TEXAS REGISTER

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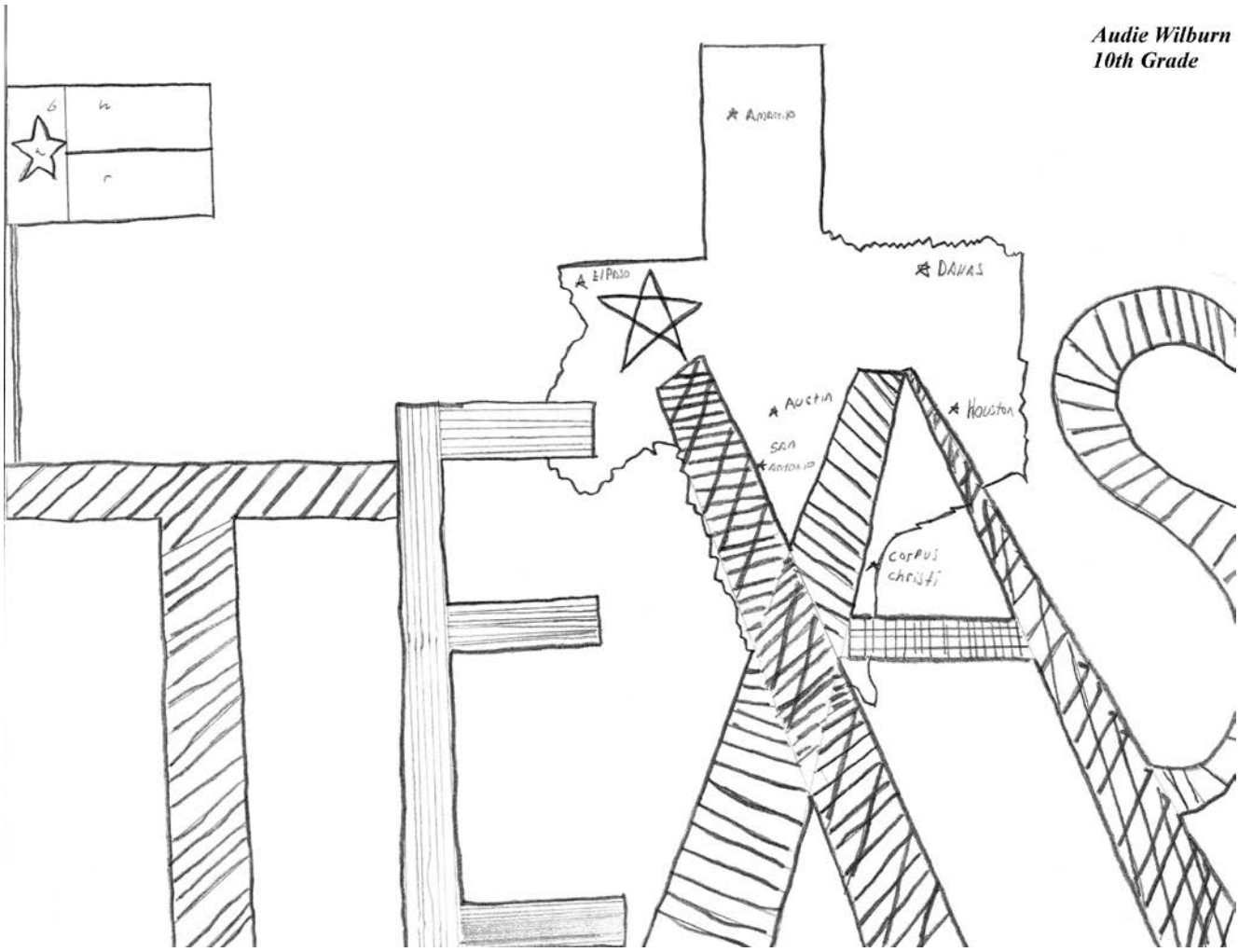

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0047-KP

Requestor:

The Honorable Glenn Hegar

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Legality of the Governor's vetoes of the General Appropriations Act (RQ-0047-KP)

Briefs requested by September 24, 2015

RQ-0048-KP

Requestor:

The Honorable G. A. Maffett III

Wharton County Attorney

100 South Fulton Street, Suite 105

Wharton, Texas 77488

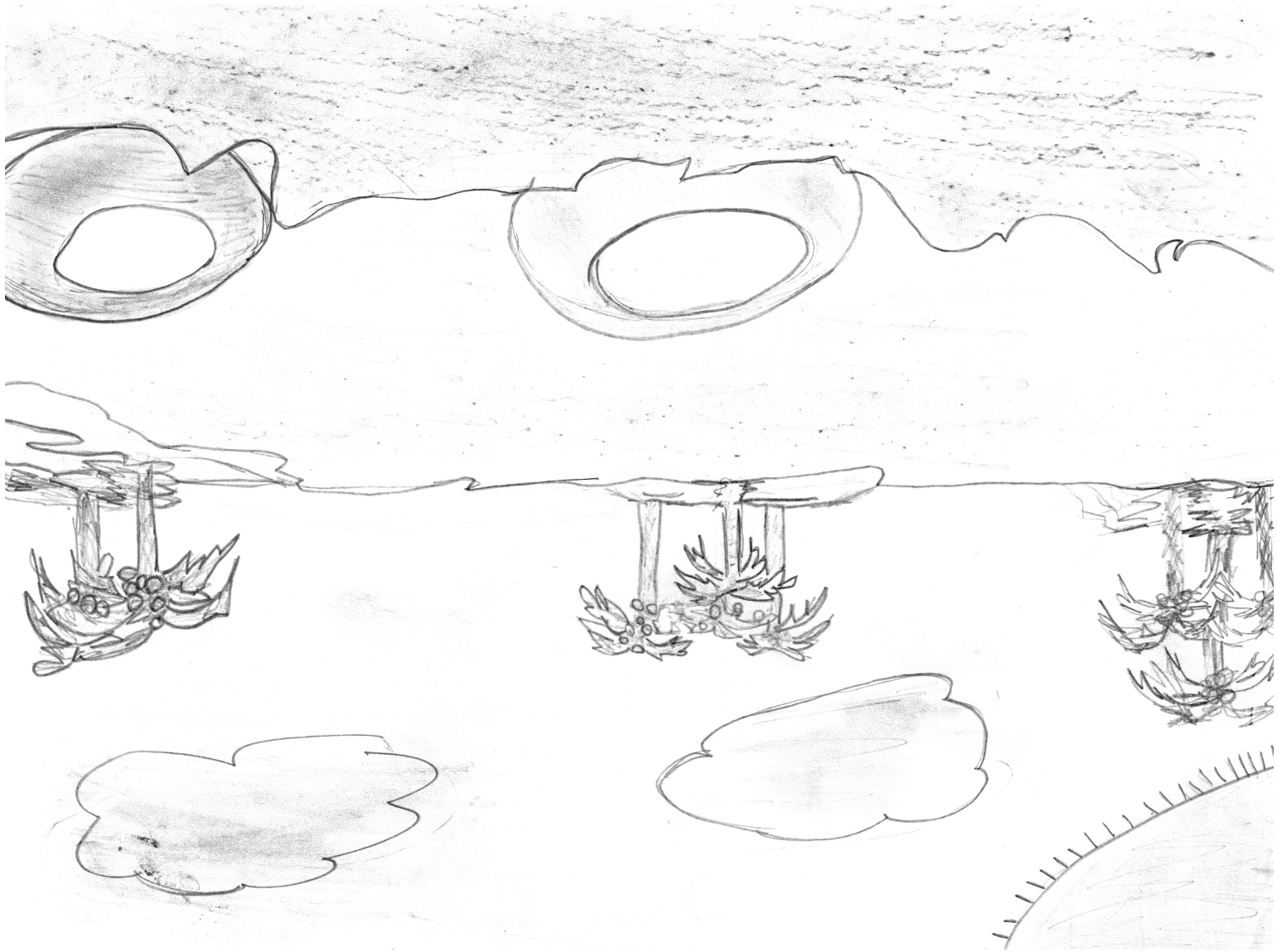
Re: Definition of the term "site improvements" for purposes of section 501.103 of the Local Government Code, relating to an economic development corporation's funding of the same (RQ-0048-KP)

Briefs requested by September 24, 2015

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

TRD-201503527
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: September 1, 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 underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

The Texas Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 203, §§203.20 - 203.22, 203.40 - 203.42, proposes new §§203.20, 203.22, 203.40, and 203.42, and proposes amendments to §§203.1, 203.23, 203.24, 203.43, and 203.44, concerning Management of Electronic Transactions and Signed Records, to clarify the processes and policies of current practices. The department published a formal notice of rule review in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4489). Review of the sections implements Government Code, §2001.039.

In §203.1, the department proposes amendments to definitions to clarify existing rule, and ensure consistency throughout the Chapter and with DIR policies.

In §203.20, DIR proposes to repeal the current rule and replace it with new language. The information in §203.20, while necessary and essential, was confusing and redundant. Therefore, DIR reorganized the information to be succinct. The information previously in §203.21 was added into §203.20.

In §203.21 DIR proposes to repeal this rule. This language has been added to §203.20 to make the rule succinct.

In §203.22, DIR proposes to repeal the current rule and replace it with new language. The current paragraph inconsistently lists the content included in the *Guidelines for the Management of Electronic Transactions and Signed Records (also known as the UETA Guidelines)* in paragraph format. This makes the rule difficult to read. Therefore, DIR proposes replacing the current language with the table of contents from the UETA Guidelines to ensure consistency and clarity throughout all documentation.

In §203.23(d), DIR proposes amendments specifying the referenced guidelines to clarify existing rule.

In §203.24, DIR proposes amendments to correct a grammatical error and allow state agencies to use a program operated by the Department of Defense (DoD) PKI Program Management Office (PMO) The program is certified and accredited in accordance with DoD Instruction 8510.01 "DoD Information Assurance Certification and Accreditation Process (DIACAP)".

In §203.40, DIR proposes to repeal the current rule and replace it with new language. The information in §203.40, while necessary and essential, was confusing and redundant. Therefore, DIR reorganized the information to be succinct. The information previously in §203.41 was added into §203.40.

In §203.41 DIR proposes to repeal this rule. This language has been added to §203.40 to make the rule succinct.

In §203.42, proposes to repeal the current rule and replace it with new language. The current paragraph inconsistently lists the content included in the *Guidelines for the Management of Electronic Transactions and Signed Records (also known as the UETA Guidelines)* in paragraph format. This makes the rule difficult to read. Therefore, DIR proposes replacing the current language with the table of contents from the UETA Guidelines to ensure consistency and clarity throughout all documentation.

In §203.43(d), DIR proposes amendments specifying the referenced guidelines to clarify existing rule.

In §203.44, DIR proposes amendments to correct a grammatical error and allow institutes of higher education to use a program operated by the Department of Defense (DoD) PKI Program Management Office (PMO) The program is certified and accredited in accordance with DoD Instruction 8510.01 "DoD Information Assurance Certification and Accreditation Process (DIACAP)".

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

Deborah Hujar, Director of Technology Planning, Policy and Governance, has determined that during the first five-year period following the amendments to 1 TAC Chapter 203 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Ms. Hujar has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 203 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rule.

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

SUBCHAPTER A. DEFINITIONS

1 TAC §203.1

The rules are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.06(a) and (b), Texas Government Code, which refer to rules created by the department regarding digital signatures; and §322.017 *et seq.,* Texas Business and Commerce Code, which allows the department to specify the management of electronic records.

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

§203.1. Applicable Terms and Technologies for Management of Electronic Transactions and Signed Records.

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

(1) Asymmetric cryptosystem--A computer-based system that employs two different but mathematically related keys with the following characteristics:

(A) one key encrypts a given message;

(B) one key decrypts a given message; and

(C) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

(2) Certificate--A message which:

(A) identifies the certification authority issuing it;

(B) names or identifies its subscriber;

(C) contains the subscriber's public key;

(D) identifies its operational period;

(E) is digitally signed by the certification authority issuing it; and

(F) conforms to ISO X.509 Version 3 standards.

(3) Certificate Manufacturer--A person that provides operational services for a Certification Authority or PKI Service Provider. The nature and scope of the obligations and functions of a Certificate Manufacturer depend on contractual arrangements between the Certification Authority or other PKI Service Provider and the Certificate Manufacturer.

(4) Certificate Policy--A document prepared by a Policy Authority that describes the parties, scope of business, functional operations, and obligations between and among PKI Service Providers and End Entities who engage in electronic transactions in a Public Key Infrastructure.

(5) Certification Authority--A person who issues a certificate.

(6) Certification practice statement--Documentation of the practices, procedures, and controls employed by a Certification Authority.

(7) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of this chapter.

(8) Digitally[-]signed communication--A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.

(9) Electronic--Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) Electronic record--A record created, generated, sent, communicated, received, or stored by electronic means.

(11) Electronic signature--An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(12) End Entities--Subscribers or Signers and Relying Parties.

(13) Escrow agent--A person who holds a copy of a private key at the request of the owner of the private key in a trustworthy manner.

(14) Expert--A person with demonstrable skill and knowledge based on training and experience who would qualify as an expert under Rule 702 of the Texas Rules of Evidence.

(15) Handwriting measurements--The metrics of the shapes, speeds and/or other distinguishing features of a signature as the person writes it by hand with a pen or stylus on a flat surface.

(16) Key pair--A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.

(17) Local government--A county, municipality, special district, or other political subdivision of this state or another state, or a combination of two or more of those entities, but excluding an agency in the judicial branch of local government.

(18) Message--A digital representation of information.

(19) Person--An individual, state agency, institution of higher education, local government, corporation, partnership, association, organization, or any other legal entity.

(20) PKI--Public Key Infrastructure; A set of policies, processes, server platforms, software and workstations used for the purpose of administering certificates and public-private key pairs, including the ability to issue, maintain, and revoke public key certificates.

(21) PKI Service Provider--A Certification Authority, Certificate Manufacturer, Registrar, or any other person that performs services pertaining to the issuance or verification of certificates.

(22) Policy Authority--A person with final authority and responsibility for specifying a Certificate Policy.

(23) Private key--The secret part of an asymmetric key pair that is used to digitally sign or decrypt data [~~The key of a key pair used to create a digital signature~~].

(24) Proof of Identification--The document or documents or other evidence presented to a Certification Authority to establish the identity of a subscriber.

(25) Public key--The public part of an asymmetric key pair that is used to verify signatures or encrypt data [~~The key of a key pair used to verify a digital signature~~].

(26) Public Key Cryptography--A type of cryptographic technology that employs an asymmetric cryptosystem.

(27) Record--Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(28) Registrar--A person that gathers evidence necessary to confirm the accuracy of information to be included in a Subscriber's certificate.

(29) Relying Party--A state agency, including an institution of higher education, that has received an electronic message that has

been signed with a digital signature and is in a position to rely on the message and signature.

(30) Role-based key--A key pair issued to a person to use when acting in a particular business or organizational capacity.

(31) Signature Dynamics--Measuring the way an individual writes his or her signature by hand on a flat surface and binding the measurements to a message through the use of cryptographic techniques.

(32) Signer--The person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.

(33) Subscriber--A person who:

(A) is the subject listed in a certificate;

(B) accepts the certificate; and

(C) holds a private key which corresponds to a public key listed in that certificate.

(34) Technology--The computer hardware and/or software-based method or process used to create digital signatures.

(35) Transaction--An action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs, where one of the persons is a state agency, including an institution of higher education.

(36) Written electronic communication--A message that is sent by one person to another person.

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 25, 2015.

TRD-201503395
Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-6124

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SUBCHAPTER B. STATE AGENCY USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §§203.20 - 203.22

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

The repeals are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.06(a) and (b), Texas Government Code, which refer to rules created by the department regarding digital signatures; and §322.017 *et seq.,* Texas Business and Commerce Code, which allows the department to specify the management of electronic records.

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

§203.20. Guidelines.

§203.21. Applicability.

§203.22. Contents.

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 25, 2015.

TRD-201503396
Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-6124

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1 TAC §§203.20, 203.22 - 203.24

The new and amended rules are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.06(a) and (b), Texas Government Code, which refer to rules created by the department regarding digital signatures; and §322.017 *et seq.,* Texas Business and Commerce Code, which allows the department to specify the management of electronic records.

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

§203.20. Guidelines.

Pursuant to the Texas Business and Commerce Code, §322.017, the department and the Texas State Library and Archives Commission jointly formed the Uniform Electronic Transactions Act Task Force to create rules and develop the Guidelines for the Management of Electronic Transactions and Signed Records. The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to state agencies that send and accept electronic records and electronic signatures to and from other persons and to state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. These guidelines are available on the department's website.

§203.22. Contents.

(a) The Guidelines for the Management of Electronic Transactions and Signed Records shall describe

(1) Electronic transactions and signed records, including:

(A) Electronic records;

(B) Electronic signatures; and

(C) Trustworthy records;

(2) Risks pertaining to electronic transactions and signed records, including:

(A) Common types of risks;

(B) Assessments of risk;

(C) Cost-benefit analysis; and

(D) Risk mitigation and security relating to electronic records and signatures; and

(3) Records management issues, including:

(A) Records life cycle and system development life cycle;

(B) Preserving trustworthy records;

(C) Records managers and auditors; and

(D) Other records management issues.

(b) The Guidelines shall include the following appendices:

(1) Current electronic signature technologies;

(2) Checklist for evaluating electronic signatures;

(3) Technical considerations of various electronic signature alternatives; and

(4) Comments on the International Organization for Standardization nonrepudiation model.

§203.23. Digital Signatures.

(a) This section applies to all written electronic communications which are sent to a state agency over the Internet or other electronic network or by another means that is acceptable to the state agency, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving state agency regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems:

(1) for the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving state agency or local government is not a party to the underlying transaction which is the subject of the communication; or

(2) for the electronic approval of payment vouchers under rules adopted by the comptroller of public accounts pursuant to applicable law.

(b) Prior to accepting a digital signature, a state agency shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. A state agency that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the state agency.

(c) A state agency that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in §203.24 of this chapter if the state agency:

(1) determines that the expense that would necessarily be incurred by the state agency in accepting such a digital signature is excessive and unreasonable; and

(2) provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable.

(d) A state agency shall review and consider any applicable guidelines as described in §203.20 of this chapter and recommendations that have been adopted by the department in determining whether and for what purposes the state agency shall accept a digital signature. A copy of such guidelines and recommendations may be obtained directly from the department, or may be obtained electronically via the department's website.

(e) A state agency shall ensure that all written electronic communications received by the state agency and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the state agency as necessary to comply with applicable law pertaining to audit and records retention requirements.

§203.24. Acceptable Digital Signature Technology.

(a) Digital Signatures must be created [~~Created~~] by an Acceptable Technology. For a digital signature to be valid for use by a state agency, it must be created by a technology that is accepted for use by the department pursuant to this section.

(b) Criteria for Determining if a Digital Signature Technology is Acceptable. An acceptable technology must be capable of creating signatures that conform to requirements set forth in §2054.060, Texas Government Code and the requirements of this section.

(c) List of Acceptable Technologies. The technology known as Public Key Cryptography is an acceptable technology for use by state agencies, provided that the digital signature is created consistent with the following:

(1) A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

(A) the private key used to create the signature on the message is known only to the signer or, in the case of a role-based key, known only to the signer and an escrow agent acceptable to the signer and the state agency; and

(B) the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key; and

(C) although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and

(D) it is computationally infeasible to derive the private key from knowledge of the public key.

(2) A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

(A) the relying party can verify the message was digitally signed by using the signer's public key to decrypt the message; and

(B) if a certificate is a required component of a transaction with a state agency, the issuing PKI Service Provider, either through a certification practice statement, certificate policy, or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

(3) The private key of public-key based digital signature must remain under the sole control of the person using it, or in the case of a role-based key, that person and an escrow agent acceptable to that person and the state agency. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, must exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

(4) The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

(5) An organization may use a PKI that is operated by the Department of Defense (DoD) PKI Program Management Office (PMO), and is certified and accredited in accordance with DoD Instruction 8510.01 "DoD Information Assurance Certification and Accreditation Process (DIACAP)".

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 25, 2015.

TRD-201503397
Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-6124

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SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §§203.40 - 203.42

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

The repeals are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.06(a) and (b), Texas Government Code, which refer to rules created by the department regarding digital signatures; and §322.017 *et seq.,* Texas Business and Commerce Code, which allows the department to specify the management of electronic records.

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

§203.40. Guidelines.

§203.41. Applicability.

§203.42. Contents.

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 25, 2015.

TRD-201503398
Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-6124

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1 TAC §§203.40, 203.42 - 203.44

The new and amended rules are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.06(a) and (b), Texas Government Code, which refer to rules created by the department regarding digital signatures; and §322.017 *et seq.,* Texas Business and Commerce Code, which allows the department to specify the management of electronic records.

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

§203.40. Guidelines.

Pursuant to the Texas Business and Commerce Code, §322.017, the department and the Texas State Library and Archives Commission jointly formed the Uniform Electronic Transactions Act Task Force to create rules and develop the Guidelines for the Management of Electronic Transactions and Signed Records. The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to institutions of higher education that send and accept electronic records and electronic signatures to and from other persons and to other institutions of higher education and state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. These guidelines are available on the department's website.

§203.42. Contents.

(a) The Guidelines for the Management of Electronic Transactions and Signed Records shall describe

(1) Electronic transactions and signed records, including:

(A) Electronic records;

(B) Electronic signatures; and

(C) Trustworthy records;

(2) Risks pertaining to electronic transactions and signed records, including:

(A) Common types of risks;

(B) Assessments of risk;

(C) Cost-benefit analysis; and

(D) Risk mitigation and security relating to electronic records and signatures; and

(3) Records management issues, including:

(A) Records life cycle and system development life cycle;

(B) Preserving trustworthy records;

(C) Records managers and auditors; and

(D) Other records management issues.

(b) The Guidelines shall include the following appendices:

(1) Current electronic signature technologies;

(2) Checklist for evaluating electronic signatures;

(3) Technical considerations of various electronic signature alternatives; and

(4) Comments on the International Organization for Standardization nonrepudiation model.

§203.43. Digital Signatures.

(a) This section applies to all written electronic communications which are sent to an institution of higher education over the Internet or other electronic network or by another means that is acceptable to

the institution of higher education, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving institution of higher education regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems:

(1) for the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving institution of higher education is not a party to the underlying transaction which is the subject of the communication; or

(2) for the electronic approval of payment vouchers under rules adopted by the comptroller of public accounts pursuant to applicable law.

(b) Prior to accepting a digital signature, an institution of higher education shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. An institution of higher education that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the institution of higher education.

(c) An institution of higher education that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in §203.44 of this chapter if the institution of higher education:

(1) determines that the expense that would necessarily be incurred by the institution of higher education in accepting such a digital signature is excessive and unreasonable; and

(2) provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable.

(d) An institution of higher education shall review and consider any applicable guidelines as described in §203.40 of this chapter and recommendations that have been adopted by the department in determining whether and for what purposes the institution of higher education shall accept a digital signature. A copy of such guidelines and recommendations may be obtained directly from the department, or may be obtained electronically via the department's website.

(e) An institution of higher education shall ensure that all written electronic communications received by it and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the institution of higher education as necessary to comply with applicable law pertaining to audit and records retention requirements.

§203.44. Acceptable Digital Signature Technology.

(a) Digital Signatures must be created [~~Created~~] by an Acceptable Technology. For a digital signature to be valid for use by an institution of higher education, it must be created by a technology that is accepted for use by the department pursuant to this section.

(b) Criteria for Determining if a Digital Signature Technology is Acceptable. An acceptable technology must be capable of creating signatures that conform to requirements set forth in §2054.060, Texas Government Code and the requirements of this section.

(c) List of Acceptable Technologies. The technology known as Public Key Cryptography is an acceptable technology for use by institutions of higher education provided that the digital signature is created consistent with the following:

(1) A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

(A) the private key used to create the signature on the message is known only to the signer or, in the case of a role-based key, known only to the signer and an escrow agent acceptable to the signer and the institution of higher education; and

(B) the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key; and

(C) although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and

(D) it is computationally infeasible to derive the private key from knowledge of the public key.

(2) A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

(A) the relying party can verify the message was digitally signed by using the signer's public key to decrypt the message; and

(B) if a certificate is a required component of a transaction with a institution of higher education, the issuing PKI Service Provider, either through a certification practice statement, certificate policy, or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

(3) The private key of public-key based digital signature must remain under the sole control of the person using it, or in the case of a role-based key, that person and an escrow agent acceptable to that person and the institution of higher education. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, must exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

(4) The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

(5) An organization may use a PKI that is operated by the Department of Defense (DoD) PKI Program Management Office (PMO), and is certified and accredited in accordance with DoD Instruction 8510.01 "DoD Information Assurance Certification and Accreditation Process (DIACAP)".

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

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Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-6124

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CHAPTER 216. PROJECT MANAGEMENT PRACTICES

The Texas Department of Information Resources (department) proposes to repeal 1 TAC 216, §216.2 and §216.3, proposes new §216.2 and §216.3, and proposes amendments to 1 TAC Chapter 216, §§216.1, 216.10 - 216.12, 216.20 - 216.22, concerning Project Management Practices. These proposed amendments are necessary to clarify and update the processes and policies of current practices. The department published a formal notice of rule review in the September 12, 2014, issue of the *Texas Register* (39 TexReg 7355). Review of the sections implements Government Code, §2001.039.

In §216.1, department staff proposes amending and adding definitions to clarify existing policies and procedures.

In §216.2 department staff proposes to repeal the rule and replace it with the current language of 1 TAC 216, §216.3. All DIR rules that have definitions for state agency and institutions of higher education consistently place the definitions in that order. 1 TAC 216 are in reverse order of other chapters. The proposed repeal and replace corrects this anomaly and ensure consistency throughout all the department's rules.

In §216.3 department staff proposes to repeal the rule and replace it with the current language of 1 TAC 216, §216.2. All DIR rules that have definitions for state agency and institutions of higher education consistently place the definitions in that order. 1 TAC 216 are in reverse order of other chapters. The proposed amendment corrects this anomaly and ensures consistency throughout all the department's rules.

In §216.10, department staff proposes amendments to clarify the existing rule. Additionally, the department proposes adding a subsection (b) requiring a state agency to include in the agency's strategic plan a description of the extent to which the agency uses its project management practices to ensure compliance with Texas Government Code §2054.156(c).

In §216.11, department staff recommended amendments to language to clarify existing policies and best practices.

In §216.12, the department amended the project management knowledge areas to be consistent with the Project Management Body of Knowledge Guide.

In §216.20, department staff proposes amendments to clarify the existing rule.

In §216.21, department staff recommended amendments to language to clarify existing policies and best practices.

In §216.22, the department amended the project management knowledge areas to be consistent with the Project Management Body of Knowledge Guide.

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

Deborah Hujar, Director of Technology Planning, Policy and Governance, has determined that during the first five-year period following the amendments to 1 TAC Chapter 216 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Ms. Hujar has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 216 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rule.

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

SUBCHAPTER A. DEFINITIONS

1 TAC §§216.1 - 216.3

The rules are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules to implement §2054.453, *et seq.*

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

§216.1. Applicable Terms and Technologies for Project Management Practices.

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

(1) Agency head--Top-most senior manager with operational accountability for an agency, such as an executive director, commissioner, university president, university chancellor, comptroller, or board president.

(2) Component--Element [~~Elements~~] of project management practices such as project management methodologies, tools, and techniques[~~, and methods for integration with other similar or related disciplines that influence information resources project delivery~~].

(3) Department--Department of Information Resources.

(4) Information Resources--Shall have the meaning in §2054.003(7), Texas Government Code.

(5) Major information resource project--Any information resources technology project that meets the criteria defined in Texas Government Code §2054.003(10) and the General Appropriations Act.

(6) Methodology--A system of practices, techniques, procedures, and rules used by those who work in a discipline.

(7) Process--Series of steps used to achieve specific goals and results.

[~~(4) Information resources--Procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.~~]

[~~(5) Information resources technologies--Data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.~~]

[(6) Process--Series of steps and strategies used to achieve specific goals and results.]

[(7) Methodology--Set of inter-related processes, tasks, activities, or principles that can be scaled and applied to a specific situation; provides a list of activities, indicates how to accomplish the activities, and identifies who executes the activities and when.]

(8) Project--An initiative that provides information resources technologies and creates products, services, or results within or among elements of a state agency; and is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(9) Project management practices--Documented and repeatable activities through which a state agency applies knowledge, skills, tools, and techniques to satisfy project activity requirements.

(10) Standard--A definition, format, or specification that has been approved by a recognized, formal, national and international standards organization or is accepted as a de facto standard by the industry.

(11) Texas Project Delivery Framework--A statewide method for project selection, control, and evaluation based on alignment with business goals and objectives that assists and guides agencies to successfully plan and manage major information resources projects.

§216.2. Institution of Higher Education.

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

§216.3. State Agency.

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

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

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Martin Zelinsky
General Counsel
Department of Information Resources
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1 TAC §216.2, §216.3

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

The repeals are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules to implement §2054.453, *et seq.*

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

§216.2. State Agency.

§216.3. Institution of Higher Education.

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

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SUBCHAPTER B. PROJECT MANAGEMENT PRACTICES FOR STATE AGENCIES

1 TAC §§216.10 - 216.12

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.453, Texas Government Code, which authorizes the department to adopt rules to implement §2054.453, *et. seq.*

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

§216.10. Policy.

(a) Each state agency shall institute, approve, and publish a methodology [an operating procedure] that communicates an agency-wide approach for project management practices. At a minimum, the methodology [operating procedure] will:

(1) Identify components and general use of project management practices, citing sources of reusable components adopted from industry standards, best practices, or another agency or institution of higher education that satisfy requirements specified under §216.11 of this subchapter; and

(2) Be approved by the agency head or designee.

(b) Each state agency shall include in its agency strategic plan under Texas Government Code §2056.002, a description of the extent to which the agency uses its project management practices.

§216.11. Requirements.

Each state agency shall manage information resources projects based on project management practices that meet the following criteria:

(1) Include a standardized and repeatable method for delivery of information resources projects that solve business problems;

(2) Include a method for governing application of project management practices;

(3) Be documented[, repeatable,] and include a single reference source (e.g., handbook, guide, repository) [that communicates how to effectively apply use of the project management practices components];

(4) Include a project classification method developed by DIR [(see http://www.dir.state.tx.us/projectdelivery/projectmgmt/classify/index.htm),] the agency, or another source that:

(A) Differentiates [Distinguishes] and categorizes projects according to level of complexity and risk (e.g., technology, size, budget, time to deliver); and

(B) Defines how to use the project classification method to establish, scale, and execute the appropriate level of processes;

(5) Include a method to periodically review, assess, monitor, [and] measure, and improve the impact of organizational project management practices on the agency's ability to achieve its strategic objectives and deliver business value [core mission];

(6) Align with use of the Texas Project Delivery Framework for major information resources projects;

(7) Accommodate use of other practices and methods that align [intersect] with application of project management practices; and

(8) Be reviewed and updated at least every two years [annually] to facilitate [help ensure] continuous process improvement.

§216.12. Standards.

Each state agency shall identify and adopt one or more standards as a basis for project management practices to meet project requirements in a minimum of the following knowledge areas:

(1) integration management;

(2) scope management;

(3) schedule management;

(4) cost management;

(5) quality management;

(6) human resources management;

(7) communications management;

(8) risk management; [and]

(9) procurement (acquisition) management; and[.]

(10) stakeholder management.

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

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SUBCHAPTER C. PROJECT MANAGEMENT PRACTICES FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§216.20 - 216.22

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; §2054.453, Texas Government Code, which authorizes the department to adopt rules to implement §2054.453, *et seq.*

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

§216.20. Policy.

Each institution of higher education shall institute, approve, and publish a methodology [an operating procedure] that communicates an institution-wide approach for project management practices. At a minimum, the methodology [operating procedure] will:

(1) Identify components and general use of project management practices, citing sources of reusable components adopted from industry standards, best practices, or a state agency or another institution of higher education that satisfy requirements specified under §216.21 of this subchapter; and

(2) Be approved by the president or chancellor of the institution of higher education or designee.

§216.21. Requirements.

Each institution of higher education shall manage information resources projects based on project management practices that meet the following criteria:

(1) Include a standardized and repeatable method for delivery of information resources projects that solve business problems;

(2) Include a method for governing application of project management practices;

(3) Be documented[, repeatable,] and include a single reference source (e.g., handbook, guide, repository) [that communicates how to effectively apply use of the project management practices components];

(4) Include a project classification method developed by DIR [(see http://www.dir.state.tx.us/projectdelivery/projectmgmt/classify/index.htm)], the institution of higher education, or another source that:

(A) Differentiates [Distinguishes] and categorizes projects according to level of complexity and risk (e.g., technology, size, budget, time to deliver); and

(B) Defines how to use the project classification method to establish, scale, and execute the appropriate level of processes;

(5) Include a method to periodically review, assess, monitor, [and] measure, and improve the impact of organizational project management practices on the institution of higher education's ability to achieve its strategic objectives and deliver business value [core mission];

[(6) Align with use of the Texas Project Delivery Framework;]

(6) [(7)] Accommodate use of other practices and methods that intersect with application of project management practices; and

(7) [(8)] Be reviewed and updated at least every two years [annually] to facilitate [help ensure] continuous process improvement.

§216.22. Standards.

Each institution of higher education shall identify and adopt one or more standards as a basis for project management practices to meet project requirements in a minimum of the following knowledge areas:

(1) integration management;

(2) scope management;

(3) schedule management;

(4) cost management;

(5) quality management;

(6) human resources management;

(7) communications management;

(8) risk management; [~~and~~]

(9) procurement (acquisition) management; and[~~.~~]

(10) stakeholder management.

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

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Martin Zelinsky
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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER M. MISCELLANEOUS PROGRAMS

DIVISION 6. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

1 TAC §355.9080

The Texas Health and Human Services Commission (HHSC) proposes new §355.9080, concerning Reimbursement Methodology for Prescribed Pediatric Extended Care Centers.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, proposes new §355.9080 to establish a reimbursement methodology for Prescribed Pediatric Extended Care Centers (PPECCs). A PPECC provides non-residential, facility-based care as an alternative to private-duty nursing (PDN) for individuals under the age of 21 with complex medical needs. In 2013, the Texas Legislature adopted Senate Bill 492, which, among other things, enacts Health and Safety Code Chapter 248A to establish PPECCs in Texas and provide for their licensing; enacts Texas Human Resources Code §32.024(jj) to require HHSC to establish PPECCs as a separate Medicaid provider type; and, in an uncodified portion, limits the HHSC-established reimbursement rate to no more than 70 percent of the average hourly PDN rate. *See* Act of May 22, 2013, 83d Leg., R.S., ch. 1168, §§1, 6, 8(c), 2013 Tex. Gen. Laws 2898.

Section-by-Section Summary

Proposed §355.9080(a) establishes that the payment rates for the PPECC program are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, HHSC will model rates based on a pro forma analysis that makes assumptions about staff salaries and service requirements and estimates the basic types and costs of products and services necessary to deliver services that meet federal and state requirements. In accordance with the Legislature's direction, the payment rate is limited to 70 percent of the average PDN rate under the Texas Health Steps Program.

Proposed §355.9080(b) establishes that §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) govern payment rate development under the PPECC program.

Proposed §355.9080(c) states that, if HHSC needs to gather adequate financial and statistical data to determine a proper reimbursement rate, HHSC may require a contracted provider to submit a cost report for any service provided through the PPECC program. If HHSC requires a cost report, the provider must follow the cost reporting guidelines specified in §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs), and §355.105 of this chapter. A provider is excused from the requirement to submit a cost report if the provider meets one or more of the conditions in §355.105(b)(4)(D) of this chapter.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be no fiscal impact to state government or local governments as a result of enforcing or administering the rule.

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

Small and Micro-business Impact Analysis

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

Public Benefit

Pam McDonald, Director of Rate Analysis for HHSC, has determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefit is that the rule will describe the reimbursement methodology used to develop rates for this program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Sarah Hambrick by fax to (512) 730-7475; by e-mail to *sarah.hambrick@hhsc.state.tx.us;* or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication of this proposal in the Texas Register.

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Human Resources Code §32.024(jj), which requires HHSC to allow PPECCs to enroll as Medicaid providers.

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

§355.9080. Reimbursement Methodology for Prescribed Pediatric Extended Care Centers.

(a) Payment rate determination. Payment rates for the Prescribed Pediatric Extended Care Centers program are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures). The payment rate cannot be more than 70 percent of the average hourly Private Duty Nursing rate under the Texas Health Steps (THSteps) program.

(b) Related information. The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter applies to this section.

(c) Reporting of cost. To gather adequate financial and statistical information upon which to base reimbursement, the Health and Human Services Commission (HHSC) may require a contracted provider to submit a cost report for any service provided through the Prescribed Pediatric Extended Care Centers program.

(1) If HHSC requires the provider to submit a cost report, the provider must follow the cost reporting guidelines in §355.105 of this chapter and the guidelines for determining whether a cost is allowable or unallowable in §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs).

(2) A provider is excused from the requirement to submit a cost report if the provider meets one or more of the conditions in §355.105(b)(4)(D) of this chapter.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 12. COAL MINING REGULATIONS
SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS
DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) proposes to amend §12.108, relating to Permit Fees, to implement provisions of House Bill 1, 84th Texas Legislature (Regular Session, 2015), and, specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from general revenue for state fiscal years 2016 and 2017 to cover the cost of permitting and inspecting coal mining operations. This requirement is contingent upon the Commission assessing fees sufficient to generate, during the 2016-2017 biennium, revenue to cover the general revenue appropriations.

The Commission proposes to amend the fees set forth in subsection (b) by amending the calendar years to 2015 and 2016. The Commission proposes to delete paragraph (1) to eliminate the annual fee for each acre of land within a permit area on which coal or lignite was actually removed during a calendar year, which is currently $84 per acre. The Commission proposes to renumber paragraph (2) as paragraph (1) and increase the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of each year, as shown on the map required at §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans), from the current $12 to $13.05. Finally, the Commission proposes to renumber paragraph (3) as paragraph (2) and increase the annual fee for each permit in effect on December 31st of a year to $6,600 from the current amount of $6,540. The Commission anticipates that annual fees in these new amounts will result in revenue of $2,826,150 in each year of the 2016-2017 biennium.

John Caudle, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments would be in effect, the net effect on state government as a result of enforcing the proposed amendments would be zero. There are no fiscal impacts on local governments.

The Commission's coal mining regulatory program is partially funded with a 50 percent cost reimbursement grant from the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. The appropriated state share of the cost for implementing this regulatory program, $2,703,364 in FY 2016 and $2,537,089 in FY 2017, is funded from fees paid by the regulated coal mining industry. Based on an anticipated shortfall of federal share funding, the Commission proposes an increased estimated annual state share of $2,826,150 for each year of the biennium.

Fees for the Commission's surface coal mining regulatory program come from two general categories: application fees and annual fees. The application fees are specified in §12.108(a) and the Commission does not propose to revise these fees in this rulemaking. Annual fee collection is based on a formula and schedule agreed to by the coal mining industry and the Commission in 2005. Every two years since 2005 the Commission has adjusted the surface mining fees based on this predetermined formula. This fee schedule adjustment gradually increases fees based on bonded acreage for each permit as of December 31 of each year and correspondingly decreases the portion of the fee derived from mined acreage. The mined acreage fee, currently specified in subsection (b)(1), is now proposed to be eliminated in this fifth and final adjustment to the fee schedule pursuant to the 2005 agreement. The Commission may adjust the annual fees in future rulemakings if additional funding is needed due to changes in: federal funding, legislative appropriations, the number of permits, the amount of funds received from application fees, the amount of bonded acreage, or other relevant factors.

The total amount of annual fees required to fund the regulatory program was determined by subtracting the total amount of application fees estimated to be collected in each fiscal year from the estimated annual state share cost for FY 2016 and FY 2017 ($2,826,150). Mr. Caudle estimates that the Commission will collect application fees annually in the amount of $90,000 in both FY 2016 and FY 2017. The remainder in state share expense is then allocated for collection from annual fees. In accordance with the agreement with industry, the total remaining amount of annual fees required is allocated at seven percent for annual permit fees and 93 percent from bonded acreage fees. The proposed annual fee rates are then determined based on the estimated permit status and bonded acres on December 31, 2015.

The 93 percent to be collected through the bonded acreage fee ($2,543,600) was divided by 195,000 acres, the cumulative acres the Commission estimates will be under bond on December 31, 2015, to derive the $13.05 per bonded acre fee proposed in renumbered subsection (b)(1). The remaining seven percent to be collected from annual permit fees ($191,450) was divided by 29, the estimated number of permits on December 31, 2015, to derive the $6,600 individual permit annual fee proposed in renumbered subsection (b)(2).

Mr. Caudle has determined that during each year of the first five years the proposed amendments would be in effect there will be an increase in the economic cost to the mining industry of approximately $44,490. This is based on: (1) a comparison of the revenue that would be generated under the current $84 annual mined acreage fee (based on 3000 acres mined each year) to the revenue that would be generated under the proposed amendment that would eliminate this mined acreage fee; (2) a comparison of the revenue that would be generated under the current annual fee of $12 per bonded acre to the revenue that would be generated under the proposed increase to $13.05 per bonded acre; and (3) a comparison of the revenue generated under the current annual fee of $6,540 per permit to the revenue that would be generated under the proposed increased amount of $6,600 for each of the 29 permits in existence. Mr. Caudle has determined that the public benefit resulting from the new fee structure for coal mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the Commission, as required by House Bill 1.

In accordance with Texas Government Code §2006.002, Mr. Caudle has determined that there will be no adverse economic effects on small businesses or micro-businesses resulting from the proposed amendments because there are no small businesses or micro-businesses, as those terms are defined in Texas Government Code §2006.001, holding coal mining permits from the Commission; therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

Lastly, the Commission has determined that the proposed rule does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225; therefore, a regulatory analysis pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at *www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings;* or by electronic mail to *rulescoordinator@rrc.state.tx.us.* Comments should refer to Docket No. SMRD 1-15. The Commission will accept comments until 12:00 p.m. (noon) on Monday, October 12, 2015, which is 31 days after publication in the *Texas Register.* The Commission has determined this is a reasonable opportunity for interested persons to submit data, views, or arguments, as required by Texas Government Code, §2001.029, for two reasons. First, the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons additional time to review and analyze the proposal and to draft and submit comments. Second, the proposed fee structure continues to be based on a predetermined formula and schedule agreed to by the coal mining industry and the Commission in 2005 for a 10-year period, phasing in fee increases based on bonded acreage and phasing out the portion of the fee derived from mined acreage. The adjustment proposed in this rulemaking is the fifth and final adjustment to this fee schedule under the agreement with industry.

The Commission encourages all interested persons to submit comments on the proposal no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Caudle at (512) 463-6901. The status of pending Commission rulemakings is available at *www.rrc.state.tx.us/legal/rules/proposed-rules.*

The Commission proposes the amendment under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and §134.055, which authorizes the Commission to collect annual fees.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055.

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055.

Issued in Austin, Texas, on August 25, 2015.

§12.108. Permit Fees.

(a) (No change.)

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees for calendar years 2015 [~~2013~~] and 2016 [~~2014~~] due and payable not later than March 15th of the year following the calendar year for which these fees are applicable:

[~~(1) a fee in the amount of $84 for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year;~~]

(1) [~~(2)~~] a fee of $13.05 [~~$12~~] for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans); and

(2) [~~(3)~~] a fee of $6,600 [~~$6,540~~] for each permit in effect on December 31st of the year.

(c) (No change.)

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

Filed with the Office of the Secretary of State on August 25, 2015.

TRD-201503394
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 475-1295

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PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

The Texas Racing Commission proposes amendments to 16 TAC §311.1 and §311.104. Section 311.1 relates to occupational licenses in general, and §311.104 relates to the licensure of trainers. The proposed amendment to §311.1 would delete language stating that an individual who enters an animal into a race is deemed to be a participant in racing. The proposed amendment to §311.104 would allow an unlicensed trainer to enter a horse or greyhound into a race, but require the trainer to obtain a license one hour prior to the post time of the first race of the day in which the trainer intends to race the horse or greyhound.

Chuck Trout, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposed amendments.

Mr. Trout has determined that for each year of the first five years that the proposed amendments are in effect the anticipated public benefit will be to improve consistency by making the licensing requirements for trainers consistent with the licensing requirements for owners. The changes will also make it easier for trainers to enter horses and greyhounds into races.

The amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

The amendments will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by increasing consistency within the rules and by making it easier for trainers to make entries.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. Comments may also be submitted electronically to *info@txrc.texas.gov.*

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.1

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§311.1. Occupational Licenses.

(a) License Required.

(1) A person other than a patron may not participate in racing at which pari-mutuel wagering is conducted unless the person has a valid license issued by the Commission. [~~Any individual who enters an animal is deemed to be a participant in racing.~~]

(2) A licensee may not employ a person to work at a racetrack at which pari-mutuel wagering is conducted unless the person has a valid license issued by the Commission.

(3) An association may not employ a person who works in an occupation that affords the employee an opportunity to influence racing with pari-mutuel wagering, or who will likely have significant access to the backside or restricted areas of a racetrack, unless the person has a valid license issued by the Commission.

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on August 31, 2015.

TRD-201503464
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 833-6699

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SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.104

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§311.104. Trainers.

(a) Licensing.

(1) [~~Except as otherwise provided by this subsection, a trainer must obtain a trainer's license before the trainer may enter a horse or greyhound in a race.~~] A trainer may enter a horse or greyhound in a [~~stakes~~] race without first obtaining a license, but must obtain a license one hour prior to the post time of the first race of the day in which the trainer intends to race the horse or greyhound. [~~before the horse or greyhound may start in the stakes race.~~] Except as otherwise provided by this section, to be licensed by the Commission as a trainer, a person must:

(A) be at least 18 years old;

(B) submit a minimum of two written statements from licensed trainers, veterinarians, owners, or kennel owners, attesting to the applicant's character and qualifications;

(C) interview with the board of stewards or judges;

(D) satisfactorily complete a written examination prescribed by the Commission; and

(E) satisfactorily complete a practical examination prescribed by the Commission and administered by the stewards or racing judges or designee of the stewards or racing judges.

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

(b) - (k) (No change.)

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

Filed with the Office of the Secretary of State on August 31, 2015.

TRD-201503465
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §313.110

The Texas Racing Commission proposes an amendment to 16 TAC §313.110. The section relates to coupled entries. The proposed amendment would eliminate the $50,000 threshold for horses with common ownership interests to run as separate betting interests in stakes races.

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

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be to improve interest and wagering in stakes races by increasing the number of betting interests. This will generate larger purses for the owners of winning horses and greyhounds.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by increasing purses for the owners of winning horses and greyhounds.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. Comments may also be submitted electronically to *info@txrc.texas.gov.*

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§313.110. Coupled Entries.

(a) Not more than two horses that have common interests through ownership, training, or lease may be entered in an overnight race, unless the race is divided.

(b) Except as provided by subsection (c) of this section, if two horses entered in a race are owned in whole or in part by the same individual or entity, the entry shall be coupled as a single wagering interest.

(c) In stakes races [~~with a purse of at least $50,000~~], the stewards may allow two or more horses owned in whole or in part by the same individual or entity to race as separate wagering interests.

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 31, 2015.

TRD-201503466
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE WAGERING
DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.322

The Texas Racing Commission proposes new 16 TAC §321.322, concerning the Triple Trifecta wager. The new rule would create a new wager based on the correct selection of the first three race animals, in order, in three successive races. The wager is designed to increase the racing associations' handle on live races. It will also potentially create a large carryover pool over time, which will attract additional wagers.

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

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to increase purses for the owners of winning horses and greyhounds.

The new rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed new rule.

The new rule will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by increasing the size of purses for the owners of wining horses and greyhounds.

All comments or questions regarding the proposed new rule may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. Comments may also be submitted electronically to *info@txrc.texas.gov.*

The new rule is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on greyhound races and horse races.

The new rule implements Texas Revised Civil Statutes Annotated, Article 179e.

§321.322. Triple Trifecta.

(a) The Triple Trifecta wager is not a parlay and has no connection with or relation to the win, place, and show pools shown on the tote board. All tickets on the Triple Trifecta wager shall be calculated as a separate pool.

(b) The association may select a distinctive name for the Triple Trifecta wager, with the prior written approval of the executive secretary.

(c) A Triple Trifecta wager is a contract between the holder of the ticket and the association and the ticket constitutes acceptance of this section. The association, totalisator company and the State of Texas are not liable to a person for a Triple Trifecta wager ticket that is not a winning ticket under this section or for a Triple Trifecta wager ticket that is not delivered.

(d) The Triple Trifecta wager requires the selection of the first three finishers, in exact order, in each of three consecutive designated contests. Payment of the ticket may be made only to the purchaser who has selected the qualifying finishers in three designated races.

(e) A coupled entry or mutuel field in a race that is part of the Triple Trifecta races shall race as a single betting interest for the purpose of mutuel pool calculations and payoffs to the public.

(f) The association must obtain written approval from the executive secretary concerning the scheduling of the Triple Trifecta contests and the designation of qualifying races. Any change to the Triple Trifecta requires prior written approval from the executive secretary and the association.

(g) If no Triple Trifecta ticket is sold for the winning combination, then 100% of the net pool shall be carried over and made available on the next consecutive Triple Trifecta pool and shall be combined with and added to the net pool for such qualifying pool, and made available for payout.

(h) Except for refunds required by this section, a Triple Trifecta wager ticket may not be sold, exchanged, or canceled after the close of wagering on the first of the Triple Trifecta wager races.

(i) Dead heats. For the purposes of determining whether a Triple Trifecta wager correctly selected the finishers in exact position, animals in a dead heat are deemed to jointly occupy both or all positions in the dead heat. For calculation purposes, the Triple Trifecta will be calculated as a place pool.

(j) The minimum number of wagering interests required to offer Triple Trifecta wagering shall be six wagering interests in each of the Triple Trifecta races. If one of the legs of the Triple Trifecta scratches to less than six wagering interests then all wagers, less any carryover, shall be refunded.

(k) If after wagering has begun an animal entered in a Triple Trifecta race is scratched or otherwise prevented from racing, all money wagered on the affected animal shall be deducted from the Triple Trifecta pool and refunded to the holders of tickets on the affected animal.

(l) Canceled contests. If any of the Triple Trifecta contests are canceled or declared no contest, that Triple Trifecta pool, less any carryover, shall be refunded.

(m) If on the final day of a race meeting or on a designated mandatory payout date the Triple Trifecta pool has not been distributed under this section, then the net pool for that performance plus any carryover from previous performances shall be paid out in the following manner:

(1) To those who correctly selected two of three trifectas in the Triple Trifecta races. If there are no such wagers, then

(2) To those who correctly selected one of three trifectas in the Triple Trifecta races. If there are no such wagers, then

(3) As a single price pool to holders of Triple Trifecta wagers.

(n) If the final or designated mandatory payoff performance is canceled or the pool has not been distributed under subsection (m) of this section the pool shall be deposited in an interest-bearing account approved by the executive secretary. The pool plus all accrued interest shall then be carried over and added to the Triple Trifecta pari-mutuel pool in the following race meeting on a date and performance designated by the association with the approval of the executive secretary.

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 31, 2015.

TRD-201503463

Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 833-6699

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT
SUBCHAPTER C. PRACTICE AND PROCEDURE

16 TAC §401.220

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.220 (Motion for Rehearing). The purpose of the proposed amendments is to implement changes to Texas Government Code §2001.146 (Motions for Rehearing: Procedures) made pursuant to Section 9 of the recently enacted Tex. S.B. 1267, 84th Leg., R.S. (2015). Senate Bill 1267 modifies certain deadlines with regard to filing, responding to, and ruling on motions for rehearing in contested cases under the Administrative Procedure Act, and clarifies the content required in a motion for rehearing.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there is no significant fiscal impact to the state as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2). Bob Biard, General Counsel, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit is that the Commission's procedural rule on Motions for Rehearing will accurately reflect the legislative changes set forth in S.B. 1267, and parties in contested cases involving the Commission will be apprised of the correct motion for rehearing deadlines and content requirements when referring to the Commission's rule.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposal may be submitted to Kristen Guthrie, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed pursuant to Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction, and §466.015(a), which authorizes the Commission to adopt rules necessary to administer Chapter 466. The amendments are also proposed pursuant to §2001.004(1) of the Texas Government Code, which requires state agencies to adopt rules of practice.

The proposed amendments implement changes to §2001.146 of the Texas Government Code.

§401.220. Motion for Rehearing.

A motion for rehearing may be filed by any party with the Commission by filing it with the Office of the General Counsel within 25 [~~20~~] days of the date which the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has been extended [~~a decision or order that may become final~~] under Texas Government Code §2001.142, by an agreement under Texas Government Code §2001.147, or by a written Commission order issued under Texas Government Code §2001.146(e). The motion must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error. [~~state each specific ground upon which the party believes the decision is erroneous.~~] Any reply to a motion for rehearing must be filed within 40 days after the date which the decision or order that is the subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under Texas Government Code §2001.147, or by a written state agency order issued under Texas Government Code §2001.146(e). The Commission shall act on a motion for rehearing [~~30 days of a decision or order that may become final under Texas Government Code §2001.144. The motion will be acted on~~] within 55 days of the date the [~~45 days of a~~] decision or order that is the subject of the motion is signed, [~~may become final under Texas Government Code §2001.144,~~] or the motion is [~~will be~~] overruled by operation of law. [~~These times are calculated in accordance with Texas Government Code §2001.142 as provided by Texas Government Code, Chapter 2001, Administrative Procedure Act.~~] The Commission may, on its own initiative or on the motion of any party for cause shown, by written order[~~,~~] extend the time for filing a motion or reply or taking agency action under Texas Government Code [~~Annotated~~] §2001.146, provided that the Commission extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. The Executive Director or the Charitable Bingo Operations Director, as appropriate, may act on behalf of the Commission to extend the time for the Commission to act on a motion for rehearing if such motion cannot be considered by the Commission prior to the time it will expire by operation of law. An extension may not extend the period for Commission action beyond the 100th [~~90th~~] day after the date the decision or order that is the subject of the motion for rehearing is signed. In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, the 100th day after the date of the decision or order that is the subject of the motion is signed. [~~on which the party or party's attorney of record is notified, as required by Texas Government Code Annotated §2001.142, of the decision or order that may become final under §2001.144.~~]

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 28, 2015.

TRD-201503460
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §101.3014, §101.3017

The Texas Education Agency (TEA) proposes amendments to §101.3014 and §101.3017, concerning student assessment. Section 101.3014 addresses scoring and reporting of assessment instruments. Section 101.3017 addresses the release of tests. The proposed amendments would reflect changes made to the state's assessment graduation requirements by House Bill (HB) 2349, 84th Texas Legislature, Regular Session, 2015.

The proposed amendment to 19 TAC Chapter 101, Subchapter CC, Division 1, §101.3014, Scoring and Reporting, would stipulate that a school district, charter school, or private school that administers a State of Texas Assessments of Academic Readiness test will be required to report to the TEA whether an assessed student transferred into the school or district from out of state during the current school year. Procedures for reporting of out-of-state transfer students to the TEA are currently being established by the TEA and will be communicated to schools and districts in the appropriate test administration materials. As required by new TEC, §39.02315, the assessment results of the out-of-state transfer students will be reported separately to school districts from the results of the district's other students. This is in addition to the current reporting of assessment results for all students and other student subsets.

The proposed amendment to 19 TAC Chapter 101, Subchapter CC, Division 1, §101.3017, Release of Tests, would add the assessment release for the 2014-2015 and 2015-2016 school years and specify that an assessment's release is contingent on whether it is under development or modification.

The proposed amendment to 19 TAC §101.3014 would have procedural and reporting implications for submissions to the TEA. The TEA will establish procedures for the reporting of out-of-state transfer students to the TEA. These procedures will be communicated to schools and districts in the appropriate test administration materials. The proposed amendments would have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

FISCAL NOTE. Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT/COST NOTE. Dr. Cloudt has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be establishing separate scoring and reporting for out-of-state transfer students, informing the public of the assessment release schedule for the 2014-2015 and 2015-2016 school years, and clarifying that the release of an assessment under development or revision may be deferred. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 11, 2015, and ends October 13, 2015. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §39.02315, as added by House Bill 2349, 84th Texas Legislature, 2015, which requires the commissioner to adopt rules to report the results of state assessments for students who recently moved from another state separately from the results of other students. HB 2349 also amended TEC, §39.025, by removing subsection (f)(3) and relocating it as new TEC, §39.023(e-1), which allows TEA to delay the release of any assessment currently under development or modification.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §39.023(e-1) and §39.02315, as added by HB 2349, 84th Texas Legislature, 2015.

§101.3014. Scoring and Reporting.

(a) The superintendent of a school district or chief administrative officer of each charter school shall accurately report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.

(b) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students, his or her parent or guardian, and his or her teacher for that subject of test results, observing confidentiality requirements in the TEC, §39.030.

(c) All test results shall be included in each student's academic record and shall be furnished for each student transferring to another school district, charter school, or private school.

(d) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §28.0211, within a ten-day period following the receipt of the test materials from the school district or charter school.

(e) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §39.023, within a 21-day period following the receipt of the test materials from the school district or charter school.

Upon receipt of the assessment results from the agency's test contractor, a school district or charter school shall disclose a student's assessment results to a student's teacher in the same subject area as the assessment for that school year.

(f) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall accurately report to the Texas Education Agency (TEA) whether that student transferred into the school or district from out of state during the current school year.

(1) Procedures for the reporting of out-of-state-transfer students to the TEA shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by the TEC, Chapter 39, Subchapter B, shall follow procedures specified in those test administration materials.

(2) The assessment results of the out-of-state transfer students shall be reported separately to school districts from the results of the district's other students in addition to the current reporting of assessment results for all students and other student subsets.

§101.3017. Release of Tests.

During the 2014-2015 and 2015-2016 school years [~~2013-2014 school year~~], the Texas Education Agency shall release [~~all~~] test items and answer keys for primary administration assessment instruments under the Texas Education Code (TEC), §39.023(a), (b), (c), (d), and (l), after the last time the assessment is administered for the school year. The test release shall exclude any test items or test forms used in subsequent test administrations. In accordance with the TEC, §39.023(e-1), an assessment's release shall be deferred or limited if the assessment is under development or revision.

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 31, 2015.

TRD-201503491
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 475-1497

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DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

19 TAC §101.3021

The Texas Education Agency (TEA) proposes an amendment to §101.3021, concerning student assessment. Section 101.3021 addresses required participation in academic content area assessments. The proposed amendment would reflect changes made to the state's assessment graduation requirements by House Bill (HB) 2349, 84th Texas Legislature, 2015.

As amended in section 4 of HB 2349, 84th Texas Legislature, Regular Session, 2015, the Texas Education Code (TEC), §39.025(a), specifies a student must only pass an end-of-course (EOC) assessment for a course in which the student was enrolled in a Texas public school and for which an EOC assessment is administered in order to receive a Texas diploma. Prior to HB 2349, a student on the foundation program was required take and pass all five EOC assessments in order to receive a Texas diploma regardless of course enrollment. The amended assessment graduation requirements are effective with the 2015-2016 school year.

The proposed amendment to 19 TAC Chapter 101, Subchapter CC, Division 2, §101.3021, would reflect HB 2349's revision to the assessment graduation requirements by deleting subsections (e)(1) and (e)(2) to remove any qualifications about the applicability of subsection (e). With the proposed deletions, subsection (e) would state that 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 proposed amendment would have no procedural and reporting implications for submissions to the TEA. The proposed amendment would have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

FISCAL NOTE. Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendment.

PUBLIC BENEFIT/COST NOTE. Dr. Cloudt has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be additional opportunities for students to meet assessment requirements for graduation. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 11, 2015, and ends October 13, 2015. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §39.025(a), which requires the commissioner to adopt rules requiring a student in the foundation high school program to be administered end-of-course (EOC) assessments and, as amended by HB 2349, 84th Texas Legislature, 2015, which specifies that a student must only pass an EOC assessment for a course in which the student was enrolled

in a Texas public school and for which an EOC assessment is administered in order to receive a Texas diploma.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §39.025(a), as amended by HB 2349, 84th Texas Legislature, 2015.

§101.3021. Required Participation in Academic Content Area Assessments.

(a) Beginning with students first enrolled in Grade 9 in the 2011-2012 school year, a student enrolled in a course for which an end-of-course (EOC) assessment exists as required by the Texas Education Code (TEC), §39.023(c), shall take the appropriate assessment.

(b) A student is required to meet the EOC assessment graduation requirements of §101.3022 of this title (relating to Assessment Requirements for Graduation) to receive a Texas diploma if a student:

(1) is participating in a distance-learning or correspondence course as outlined in §74.23 of this title (relating to Correspondence Courses and Distance Learning) for which there is an EOC assessment as listed in the TEC, §39.023(c); or

(2) is participating in a dual-credit course as specified in §74.25 of this title (relating to High School Credit for College Courses) for which there is an EOC assessment as listed in the TEC, §39.023(c).

(c) An EOC assessment administered under the TEC, §39.023(c), cannot be used for purposes of credit by examination as specified in §74.24 of this title (relating to Credit by Examination).

(d) Beginning in the 2011-2012 school year, a student in Grade 8 or lower who takes a high school course for credit is required to take the applicable EOC assessment specified in the TEC, §39.023(c). The EOC assessment result shall be applied toward the student's assessment graduation requirements, as specified in §101.3022 of this title.

(e) If a student earned high school credit for a course for which there is an EOC assessment as listed in the TEC, §39.023(c), prior to enrollment in a Texas public school district and the credit has been accepted by a Texas public school district, or a student completed a course for Texas high school credit in a course for which there is an EOC assessment prior to the 2011-2012 spring administration, the student is not required to take the corresponding EOC assessment as listed in the TEC, §39.023(c). [~~This subsection applies only to:~~]

[~~(1) students who will graduate under the minimum, recommended, or distinguished high school programs as those programs existed before the adoption of House Bill 5, 83rd Texas Legislature, Regular Session, 2013; or~~]

[~~(2) courses for which credit was earned prior to September 1, 2014, by students who will graduate under the foundation high school program.~~]

(f) A student may retake an EOC assessment under the TEC, §39.023(c), only if the student previously failed the EOC assessment. A student is not required to retake a course in order to be administered a retest of an EOC assessment.

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-201503492

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 475-1497

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SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING SUBSTITUTE ASSESSMENTS FOR GRADUATION

19 TAC §101.4002

The Texas Education Agency (TEA) proposes an amendment to §101.4002, concerning student assessment. Section 101.4002 allows for the use of certain substitute tests in place of corresponding State of Texas Assessments of Academic Readiness (STAAR®) end-of-course (EOC) assessments for graduation purposes. The proposed amendment would reflect changes made to the state's assessment graduation requirements by Senate Bill (SB) 149 and House Bill (HB) 1613, 84th Texas Legislature, 2015.

As amended by HB 1613, the Texas Education Code (TEC), §39.025(a-1), stipulates that a student enrolled in an English language arts (ELA) or a mathematics college preparatory course under the TEC, §28.014, who meets the college-readiness benchmark on the applicable Texas Success Initiative (TSI) assessment has satisfied the assessment graduation requirement for that subject area. The college preparatory courses are specifically identified with the following Public Education Information Management System (PEIMS) codes: College Preparatory Course English Language Arts, PEIMS code CP110100, and College Preparatory Course Mathematics, PEIMS code CP111200.

For ELA, a student meeting the college-readiness benchmark on the reading and writing TSI at the end of the college preparatory course would satisfy both the English I and English II EOC requirements. The mathematics TSI assessment would satisfy the Algebra I EOC requirement. A student may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment. If a student fails to meet the TSI college-readiness benchmark, the student may retake either the TSI or the applicable EOCs for purposes of graduation.

Additionally, as added by SB 149, the TEC, §39.025(a-3), states that a student who did not meet satisfactory performance on the Algebra I or English II EOC assessment after retaking the assessment, but who receives a score of proficient on the TSI assessment in the corresponding course area, has satisfied the EOC assessment requirement for that subject. The agency clarifies that though the TSI provisions of SB 149 expire September 1, 2017, a student may still meet the assessment graduation requirements using the TSI if the student has met the necessary score requirement as specified in 19 TAC §101.4002(b) prior to September 1, 2017.

The proposed amendment to 19 TAC §101.4002 would add new subsection (d) for use of the TSI to meet the state's assessment graduation requirements as a result of and allowed by SB 149 and HB 1613. The proposed amendment would also make conforming changes to subsections (b) and (c), as well as update Figure: 19 TAC §101.4002(b) to include the necessary TSI

scores a student must achieve in order to use a TSI assessment in place of an EOC assessment developed under the TEC, §39.023(c). The subsequent subsections would be re-lettered accordingly.

The agency notes that a student must achieve the corresponding required ELA TSI score as indicated in the chart included in rule as Figure: 19 TAC §101.4002(b) to use as a substitute for a state-developed EOC assessment. In addition, those students who took separate reading and writing assessments for the English II EOC and who did not meet the English II assessment graduation requirement using those tests as specified by 19 TAC §101.3022(b) of this title may not use the separate TSI reading and writing assessments to substitute for the corresponding English II EOC.

The proposed amendment would have no procedural and reporting implications beyond those that apply to all Texas students with respect to implementation of the STAAR® program. The proposed amendment would necessitate that school districts track and verify results of substitute assessments used by students for graduation purposes.

FISCAL NOTE. Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendment.

PUBLIC BENEFIT/COST NOTE. Dr. Cloudt has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be that certain students would be allowed the opportunity to substitute an appropriate test for a STAAR® EOC assessment for graduation purposes. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 11, 2015, and ends October 13, 2015. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §39.025(a), which requires the commissioner to adopt rules requiring a student in the foundation high school program to be administered end-of-course (EOC) assessments; TEC, §39.025(a-1), as amended by HB 1613, 84th Texas Legislature, 2015, which stipulates that a student enrolled in an English language arts (ELA) or a mathematics college preparatory course under TEC, §28.014, who meets the college-readiness benchmark on the applicable Texas Success Initiative (TSI) assessment has satisfied the assessment graduation requirement for that subject area; and TEC, §39.025(a-3), as added by SB 149, 84th Texas Legislature, 2015, which states that a student who did not meet satisfactory performance on the Algebra I or English II EOC assessment after retaking the assessment, but who receives a score of proficient on the TSI assessment in the corresponding course area, has satisfied the EOC assessment requirement for that subject.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §39.025(a) and (a-1), as amended by HB 1613, 84th Texas Legislature, 2015; and TEC, §39.025(a-3), as added by SB 149, 84th Texas Legislature, 2015.

§101.4002. State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.

(a) For purposes of this subchapter, "equivalent course" is defined as a course having sufficient content overlap with the essential knowledge and skills of a similar course in the same content area listed under §74.1(b)(1)-(4) of this title (relating to Essential Knowledge and Skills).

(b) Effective beginning with the 2011-2012 school year, in accordance with the Texas Education Code (TEC), §39.025(a-1), (a-2), and (a-3), the commissioner of education adopts certain assessments as provided in the chart in this subsection as substitute assessments that a student may use in place of a corresponding end-of-course (EOC) assessment under the TEC, §39.023(c), to meet the student's assessment graduation requirements. An approved substitute assessment may be used in place of only one specific EOC assessment, except in those cases described by subsection (d)(1) of this section.
Figure: 19 TAC §101.4002(b)
[~~Figure: 19 TAC §101.4002(b)~~]

(c) A student is eligible to use a substitute assessment as provided in the chart in subsection (b) of this section if:

(1) a student was administered an approved substitute assessment for an equivalent course in which the student was enrolled; [~~and~~]

(2) a student received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart in subsection (b) of this section; and[~~.~~]

(3) a student using a Texas Success Initiative (TSI) assessment also meets the requirements of subsection (d) of this section.

(d) Effective beginning with the 2014-2015 school year, a student must meet criteria established in this subsection in order to qualify to use TSI as a substitute assessment.

(1) A student must have been enrolled in a college preparatory course for English language arts (PEIMS code CP110100) or mathematics (PEIMS code CP111200) and, in accordance with the TEC, §39.025(a-1), have been administered an appropriate TSI assessment at the end of that course.

(A) A student under this paragraph who meets all TSI English language arts score requirements provided in the chart in subsection (b) of this section satisfies both the English I and English II EOC assessment graduation requirements.

(B) A student under this paragraph may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.

(2) In accordance with the TEC, §39.025(a-3), a student who did not meet satisfactory performance on the Algebra I or English

II EOC assessment after retaking the assessment may use the corresponding TSI assessment in place of that EOC assessment.

(A) For a student under this paragraph who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in §101.3022(b) of this title (relating to Assessment Requirements for Graduation), the separate TSI reading or writing assessment may not be used to substitute for the corresponding English II reading or writing EOC assessment.

(B) The provisions of this paragraph expire September 1, 2017. A student may meet the assessment graduation requirements under this paragraph using the TSI if the student has met the necessary score requirements as specified in the chart in subsection (b) of this section prior to September 1, 2017.

(e) [~~(d)~~] A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under the TEC, §39.023(c), unless the student met the requirements specified in subsection (c) of this section.

(f) [~~(e)~~] A student who fails to perform satisfactorily on the PSAT or the ACT-PLAN as indicated in the chart in subsection (b) of this section must take the appropriate end-of-course assessment required under the TEC, §39.023(c), to meet the assessment graduation requirements for that subject.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY
DIVISION 2. FINANCIAL SOLVENCY

19 TAC §109.1101

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

The Texas Education Agency (TEA) proposes the repeal of §109.1101, concerning financial solvency. Section 109.1101 establishes a review process relating to financial solvency of school districts and open-enrollment charter schools. The proposed repeal is necessary to remove obsolete provisions from rule. The statute that directed the TEA to develop a review process relating to financial solvency of school districts and open-enrollment charter schools and to take certain actions if the TEA's review indicates a projected deficit was repealed effective September 1, 2014.

House Bill (HB) 3, 81st Texas Legislature, 2009, added the Texas Education Code (TEC), §39.0822, which required the commissioner to adopt rules related to the financial solvency review required by that statute. This review was developed by the TEA, in consultation with school district financial officers and public finance experts, to anticipate the future financial solvency of school districts and open-enrollment charter schools through analysis of tax and financial information and staff and student count information. TEC, §39.0823, required the commissioner to assign an accredited-warned status to a school district or an open-enrollment charter school that was required to submit a financial plan as a result of the findings of the TEA's financial solvency review if the district or charter school failed to submit, get approval for, or appropriately implement the plan.

To implement the financial solvency review provisions, 19 TAC Chapter 109, Subchapter AA, was renamed and organized to include adopted new §109.1101, Financial Solvency Review, effective December 22, 2012. The subchapter title was changed from "Commissioner's Rules Concerning Financial Accountability Rating System" to "Commissioner's Rules Concerning Financial Accountability."

HB 5, Section 49, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §39.082, requiring that the commissioner of education include in the financial accountability rating system processes for anticipating the future financial solvency of each school district and open-enrollment charter school, including analysis of district and school revenues and expenditures for preceding school years. The TEC, §39.082, also requires the commissioner to adopt rules by which to measure the financial management performance and future financial solvency of a school district or an open-enrollment charter school and sets forth specific requirements relating to indicators adopted by the commissioner and the assignment of ratings.

To implement the requirements of the TEC, §§39.082, 39.0823, and 39.085, as amended by HB 5, rules relating to the financial accountability rating system in 19 TAC Chapter 109, Subchapter AA, §§109.1001 - 109.1005, were repealed and new §109.1001, which includes provisions for the review of financial solvency, was adopted effective August 6, 2015.

The proposed repeal of 19 TAC §109.1101 would repeal a rule that is no longer necessary.

The proposed repeal has no procedural and reporting implications. The proposed repeal has no locally maintained paperwork requirements.

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

PUBLIC BENEFIT/COST NOTE. Dr. Dawn-Fisher has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal would be removal of obsolete provisions from rule. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small busi-

nesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 11, 2015, and ends October 13, 2015. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §39.082, as amended by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013, which requires the commissioner as part of the financial accountability system for school districts and open-enrollment charter schools, to include processes for anticipating future financial solvency of school districts and open-enrollment charter schools. Prior to repeal by HB 5, TEC, §39.0822, required the agency to develop a review process to anticipate future financial solvency of each district. Prior to amendment by HB 5, TEC, §39.0823, required districts to submit additional information if the review process developed under TEC, §39.0822, projected insolvency and also required the commissioner to assign accredited-warned status in certain circumstances. Currently, TEC, §39.0823, as amended by HB 5, requires the agency to provide school districts and charters additional information if a projected deficit occurs under TEC, §39.082. TEC, §39.085, authorizes the commissioner to adopt rules for the implementation and administration of the provisions of TEC, Chapter 39, Subchapter D. TEC, §12.104(b)(2)(L), applies the financial accountability provisions, including these sections, to open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §39.082, as amended by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013; §39.0822, as repealed by HB 5; §39.0823, as amended by HB 5; §39.085, and §12.104(b)(2)(L).

§109.1101. Financial Solvency Review.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING
SUBCHAPTER A. GENERAL

22 TAC §571.1

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.1, concerning Definitions.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than upon a calendar year. This amendment specifically adds a new definition for "renewal year" to mean the year between the first day of the month after a licensee's birth month and the last day of the licensee's birth month in the following year.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.1. Definitions.

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571 - 577) shall have the following meaning:

(1) Board--the Texas Board of Veterinary Medical Examiners.

(2) EDPE--Equine Dental Provider Jurisprudence Examination.

(3) Locally derived scaled score--the equivalent of the criterion referenced passing point for the national examination or the NAVLE.

(4) Name on license--licenses will be issued to successful applicants in the name of the individual as it appears on the birth certificate, court order, marriage license, or documentation of naturalization.

(5) National Board of Veterinary Medical Examiners (NBVME)--the organization responsible for producing, administering and scoring the NAVLE.

(6) National examination--the examination in existence and effective prior to the inauguration date of the NAVLE and which consists of the national board examination (NBE) and the clinical competency test (CCT).

(7) North American Veterinary Licensing Examination (NAVLE)--the examination which replaced the national examination in the year 2000.

(8) Passing Score--an examination score of at least 75 percent on the national examination and NAVLE, which is based on a locally derived scaled score; an examination score of at least 75 percent on the VTNE, which is based on a locally derived scaled score; an examination score of at least 85 percent on the SBE, the LVTE, or the EDPE. The examination score on the SBE, LVTE, or the EDPE is valid for one year past the date of the examination.

(9) SBE--State Board Examination.

(10) School or college of veterinary medicine--a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) certificate.

(11) VTNE--Veterinary Technician National Examination.

(12) LVTE--Licensed Veterinary Technician jurisprudence examination.

(13) Veterinary Technician Program--a program of education for veterinary technicians accredited by AVMA.

(14) Renewal year--the year between the first day of the month after a licensee's birth month and the last day of the licensee's birth month in the following year.

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

Filed with the Office of the Secretary of State on August 31, 2015.

TRD-201503487
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 305-7563

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22 TAC §571.9

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.9, concerning Special Veterinary Licenses.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than upon a calendar year. This amendment specifically provides that a license will be issued for a renewal year, which is based upon the licensee's birth month rather than based upon the end of the calendar year.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.9. Special Veterinary Licenses.

(a) General requirements for special veterinary licensure; examination scores; issuance and renewal.

(1) The Board shall schedule a jurisprudence examination at least once a year for applicants for special veterinary licenses.

(2) An applicant for a special veterinary license under §801.256(a)(1) - (3), Texas Occupations Code, must:

(A) be at the age of majority;

(B) be a graduate of a Board approved veterinary program at an institution of higher education or possess an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; or

(C) provide to the Board a written affirmation by the dean of a Board approved veterinary program at an institution of higher education in this state or the executive director of the Texas Animal Health Commission or the executive director of the Texas Veterinary Medical Diagnostic Laboratory that the applicant:

(i) meets a critical need for staffing at the institution of higher education or the Texas Animal Health Commission or the Texas Veterinary Medical Diagnostic Laboratory; and

(ii) is certified by a nationally recognized veterinary specialty board or is eligible for that certification; and

(D) pass the Board's jurisprudence examination. The applicant must submit a completed application for examination to the Board by no later than forty-five (45) days prior to the examination date. The completed application includes payment of examination fees and certification from the applicant's employer attesting to the applicant's employment position.

(3) For purposes of this section, a "Board approved veterinary program at an institution of higher education" means any program which is recognized and accredited by an appropriate body of the American Veterinary Medical Association (AVMA).

(4) The applicant must submit with his application a written statement from his employer describing the applicant's official duties that require the issuance of a special license under §801.256(a)(1) - (3), Texas Occupations Code. Upon completion of the jurisprudence examination, the Board shall notify the applicant by letter of his score. For candidates who attain a passing score of 85 percent, the letter shall constitute the special license for limited practice in the State of Texas.

(5) A special veterinary license will be issued for the renewal [~~calendar~~] year in which the requirements for licensure have been met. [~~Annually thereafter, a renewal certificate will be issued upon receipt of a registration renewal form which has been re-certified by the employing official and payment of the annual registration fee.~~]

(6) A special veterinary license is subject to the renewal requirements set out in §801.303, Texas Occupations Code.

(7) An applicant who fails the jurisprudence examination for a special veterinary license and wishes to be re-examined will be required to resubmit an application and fees for a later scheduled jurisprudence examination.

(b) Applicant requirements for unrepresented or under represented specialty practice, as further defined in subsection (c) of this section. An applicant for a special license to practice a veterinary medicine specialty in this state must:

(1) be a graduate of a board approved veterinary program at an institution of higher education as defined in §571.15(a)(3) of this title (relating to Temporary Veterinary License) or possess an ECFVG or PAVE Certificate;

(2) present proof of a current active license in good standing in another state or jurisdiction of the United States that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801;

(3) not currently be holding a special veterinary license under this section; and

(4) have a certification from an employing sponsor or controlling authority approved by the board that the need for a special veterinary license exists.

(c) The board may issue a special veterinary license to an applicant for an unrepresented or under represented specialty practice if the board finds that:

(1) there is a need, shortage, or demand for the specialty practice in the State of Texas;

(2) the applicant is competent to practice veterinary medicine in the particular specialty; and

(3) the applicant has taken and passed the jurisprudence examination for special veterinary license.

(d) Change of special veterinary license status. A request by the holder of a special veterinary license to change the license from one category to another must be submitted to the Board for approval.

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 31, 2015.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §571.17

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.17, concerning Expedited Licensure Procedure for Military Spouses.

The Board proposes this amendment in accordance with Senate Bill 1307 (84th Legislature, 2015) to allow military spouses, military veterans, and military service members, as defined by Chapter 55, section 55.001, of the Texas Occupations Code, an expedited and alternative licensure process. Specifically, the Board shall issue a license to any military service member, military veteran, or military spouse who is not otherwise subject to denial of a license, has not surrendered his or her Texas license in lieu of disciplinary action in the past five years, and has held a Texas license within the last five years or holds a current license issued by another jurisdiction that has the substantially the same licensure requirements as Texas.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have an expedited licensure process for military service members, military spouses, and military veterans.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received

within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.17. Expedited and Alternative Licensure Procedure for Military [~~Spouses~~].

(a) For any military service member, military veteran, or military spouse, as defined under Texas Occupations Code §55.001 [~~§55.001(1-b)~~], the Board shall issue a license if the military service member, military veteran, or military spouse is not subject to denial of license as provided in Texas Occupations Code §801.401 and §801.402 and has not surrendered his or her Texas license in lieu of disciplinary action in the last five years, and held a Texas license within the last five years or holds a current license issued by another jurisdiction that has the following licensure requirements:

(1) Veterinary licensure:

(A) at least a passing score on:

(i) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(ii) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(B) is a graduate of a school or college of veterinary medicine.

(2) Equine Dental Provider licensure:

(A) certified by International Association of Equine Dentists or other Board-approved entity; and

(B) equine dental providers work only under supervision by a veterinarian licensed in the jurisdiction.

(3) Licensed Veterinary Technician licensure:

(A) at least a passing score on the VTNE; and

(B) graduate of Veterinary Technician Program.

(b) A license issued under this section is valid for 12 months from the date the license is issued. When a license issued under this section expires, the licensee must submit information showing that he or she has met all requirements for regular licensure.

(c) The terms military service member, military veteran, and military spouse are as defined in Chapter 55, §55.001, of the Texas Occupations Code.

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

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SUBCHAPTER D. LICENSE RENEWALS

22 TAC §571.55

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.55, concerning Delinquent Letters.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than upon a calendar year. This amendment specifically provides that if a licensee fails to renew his or her license by the end of his or her birth month, then Board staff will send a delinquency letter to that licensee on the 10th calendar day after the end of the licensee's birth month.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the Texas Register. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.55. Delinquent Letters.

The executive director shall prepare monthly [~~annually~~] delinquency letters addressed to all licensees, who are delinquent for the renewal year ending that month, on the 10th calendar day after the end of each month [~~on March 10th of each calendar year~~]. A one-year delinquency letter shall be mailed to each delinquent licensee. Once a licensee is delinquent for one year, his/her license is cancelled.

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

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For further information, please call: (512) 305-7563

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22 TAC §571.56

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.56, concerning Military Service Fee Waiver.

The Board proposes this amendment to waive the license and examination fees for a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for a license from the Board; or a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license from the Board. Further, the amendment provides that no late fee is assessed for failing to timely renew a licensee if such failure is due to the licensee serving as a military service member. The terms military service member, military veteran, and military spouse are as defined in Chapter 55, §55.001, of the Texas Occupations Code.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be a nominal impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have fewer fees for military service members, military spouses, and military veterans.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.56. Military Service Fee Waiver.

(a) The license and examination fees are waived for a licensee that can prove that he or she is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for a license from the Board; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license from the Board.

(b) No late fee is assessed for failing to timely renew a licensee if such failure is due to the licensee serving as a military service member.

(c) The terms military service member, military veteran, and military spouse are as defined in Chapter 55, §55.001, of the Texas Occupations Code.

[~~Upon submission of a DD214, the active license renewal fee is waived for the remainder of the calendar year in which the veterinary licensee is discharged from military service. A current year renewal certificate will be issued to the veterinary licensee in the same manner as if the active renewal fee had been paid for that particular year. A veterinary licensee's submission of a DD214 places his or her license in active status allowing the veterinary practitioner to practice in the State of Texas or renew their Texas license in inactive status the year following military separation. The waiver of the fee for the balance of the calendar year in which an applicant is discharged from the military service is to be applicable only to those veterinarians who have served at least one year on extended active duty.~~]

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §571.59

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.59, concerning Expired Veterinary Licenses.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than upon a calendar year. This amendment specifically provides that a veterinarian's license expires on the first day of the month following his or her birth month. The veterinarian may renew his or her license during the time period of 90 days prior to the last day of his or her birth month.

The Board further proposes this amendment to clarify that a veterinary licensee who has failed to renew his or her license for a period of one year or more shall have his or her license cancelled.

The Board proposes this amendment in accordance with Senate Bill 1307 (84th Legislature, 2015) to allow military spouses,

military veterans, and military service members, as defined by Chapter 55, §55.001, of the Texas Occupations Code, to receive a license even if they have failed to renew their license for a period of one year or more and if they meet the requirements of §571.17 for expedited licensure.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year. Further, this rule will provide military spouses, military veterans, and military service members additional time to maintain their licenses. The amendment will also provide greater clarity to the public and to licensees as to when a license is cancelled.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.59. Expired Veterinary Licenses.

(a) A veterinarian's license expires on the first day of the month following his/her birth month [~~March 1 of each calendar year~~] and is considered delinquent. Within 90 days of the last day of the month of a licensee's birth month [~~On or before March 1~~], a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) A veterinary licensee who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. Subject to subsections (c) and (d) of this section, the licensee must take and pass the SBE and comply with §571.3 of this title (relating to Criminal History Evaluation Letters).

(c) A military spouse, military veteran, or military service member, as defined by Chapter 55, §55.001, of the Texas Occupations Code, [~~veterinary licensee who is the spouse of a person serving on active duty as a member of the armed forces of the United States~~] who has failed to renew his or her Texas license for a period of one year or more may receive a [~~provisional~~] license in accordance with §571.17 [~~§571.11(e)~~] of this title (relating to Expedited Licensure Procedure for Military Spouses) if the military spouse, military veteran, or military service member meets the requirements of §571.17. [~~(relating to Provisional Veterinary Licensure).~~]

(d) A licensee who has failed to renew his or her license for a period of one year or more may reinstate the licensee's expired license without taking and passing the SBE if the licensee:

(1) previously had a Texas license and lived and/or practiced in Texas;

(2) moved to another state and is licensed and practices in that state;

(3) has been practicing in the other state during the past two years preceding application for reinstatement in Texas;

(4) intends to return to and practice in Texas;

(5) furnishes a letter of good standing from all states where the licensee is currently licensed; and

(6) submits a complete application for license reinstatement within two years of the date the license expired and could not be renewed.

(e) A veterinary licensee who has failed to renew his or her license for a period of one year or more, shall have his or her license cancelled.

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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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.60, concerning Expired Licenses for Equine Dental Providers and Licensed Veterinary Technicians.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than upon a calendar year. This amendment specifically provides that an equine dental provider's or a licensed veterinary technician's license expires on the first day of the month following his or her birth month. The licensee may renew his or her license during the time period of 90 days prior to the last day of his or her birth month.

The Board further proposes this amendment to clarify that a licensee who has failed to renew his or her license for a period of one year or more shall have his or her license cancelled.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there

will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year. The amendment will also provide greater clarity to the public and to licensees as to when a license is cancelled.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.60. Expired Licenses for Equine Dental Providers and Licensed Veterinary Technicians.

(a) Licensed veterinary technician and equine dental provider licenses expire on the first day of the month after his/her birth month [~~March 1 of each calendar year~~] and are considered delinquent. Within 90 days of the last day of a licensee's birth month [~~On or before March 1~~], a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) A licensed veterinary technician or an equine dental provider licensee, who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license, may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. The licensee must take and pass the EDPE or the LVTE, as appropriate for his or her license.

(c) A licensed veterinary technician or an equine dental provider licensee, who is the spouse of a person serving on active duty as a member of the armed forces of the United States who held an equine dental provider or veterinary technician license in Texas within the past five years, and has failed to renew his or her license for a period of one year or more while the licensee was living in another state for at least six months, may reinstate his or her license without appearing before the Board. The licensee must still take and pass the EDPE or the LVTE, as appropriate for his or her license.

(d) A licensed veterinary technician or equine dental provider licensee, who had failed to renew his or her license for a period of one year or more, shall have his or her license cancelled.

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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Executive Assistant
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22 TAC §571.61

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.61, concerning Inactive License Status.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than upon a calendar year. This amendment specifically provides that a licensee's request that his or her license be placed on inactive status must be made within three months prior to the first day of the licensee's birth month. The amendment further states that the terms "year" and "annual" means the "renewal year" in regards to continuing education requirements for inactive status licensees.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§571.61. Inactive License Status.

(a) Application. A licensee may request his/her license be placed on inactive status, whether or not he/she is practicing within the State of Texas, provided:

(1) his or her current license is active and is in good standing;

(2) a request in writing, on the form prescribed by the Board, is made for his or her license to be placed on official inactive status; and

(3) the original request is made during the annual license renewal period within three months prior to the first day of the licensee's birth month [~~between January 1 and February 28~~]; provided however, that subsequent requests for continued inactive status may be accepted by the Board at any time during the renewal year if accompanied by the appropriate delinquent penalty.

(b) Restrictions. The following restrictions shall apply to veterinary licensees whose licenses are on inactive status:

(1) Except as provided in §801.004, Texas Occupations Code, the licensee may not engage in the practice of veterinary medicine or otherwise provide treatment to any animal in the State of Texas.

(2) If the licensee possesses or obtains a federal Drug Enforcement Administration (DEA) and/or a Department of Public Safety (DPS) controlled substances registration for a Texas location, the licensee must comply with §573.43 and §573.50 of this title (relating to Misuse of DEA Narcotics Registration and Controlled Substances Records Keeping for Drugs on Hand, respectively).

(c) Return to Active Status. A licensee on inactive status wishing to practice within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to licensees applying to return to active status.

(1) A licensee who is licensed and practicing in another state or jurisdiction must prove he or she is in good standing in that state or jurisdiction.

(2) A licensee on inactive status must pay the total annual renewal fee, less the amount of the inactive annual renewal fee, plus a $25 administrative processing fee to obtain a regular license. The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

(d) Continuing Education Requirements.

(1) If a licensee on inactive status requesting a return to regular license status has maintained an annual average equal to the number of continuing education hours required annually for renewal of the license, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than the number of hours required annually for renewal of the license, the licensee will be placed on regular license status but must complete twice as many continuing education hours as is required to renew the license in the twelve months immediately following the licensee's attaining of regular license status.

(2) For the year of reactivation, proof of continuing education shall not be required for an active license renewal in the year following reactivation.

(3) For purposes of this subsection, the terms "year" and "annual" mean the renewal [~~calendar~~] year.

(e) Cancellation of Inactive License. A license maintained on inactive status will be automatically cancelled at the end of nine consecutive years. A new license will be issued only upon completion of all requirements for licensure. During the ninth consecutive year of inactive status, the Board will notify the inactive licensee that during the following year, his or her license must be on regular status or the license will be cancelled.

(f) Annual Renewal Fees. The annual fee for a license on inactive status shall be as set by the Board in §577.15 of this title (relating to Fee Schedule).

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-201503480
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

22 TAC §573.4

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.4, concerning Adherence to the Law.

Section 573.4 requires licensees to not violate the laws of Texas, other states, or the United States. The rule currently references the specific criminal acts enumerated in §575.50(e); however, the criminal acts are actually enumerated in §575.50(f). The Board proposes this amendment simply to correct the incorrect citation.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and correct the rule regarding criminal acts of licensees.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners,

333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.4. Adherence to the Law.

No licensee shall commit any act that is in violation of the laws of the State of Texas, other states, or of the United States, if the act is connected with the licensee's professional practice, including, but not limited to, the acts enumerated in §575.50(f) [~~§575.50(e)~~] of this title (relating to Criminal Convictions). A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this rule. Proof of the commission of the act while in the practice of, or under the guise of the practice of, either veterinary medicine or equine dentistry, is sufficient for action by the Board 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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22 TAC §573.7

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.7, concerning No Abuse of Position or Trust.

The Board proposes this amendment to improve the organization of §573.7 and to clarify the long held interpretation of the current rule that a licensee may not request or require a client or another person to waive his or her right to file a complaint with the Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the current interpretation of the rule that licensees should not request or require people to waive their right to file a complaint with the Board and to protect the public's ability to file such complaints.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.7. No Abuse of Position or Trust.

(a) Any licensee who uses present or past position, or office of trust, deliberately to create an individual professional advantage, or to coerce, or to deceive the public shall be in violation of the rules of professional conduct.

(b) A licensee may not influence, or attempt to influence, the statement, response, or opinion of any person, licensed or unlicensed, to the Board if the Board has requested the statement or opinion.

(c) A licensee may not request or require a client or another person to waive his or her right to file a complaint with the Board.

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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Texas Board of Veterinary Medical Examiners
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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.43

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.43, concerning Controlled Substances Registration.

The Board proposes this amendment in accordance with Senate Bill 195 (84th Legislature, 2015), which provides that a

person who is not registered with or exempt from registration with the Federal Drug Enforcement Administration ("DEA"), may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in Texas. Section 573.43 currently permits a licensed veterinarian who is registered with DEA to supervise or employ a non-registered veterinarian. This exception is not in accordance with DEA regulations and is not permitted by any other health profession in Texas. The Board proposes this amendment to require all veterinarians to register with the DEA in order to manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance. This amendment makes all relevant veterinarians personally accountable for how they each handle controlled substances, rather than just the owner of a clinic being responsible.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to hold each relevant veterinarian accountable for the handling of controlled substances and, thus, decrease the potential for diversion.

Ms. Oria has determined that there will be a nominal economic cost to persons required to comply with the amended rule. There is a nominal adverse impact expected for small or micro businesses that pay the registration fees for their veterinarian employees, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.43. Controlled Substances Registration.

(a) A [~~Subject to subsection (b) of this section, a~~] licensed veterinarian may not prescribe, administer, dispense, deliver, or order delivered, any controlled substance unless the licensed veterinarian is currently registered with the federal Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS) to dispense controlled substances if such registration is required by other state or federal law.

[~~(b) The requirement for DEA registration is waived for a licensed veterinarian who is not registered with the DEA to dispense controlled substances if:~~]

[~~(1) a licensed veterinarian who is registered with the DEA to dispense controlled substances (registrant) supervises or employs the veterinarian who is not registered with the DEA to dispense controlled substances (non-registrant);~~]

[~~(2) the registrant has knowledge that the non-registrant is dispensing and/or administering controlled substances in the usual course of the non-registrant's duties;~~]

[~~(3) the registrant has given written permission for the non-registrant to dispense/administer under the registrant's license; and~~]

[~~(4) the registrant has actual knowledge that the non-registrant is currently registered with the DPS and holds a current DPS controlled substances certificate.~~]

[~~(c) A licensed veterinarian who is not registered with the DEA but is registered with the DPS to dispense controlled substances and holds a current DPS controlled substances certificate may dispense and administer controlled substances, but may not procure, purchase or issue a prescription for a controlled substance.~~]

(b) [~~(d)~~] A licensed veterinarian registered with the DEA and/or DPS must comply with all relevant statutes and rules as required by DEA and/or DPS, including but not limited to chapter 481 of the Texas Health and Safety Code, Chapter 13 of Part 1 of Title 37 of the Texas Administrative Code, and Chapter 13 of Title 21 of United States Code.

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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Texas Board of Veterinary Examiners
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SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.50

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.50, concerning Controlled Substances Records Keeping for Drugs on Hand.

The Board proposes this amendment to require records regarding controlled substances be complete, contemporaneous, and legible. These requirements are consistent with Board rule §573.52 regarding Patient Record Keeping. Board staff has experienced difficulty with certain controlled substances records not being legible or complete and with the records not being created around the time the controlled substances are actually utilized. These issues can create an environment within a veterinary clinic for potential diversion of controlled substances as the records are not adequately documenting the use of the controlled substances.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no

impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to provide better documentation of the handling of controlled substance and, thus, decrease the potential for diversion.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.50. Controlled Substances Records Keeping for Drugs on Hand.

Texas veterinarians shall maintain at their place of business records of all scheduled drugs listed in the Texas Controlled Substances Act in their possession. These records shall be maintained for a minimum of five years. A record shall be kept for each scheduled drug. The records shall be complete, contemporaneous, and legible. The record shall contain the following information in addition to the name of the drug:

(1) date of acquisition;

(2) quantity purchased;

(3) date administered or dispensed;

(4) quantity administered or dispensed;

(5) name of client and patient receiving the drug(s); and

(6) total balance on hand of the scheduled drug.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §573.54

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.54, concerning Patient Records Release and Charges.

The Board proposes this amendment to allow a veterinarian greater than 15 days to provide requested patient records to a client if the veterinarian informs the client in writing of how long it will take to furnish the records and the reason for the delayed production. The records must be provided no later than 30 days after the initial request. However, if the records are requested due to an acute or emergency situation, the veterinarian must provide the records within 24 hours.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that records are received timely and that veterinarians openly communicate any reasons for delay.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.54. Patient Records Release and Charges.

(a) Release of records pursuant to request. Upon the request of the client or their authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs

requested, within 15 business days of the request or in accordance with subsection (f) of this section, unless a longer period is reasonably required to duplicate the records. If a longer period is necessary and prior to the 15 business day deadline, the veterinarian must inform the client in writing how long it will take to furnish the records and why production of the records is delayed. The records must be provided no later than 30 calendar days after the request. If the records are requested for acute/emergency care, the veterinarian must provide the records immediately and no later than 24 hours.

(b) Contents of records. For purposes of this section, "patient records" shall include those records as defined in §573.52 of this title (relating to Veterinarian Patient Record Keeping).

(c) Allowable charges. The veterinarian may charge a reasonable fee for this service and, in non-emergency and non-acute situations, may withhold the records until such payment is received. A reasonable fee shall include only the cost of:

(1) copying, including the labor and cost of supplies for copying;

(2) postage, when the individual has requested the copy or summary be mailed; and

(3) preparing a summary of the records when appropriate.

(d) Improper withholding for past due accounts. Patient records requested pursuant to a proper request for release may not be withheld from the client, the client's authorized agent, or the client's designated recipient for such records based on a past due account for care or treatment previously rendered to the patient.

(e) The veterinarian shall be entitled to the reasonable fee prior to the release of the records unless the information is requested by another veterinarian or his or her agent for purposes of emergency or acute medical care.

(f) The veterinarian must notify the requestor of records the amount of the reasonable fee within five (5) business days of the request. Once the veterinarian receives written or verbal notice from the requestor that the requestor accepts the reasonable fee and will pick up the records, the veterinarian must have the records copied and ready for delivery within ten (10) business days of receiving such notice.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.64, concerning Continuing Education Requirements.

The Board proposes this amendment to create a new license renewal period based upon a licensee's birth month rather than on a calendar year basis. This amendment specifically changes the requirement for continuing education for licensees from being based upon a calendar year to being based upon the renewal year. Further, in accordance with Senate Bill 1307 (84th Legislature, 2015), the Board proposes this amendment to allow military service members, as defined by Chapter 55, §55.001, of the Texas Occupations Code, to have up to two years to complete the required continuing education requirements for each renewal year.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to have the renewal period easier for licensees to remember and allow the Board to spread licensing resources out over the entire year rather than during just one period of time in the year and allow military service members additional time to complete continuing education requirements.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§573.64. Continuing Education Requirements.

(a) Required Continuing Education Hours.

(1) Licensed Veterinarians. Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas veterinary licenses, except as provided in subsection (b) of this section. Veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for 17 continuing education hours for the renewal [~~calendar~~] year in which they were examined and licensed.

(2) Licensed Equine Dental Providers. Six (6) hours of acceptable continuing education shall be required annually for renewal of Texas equine dental provider licenses.

(3) Licensed Veterinary Technicians. Ten (10) hours of acceptable continuing education shall be required annually for renewal of Texas veterinary technician licenses.

(4) A licensee shall earn the required hours of acceptable continuing education during the renewal [~~calendar~~] year immediately preceding the licensee's application for license renewal. Should a licensee earn acceptable continuing education hours during the year in excess of the required hours, the licensee may carry over and apply the excess hours to the requirement for the next year. Licensees may carry over excess hours to the following year only, and may not carry over more hours than the licensee is required to earn in a renewal [~~calendar~~] year.

(5) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in writing and in the Board offices by no later than the 15th day of the month three (3) months prior to the last day of the licensee's birth month [~~December 15~~]. Should such extension be granted, twice the number of hours of continuing education required for a standard annual license renewal shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her renewal application electronically (on-line).

(6) A military service member, as defined in Chapter 55, §55.001, of the Texas Occupations Code, has up to two years to complete the required continuing education requirements for each renewal year.

(b) Exemption from Continuing Education Requirements for Veterinary Licensees. A veterinary licensee is not required to obtain or report continuing education hours, provided that the veterinary licensee submits to the Board sufficient proof that during the preceding year the veterinary licensee was:

(1) in retired status;

(2) a veterinary intern or resident; or

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or

(4) on inactive status. Veterinary licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(c) Make up Hours. The Board may require a licensee who does not complete the required hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the continuing education hours required to be completed in that year.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §573.71

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.71, concerning Operation of Temporary Limited-Service Veterinary Services.

Currently, the Board requires any temporary limited-service clinic to provide notification to the Board office at least 48 hours prior to the clinic beginning its operation. However, Board staff have received notice from certain clinics giving perpetual notice, such as "every Saturday." This type of notice is difficult to track. Further, there is currently no requirement to notify the Board of cancellations. Notice is required so that the Board can properly inspect these clinics to better protect the public. The Board proposes this amendment to allow for advance notice up to 90 days prior to the clinic operation for a particular day. Any cancellations of a clinic must be received by the Board within 48 hours before the clinic was originally scheduled to operate.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that temporary limited-service clinics are able to be located and, thus, properly inspected.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.71. Operation of Temporary Limited-Service Veterinary Services.

(a) Requirements for operation. Veterinarians operating temporary limited service clinics shall:

(1) maintain sanitary conditions at the clinic site, including, but not limited to, removal of animal solid waste and sanitizing/disinfecting of urine and solid waste sites;

(2) provide injections with sterile disposable needles and syringes;

(3) utilize a non-porous table for examining and/or injecting small animals;

(4) maintain biologics and injectable medications between temperature ranges of 35 to 45 degrees Fahrenheit;

(5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications;

(6) maintain rabies vaccination records and treatment records for five years, indexed alphabetically by the client's last name and by vaccination tag numbers, if issued; and

(7) provide clients with a printed form that contains the identity of the administering veterinarian and the address of the places where the records are to be maintained.

(b) Required notification to the Board prior to operation. Before any temporary limited-service clinic may be operated, the veterinarian is required to provide notification to the Board office at least 48 hours before the clinic begins operation. Notice may be provided no more than 90 days prior to the clinic operating for a particular day and any cancellations of operation must be provided to the Board within 48 hours before the clinic was to operate. Notice must include the veterinarian's full name, license number, and daytime phone number; the date the clinic will be held, the specific location of where the clinic will be held, and times of operation; and the permanent address where records for the clinic will be kept. Notice may be by electronic transmission or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §573.72

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.72, concerning Employment by Nonprofit or Municipal Corporations.

Currently, §573.72 provides that employment by or contractual service to a nonprofit or municipal corporation does not exempt the veterinarian from any of the provisions of the Veterinary Licensing Act or the Board's rules. The Board proposes this amendment to add the word "alone" prior to the word "exempt." Further, the rule currently states that veterinarians employed by, or contracted to, nonprofit or municipal corporations shall be liable for any violations of the Act or rules occurring as a result of the practice of veterinary medicine or any veterinary services provided by the nonprofit or municipal corporation, including those occurring due to the acts or omissions of non-licensed employees of, or volunteers for, the nonprofit or municipal corporation. The Board proposes this amendment to add the phrase, "unless otherwise exempt from the Veterinary Licensing Act under §801.004."

The Board proposes these changes to clarify the rule and to include the Board's long held interpretation of the rule. While exemptions to the Veterinary Licensing Act exist in statute, they require greater elements to be met than simply employment by a municipal or nonprofit corporation. The Board has always interpreted the rules to not apply to an individual who is exempt from the Act. However, this amendment simply clarifies that interpretation.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's long held interpretation of the rule and the exemptions within the Veterinary Licensing Act.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; and §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public.

No other statutes, articles, or codes are affected by the proposal.

§573.72. Employment by Nonprofit or Municipal Corporations.

(a) A nonprofit or municipal corporation may employ or contract with a veterinarian to provide veterinary services in connection with sheltering, sterilization, vaccination, or other medical care and treatment of animals.

(b) Employment by or contractual service to a nonprofit or municipal corporation does not alone exempt the veterinarian from any of the provisions of the Veterinary Licensing Act or the Board's rules.

(c) Veterinarians employed by, or contracted to, nonprofit or municipal corporations shall be liable for any violations of the Act or rules occurring as a result of the practice of veterinary medicine or any veterinary services provided by the nonprofit or municipal corporation, including those occurring due to the acts or omissions of non-licensed employees of, or volunteers for, the nonprofit or municipal corporation, unless otherwise exempt from the Veterinary Licensing Act under §801.004.

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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22 TAC §573.80

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.80, concerning Definitions.

Currently, §573.80 provides definitions regarding "direct supervision" and "immediate supervision." Those current definitions relate to the supervision provided by a veterinarian. However, the Board now licenses Equine Dental Providers and Licensed Veterinary Technicians. The Board proposes this amendment to have the definitions regarding supervision be inclusive of all licensees.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the definition of supervision for the benefit of the public and licensees.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the Texas Register. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice of veterinary medicine; §801.151(c)(1), which states that the Board shall adopt rules necessary to protect the public; and §801.151(c)(4), which states that the Board shall adopt rules providing for the licensing and regulation of veterinary technicians.

No other statutes, articles, or codes are affected by the proposal.

§573.80. Definitions.

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571, 573, 575, and 577) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accepted livestock management practices--those practices involving animals raised or produced primarily for food, fiber, or other products for human consumption, and may include the following:

(A) branding, tattooing, ear tags or identifying marks of any kind;

(B) tail docking, except cosmetic tail docking that is performed for appearance purposes only;

(C) earmarking;

(D) routine dehorning, except cosmetic dehorning that reshapes or alters the poll area for appearance purposes;

(E) castration;

(F) non-surgical assistance with birthing;

(G) implantation with approved implant products;

(H) administration of a biologic, except where restricted by law to administration by a veterinarian, and not including deworming by use of stomach tubing;

(I) artificial insemination;

(J) shoeing and trimming hooves; and

(K) application or administration of parasiticides, except where restricted by law.

(2) Designated caretaker--a person to whom the owner of an animal has given specific authority to care for the animal and who has not been designated, by using the pretext of being a designated caretaker, to circumvent the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) by engaging in any aspect of the practice of veterinary medicine (including alternate therapies). A designated caretaker who treats an animal for a condition that the animal was known or suspected of having prior to the person being named a designated caretaker, is presumed to be attempting to circumvent the Veterinary Licensing Act unless the designated caretaker is following the instruction of a veterinarian and is under the appropriate level of supervision per board rules. In this situation, the designated caretaker may present evidence to rebut the presumption.

(3) Food production animals--any mammalians, poultry, fowl, fish or other animals that are raised primarily for human food consumption.

(4) Biologic--any serum, vaccine, antitoxin, or antigen used in the prevention or treatment of disease.

(5) Pregnancy testing--the diagnosis of the physical condition of pregnancy by any method other than the gross visual observation of the animal.

(6) Invasive dentistry or invasive dental procedures--exposing of the dental pulp, or performing extractions.

(7) Consultation--the act of rendering professional advice (diagnosis and prognosis) about a specific veterinary medical case, but does not include treatment or surgery.

(8) General Supervision--a veterinarian required to generally supervise a non-veterinarian must be readily available to communicate with the person under supervision.

(9) Direct Supervision--a licensee [~~veterinarian~~] required to directly supervise a person [~~non-veterinarian~~] must be physically present on the same premises as the person under supervision.

(10) Immediate Supervision--a licensee [~~veterinarian~~] required to immediately supervise a person [~~non-veterinarian~~] must be within audible and visual range of both the animal patient and the person under supervision.

(11) Official Health Documents--any certificate attesting to the health, vaccination status, physical condition and/or soundness of an animal.

(12) Specialist--a veterinarian that is a Board Certified Diplomate of a specialty organization recognized by the American Veterinary Medical Association.

(13) Non-veterinarian employee--an individual paid directly by a veterinarian for work involving the practice of veterinary medicine, as defined in the Veterinary Licensing Act, Texas Occupations Code, §801.002(5), regardless of the defined status of the employment relationship between the individual and the veterinarian under Internal Revenue Service regulations.

(14) Herd--a group of animals of the same species, managed as a group and confined to a specific geographic location. A herd may not include dogs, cats, any animal in individual training, or any animal that competes as an individual.

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

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.22

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.22, concerning Reinstatement of Licenses.

Currently, §575.22 refers to licenses that have been "cancelled;" however, "cancelled" is meant to reference licenses that have been actually surrendered in lieu of disciplinary action rather than "cancelled" licenses that have simply expired for a year or more. The Board proposes this amendment to clarify that this rule is addressing the reinstatement of licenses that were surrendered in lieu of disciplinary action.

The Board also proposes this amendment to allow persons seeking reinstatement of a license to appear before the Board's Enforcement Committee rather than the full Board. This allows petitioners more opportunities to be seen as the Enforcement Committee meets more often than the full Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the process for reinstatement of licenses and allow person seeking license reinstatement a faster review of their request.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§575.22. Reinstatement of Licenses.

(a) A person whose license has been surrendered [~~cancelled~~] or revoked, whether by voluntary action or by disciplinary action of the Board, may after five (5) years from the effective date of such surrender [~~cancellation~~] or revocation, petition the Board for reinstatement of the license, unless another time is provided in the surrender [~~cancellation~~] or revocation order, or unless no provision was made in the order for reinstatement. This section does not apply to licensees who let their licenses lapse for non-payment of renewal fees or licensees against whom a surrender [~~cancellation~~] or revocation proceeding is not pending before the Board or in any other jurisdiction.

(b) The petition shall be in writing and in the form prescribed by the Board.

(c) After consideration of the petition for reinstatement, the Board may:

(1) deny reinstatement of the license;

(2) reinstate and probate the licensee for a specified period of time under specified conditions; or

(3) authorize reinstatement of the licensee.

(d) If the petition is denied by the Board, a subsequent petition may not be considered by the Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(e) The petitioner or their legal representative must appear before the Board or the Board's Enforcement Committee to present the request for reinstatement of the license.

(f) The petitioner shall have the burden of showing good cause why the license should be reinstated.

(g) In considering a petition for reinstatement, the Board may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to petitioner's family;

(4) participation in continuing education programs or other methods of staying current with the individual's area of practice;

(5) criminal history record, including felonies or misdemeanors relating to the practice of veterinary medicine, the practice of equine dentistry, and/or moral turpitude;

(6) offers of employment as a veterinarian, licensed veterinary technician, or equine dental practitioner;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Board order revoking or canceling the petitioner's license;

(9) compliance with provisions of the Veterinary Licensing Act regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; and

(11) any physical, chemical, emotional, or mental impairment.

(h) In considering a petition, the Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled, revoked or restricted and the impact the offense had upon the public health, safety, and welfare;

(2) the length of time since the petitioner's license was cancelled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for the petitioner to have been rehabilitated sufficiently to be able to practice in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation at the request of the licensee; and

(4) other rehabilitative actions taken by the petitioner.

(i) If the Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Board Licensing Examination in their area of practice during the regularly scheduled examination times. The Board may also require the petitioner to complete additional testing to assure the petitioner's competency to practice.

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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Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §575.27

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.27, concerning Complaints--Receipt.

The Board proposes this amendment to correct the Board's website address to refer to the new Board website address. The Board further proposes this amendment to provide procedures for when multiple complaints are received regarding the same licensee and the same alleged facts. This amendment permits the complaints to be combined into one investigation and one file. The director of enforcement would be allowed to elect to divide multiple complaints into multiple cases based upon the timing of the receipt of the complaints. This is currently the practice of the Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the process when multiple complaints are received regarding the same licensee and same alleged facts and to improve the efficiency of the process.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§575.27. Complaints--Receipt.

(a) Complaints against licensees.

(1) All complaints filed by the public against Board licensees must be in writing on a complaint form provided by the Board and signed by the complainant. The Board-approved complaint form can be obtained free of charge from the Board office or downloaded from the Board's website at http://www.veterinary.texas.gov [~~http://www.tbvme.state.tx.us~~]. If a complaint is transmitted to the Board orally or by means other than in writing and the complaint alleges facts showing a continuing or imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) The Board may file a complaint on its own initiative.

(3) Complaints by the Board's enforcement section shall be initiated by the opening of a complaint file.

(4) Anonymous written complaints will normally not be investigated, but may be investigated if sufficient information exists for the Board to file a complaint under paragraph (2) of this subsection.

(5) The Board shall utilize violation code numbers to distinguish between categories of complaints.

(6) The Board may not consider a complaint that is filed with the Board after the fourth anniversary of the latest date:

(A) the act that is the basis of the complaint occurred; or

(B) the earlier of when the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.

(7) If the Board receives multiple complaints regarding the same licensee and the same alleged facts, the Board may combine the complaints into one investigation and one file. The director of enforcement may elect to divide multiple complaints regarding the same licensee and the same alleged facts into multiple cases based upon the timing of the receipt of such complaints.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine or equine dentistry without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local prosecutor or the attorney general for legal action, as well as addressed in §801.508 of the Occupations Code.

(c) Report to the Board of dismissed complaints. The executive director or the executive director's designee shall advise the Board at each scheduled meeting of the complaints dismissed since the last meeting.

(d) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of Board investigators is not feasible or economical or where private investigators could provide valuable assistance to the Board investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine or equine dentistry without a license. Private investigators will be utilized in accordance with existing purchasing rules of the Comptroller of Public Accounts.

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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22 TAC §575.28

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.28, concerning Complaints-Investigations.

The Board proposes this amendment to allow the director of enforcement to conclude that a complaint has been addressed as part of a previously filed complaint and related investigation regarding the same licensee and the same alleged facts and then recommend that an investigation not be initiated. This process allows the Board to conserve resources. Additionally, the current rule provides that the executive director must concur with the director of enforcement's recommendation that an investigation should not be initiated. The Board proposes this amendment to require the general counsel to concur with the director of enforcement rather than the executive director.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the process for the opening of investigations.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the proposal.

§575.28. Complaints--Investigations.

Investigation of complaints.

(1) Policy. The policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement

program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The Board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other acts and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant unless the complainant is the Board.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the Board, has been addressed as part of a previously filed complaint and related investigation regarding the same licensee and the same alleged facts, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the general counsel [~~executive director~~] concurs with the recommendation, the complainant will be so notified. If the general counsel [~~executive director~~] does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign a member of board staff to investigate the complaint. A summary of the allegations in the complaint will be sent to the licensee who is the subject of the complaint, along with a request that the licensee respond in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response. The licensee is entitled on request to review the complaint submitted to the Board unless board staff determines that allowing the licensee to review the complaint would jeopardize an active investigation.

(7) After the licensee's response to the complaint is received, board staff shall send a copy of the licensee's response to the complainant, unless the complainant is the Board, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the Board. Board staff shall provide any response provided by the complainant to the licensee, unless board staff determines that allowing the licensee to review the response from the complainant would jeopardize an active investigation, and provide a single opportunity for the licensee to respond to the Board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.

(8) Further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, board staff shall attempt to interview by telephone the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. Board staff may request additional medical opinions, supporting documents, and interviews with other witnesses.

(9) Upon the completion of an initial investigation, board staff shall prepare a report of investigation (ROI) for review by the director of enforcement.

(A) If the director of enforcement determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement will forward the ROI to the executive director. If the executive director concurs that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to two veterinary licensee board members (veterinarian members) who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complainant at an informal conference at the board offices.

(B) If the director of enforcement determines from the ROI that the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the director of enforcement shall forward the complaint file to a committee of the executive director, director of enforcement, member of board staff assigned to investigate the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

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

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §577.15, concerning the Fee Schedule.

The Board proposes an amendment to §577.15 to eliminate the $200 professional fees, in accordance with House Bill 7 (84th Legislature, 2015). Further, the Board proposes this amendment to decrease fees for all licensee categories except to slightly increase the fees for special veterinary licenses due to the resources involved in awarding such licenses.

The Board proposes this amendment to create fees for certain services the Board provides that consume the Board's resources. Specifically, the Board proposes a fee of $25 for providing letters of good standing, $25 for review of a continuing education program, and $50 for review of a continuing education program that in submitted less than 30 days prior to the event.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be a slight increase in revenue to state government as a result of the fees associated with the newly created fees; however, there will be a decrease in revenue to the state government due to the decrease of licensing fees. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be a reduction in expenses for licensees for licensing expenses and the increase in fees will allow the Board to provide the related services with greater efficiency.

Ms. Oria has determined that there will be a slight increase in economic cost to individuals requesting the services related to the new fees; however, there is a decrease in economic costs relating to the majority of licensee categories. Further, the economic cost for these few specific services will be offset by the efficiency achieved in conserving the Board's resources and providing sufficient funding to allow the Board to timely and efficiently provide the services. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter.

No other statutes, articles or codes are affected by the proposal.

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.
Figure: 22 TAC §577.15

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 31, 2015.

TRD-201503467
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 305-7555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.4

The Texas Water Development Board (TWDB) proposes amendments to 31 TAC §354.4 to incorporate into rule an amended memorandum of understanding (MOU) between the TWDB and the Texas Department of Agriculture, Office of Rural Affairs (TDA).

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE PROPOSED AMENDMENT

Pursuant to the General Appropriations Act, H.B. 1, 84th Leg., R.S., Rider 8, page VI-58 of the TWDB appropriation, and Rider 20, page VI-7 of the TDA appropriation, TWDB and TDA are required to enter into an MOU. The provisions require the TWDB to coordinate funds out of the Economically Distressed Areas Program (EDAP) administered by the TWDB and the Colonia Fund administered by the TDA as outlined in an MOU to maximize delivery of the funds and minimize administrative delay in their expenditure. The proposed amendments describe the revised MOU for the period from September 1, 2015 to August 31, 2017.

DISCUSSION OF THE AMENDMENTS

The proposed MOU is essentially the same as the current MOU; the proposed amendments are discussed as follows.

RECITALS. Citations to the General Appropriations Act (GAA) have been updated to reflect citation to the Appropriations Act relevant to this MOU.

PERIOD OF PERFORMANCE. The period of performance has been revised to reflect the biennium covered by the GAA. The period of performance is September 1, 2015 through August 31, 2017.

REPORTING REQUIREMENTS. The deadline for the report has been revised in accordance with the language in the GAA.

Other non-substantive, typographical amendments to 31 TAC §354.4 have been proposed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Mr. Christopher Hayden, Director of Budget, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from its administration.

This rule is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed amendments. This rule is not expected to have any impact on state or local revenues. The rule does not require any increase in expenditures for state or local governments as a result of administering this rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this rule.

PUBLIC BENEFITS AND COSTS

Mr. Hayden also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to make conforming amendments based on the General Appropriations Act to an existing MOU between the TDA and TWDB and to adopt by rule the MOU as required by Texas Water Code §6.104.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Water Code §6.104. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to adopt by rule the MOU between TDA and the TWDB as required by Texas Water Code §6.104.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires the resolution of interregional conflicts without specifically requiring, burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted until 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or *rulescomments@twdb.texas.gov* or by fax to (512) 475-2053.

STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code §6.104, which requires the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency and General Appropriations Act, SB 1, 83rd Leg., R.S., Rider 8, page VI-56 of the TWDB budget.

Cross reference to statute: Texas Water Code §6.104.

§354.4. Memorandum of Understanding Between the Texas Department of Agriculture[, ~~Office of Rural Affairs~~] and the Texas Water Development Board.

(a) SECTION I. RECITALS.

(1) WHEREAS, pursuant to the General Appropriations Act, H.B. 1, 84th Leg., R.S., Rider 8, page VI-58, of [~~SB 1, 83 L.S., Rider 8, page VI-56,~~], the Texas Water Development Board's (TWDB) appropriation, and Rider 20 [~~26~~], page VI-7 [~~10~~] of the Texas Department of Agriculture's (TDA) appropriation, TWDB and TDA are [~~is~~] required to enter into this Memorandum of Understanding (MOU) [~~with TDA~~];

(2) WHEREAS, the TDA administers the Colonia Set-Aside Program described in the General Appropriations Act, H.B. 1, 84th Leg., R.S., Rider 20, page VI-8 [~~SB 1, 83 L.S., Rider 27, page VI-10~~] of the TDA budget;

(3) WHEREAS, the TDA and the TWDB are required to continue to coordinate funds as outlined in this MOU to ensure that none of the funds appropriated therein are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the Economically Distressed Areas Program (EDAP) administered by the TWDB, and maximize delivery of the funds and minimize administrative delay in their expenditure.

(4) NOW THEREFORE, the TDA and the TWDB hereby enter into this MOU for the purposes set forth herein.

(b) SECTION II. PARTIES. This MOU is made and entered into between the TDA, an agency of the State of Texas, and the TWDB, also an agency of the State of Texas.

(c) SECTION III. PURPOSE. The purpose of this MOU is to ensure that none of the funds appropriated under the Colonia Fund are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the EDAP operated by the TWDB and to use the Colonia Set Aside program for residential service lines, hookups and plumbing improvements, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(d) SECTION IV. PERIOD OF PERFORMANCE. The obligations under this MOU shall be in force beginning on September 1, 2015 [~~2013~~], and terminating on August 31, 2017 [~~2015~~].

(e) SECTION V. PERFORMANCE. Each party to this MOU shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to connect those residents' housing units to EDAP-funded water and sewer systems.

(1) TDA RESPONSIBILITIES. The TDA shall be responsible for the following functions:

(A) develop an application process for projects submitted by eligible units of local government;

(B) determine whether projects meet applicable federal requirements;

(C) select projects to receive funding and make Colonia Economically Distressed Areas Program (CEDAP) grant awards from the Colonia Fund for selected projects on an as-needed basis;

(D) prepare and execute contracts with units of general local government (Contractor localities);

(E) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(F) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(G) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations; and

(H) consult with the TWDB regarding specific projects on an as-needed basis.

(2) TWDB RESPONSIBILITIES. The TWDB shall be responsible for the following functions:

(A) at the beginning of each fiscal year, or quarterly upon request, provide the TDA with descriptions of and schedules for EDAP-funded projects that need Colonia Fund assistance to provide connections and plumbing improvements;

(B) provide a list of projects for the TDA's eligibility review for joint funding; and

(C) provide assistance with technical project-related concerns brought forward by Contractor localities or the TDA during the course of the project.

(f) SECTION VI. LIMITATIONS. Eligible applicants shall be those counties eligible under both the TDA's CEDAP and TWDB's EDAP. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and ineligible cities that annexed the colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. If there are an insufficient number of TWDB EDAP projects ready for CEDAP funding, the CEDAP funds may be transferred at the TDA's discretion as stated within the current Community Development Block Grant action plan.

(g) SECTION VII. REPORTING REQUIREMENTS. No later than September 15, 2016, the [~~2014,~~] parties to this MOU agree to submit a joint report to the Legislative Budget Board describing and analyzing the effectiveness of projects funded as a result of coordinated CEDAP/EDAP efforts, including an estimate of savings gained from reducing duplicative efforts for each party.

(h) SECTION VIII. TERMINATION. This MOU shall terminate upon ten (10) days written notice by either party to the other party in this MOU.

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 28, 2015.

TRD-201503462

Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-8061

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.15, §145.17

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 145, §145.15 and §145.17, concerning action upon review; extraordinary vote and action upon special review--release denied. The amendments are proposed to update the frequency in which the Board considers the eligibility of certain offenders for release on parole in §145.15. The amendments to §145.17 include two new definitions relating to administrative file processing error and erroneous information.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process and bring the rules in compliance with the amendments to Texas Government Code, §508.141. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.state.tx.us.* Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code §§508.036, 508.0441, 508.045, 508.141 and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

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

§145.15. Action upon Review; Extraordinary Vote (SB 45).

(a) This section applies to any offender convicted of a [~~capital offense, who is eligible for parole,~~] an offense under Texas Penal Code, Sections 20A.03, 21.02, or 21.11(a)(1) [~~or 22.021~~], or who is required under Texas Government Code, Section 508.145(c), to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

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

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 60 [~~36~~] months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 60 [~~36~~] months of their maximum expiration date.

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

§145.17. Action upon Special Review--Release Denied.

(a) - (g) (No change.)

(h) Erroneous information shall mean information provided to the parole panel during the review process that may have been utilized as a basis for denial but is later determined to be inaccurate.

(i) Administrative processing error shall mean an action during the processing of an offender's file which results in the omission of or the recording of inaccurate information with respect to voting, denial reasons, or NR dates.

(j) [~~(h)~~] A special review parole panel, other than the current voting panel, shall decide and exercise final action on such requests for special review.

(k) [~~(i)~~] Upon considering a case for special review, the special review parole panel may take the following action:

(1) defer for request and receipt of further information;

(2) vote remain set; or

(3) revote the case in accordance with applicable provisions of Subchapter A of this chapter (relating to Parole Process).

(l) [(j)] The special review parole panel shall not set an offender's NR date on a date later than the previous NR date.

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-201503489
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388

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37 TAC §145.18

The Texas Board of Pardons and Paroles proposes a new rule to 37 TAC Chapter 145, §145.18, concerning action upon review; extraordinary vote (HB 1914). The new rule is proposed to update the frequency in which the Board considers the eligibility of certain offenders for release on parole in §145.15.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed new rule is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this new section.

Ms. Owens also has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be to bring the rule in compliance with the amendments to Texas Government Code, Section 508.141. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the new rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.state.tx.us*. Written comments from the general public should be received within 30 days of the publication of this new rule.

The new rule is proposed under Texas Government Code §§508.036, 508.0441, 508.045, and 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

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

§145.18. Action upon Review; Extraordinary Vote (HB 1914).

(a) This section applies to any offender convicted of a capital offense, who is eligible for parole, and an offense under Texas Penal Code, Sections 22.021. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) F1-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 60, 84 or 120 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 120 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 60, 84 or 120 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 120 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS--The board shall vote F1-1 and impose special condition "O" - "The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

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

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TRD-201503490

Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §§1.82, 1.85 - 1.87

The Texas Department of Transportation (department) proposes amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.85, Department Advisory Committees, §1.86, Corridor Advisory Committees, and §1.87, Corridor Segment Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments are the result of the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees.

Amendments to §1.82(i), Statutory Advisory Committee Operations and Procedures, revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2015. This sunset date was established under Government Code, §2110.008, which authorizes a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees is necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2017.

Amendments to §1.85, Department Advisory Committees, change the date that advisory committees created under that section are abolished. Section 1.85 provides for the creation of advisory committees by the commission and provides the operating procedures for those committees. Section 1.85(c) currently provides a December 31, 2015, sunset date, which was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §1.85 is necessary for improved communication between the department and the public. Therefore, amendments to §1.85(c) extend the sunset date to December 31, 2017.

Amendments to §1.86, Corridor Advisory Committees, eliminate an executed provision and change the date that advisory committees created under that section are abolished. Section 1.86(a) states that the commission "will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69." Those advisory committees were created and Interstate Highway 35 Corridor Advisory Committee has completed its work; the Interstate Highway 69 Corridor Advisory Committee continues to report to the

executive director. The amendments repeal the quoted phrase because it has been executed and is no longer necessary.

Section 1.86(e) currently provides that each advisory committee created under that section is abolished December 31, 2015. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.86(e) change the sunset date to December 31, 2017.

Section 1.87, Corridor Segment Advisory Committees, authorizes the creation of a segment advisory committee to assist the department in the transportation planning process for any highway corridor. Section 1.87(e) currently provides that each corridor segment advisory committee is abolished December 31, 2015. This sunset date was established in accordance with Government Code, §2110.008. Amendments to §1.87(e) extend the sunset date for any newly created corridor segment advisory committee to December 31, 2017. Specifying a date certain in this section is consistent with other sections that authorize the creation of department advisory committees and assures that the department will review the advisory committee's work and usefulness and determine whether an extension of its existence is necessary. Section 1.87(e) also currently indicates that the corridor segment advisory committees established for the Interstate Highway 35 corridor and the Interstate Highway 69 corridor were abolished December 31, 2013. That provision is repealed because it has been executed and is unnecessary.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Jeff Graham, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Graham has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy of the rules and improved communication between the department and the public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.82 and §§1.85 - 1.87 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to *RuleComments@txdot.gov* with the subject line "§§1.82, 1.85 - 1.87." The deadline for receipt of comments is 5:00 p.m. on October 12, 2015. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that, if a state agency committee designates the date on which an advisory committee will automatically be abolished or changes such a date, the designation or change must be by rule.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, §201.117.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superseded [~~superceded~~] by a specific provision in §1.84 of this subchapter (relating to Statutory Advisory Committees).

(b) Election of officers and terms of members.

(1) Unless otherwise specified with regard to a particular committee, each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The chair and vice-chair shall each be elected for a term of not less than one year and not more than two years. Once elected, the chair and vice-chair may stand for reelection, without limit on the number of consecutive terms.

(2) Members shall serve on an advisory committee until new members are appointed.

(c) Meetings.

(1) Meeting requirements. The office designated for an advisory committee under subsection (f) of this section shall submit to the Office of the Secretary of State notice of a meeting of the advisory committee at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Office of the Secretary of State shall be coordinated through the department's Office of General Counsel.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (f) of this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The office designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Quorum. A majority of the membership of an advisory committee, including the chairman, constitutes a quorum. The committee may act only by majority vote of the members present at the meeting.

(4) Removal. A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person's or entity's successor.

(5) Parliamentary procedure. Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Robert's Rules of Order, except that the chair may vote on any action as any other member of the committee, and except to the extent that Robert's Rules of Order are inconsistent with any statute or this subchapter.

(6) Record. Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) Public information. All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(e) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) Administrative support. For each advisory committee, the executive director will designate an office of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) Advisory committee recommendations. In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) Manner of reporting.

(1) The office designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or the chair's designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2017 [~~2015~~], unless the commission amends its rules to provide for a different date.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

(ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(2) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(3) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues and matters related to the Safe Routes to School Program. By involving representatives of the public, including bicyclists and other interested parties, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use, including the design, construction and maintenance of highways. The committee will also provide recommendations to the department on the Safe Routes to School Program.

(B) Duties. The committee shall:

(i) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails;

(ii) provide recommendations on the selection of projects under Chapter 25, Subchapter I of this title (relating to Safe Routes to School Program); and

(iii) review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Safe Routes to School Program. Under the Safe Routes to School Program the committee shall reports its recommendations to the director of the division responsible for administering the program.

(4) Freight Advisory Committee.

(A) Purpose. The purpose of the Freight Advisory Committee is to serve as a forum for discussion regarding transportation decisions affecting freight mobility and promote the sharing of information between the private and public sectors on freight issues. The committee's advice and recommendations will provide the department with a broad perspective regarding freight transportation matters and assist in identifying potential freight transportation facilities that are critical to the state's economic growth and global competitiveness.

(B) Duties. The committee shall:

(i) provide advice regarding freight-related priorities, issues, projects and funding needs;

(ii) make recommendations regarding the creation of statewide freight transportation policies and performance measures;

(iii) make recommendations regarding the development of a comprehensive and multimodal statewide freight transportation plan; and

(iv) communicate and coordinate regional priorities with other organizations as requested by the department.

(C) Manner of reporting. The committee shall report its advice and recommendations to the executive director or a department employee designated by the executive director and shall make reports to the commission as requested.

(b) Operating procedures.

(1) Membership. Except as otherwise specified in this section, an advisory committee shall be composed of not more than 24 members to be appointed by the office or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and at such other times as requested by the office to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2017 [~~2015~~], unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

§1.86. Corridor Advisory Committees.

(a) Purpose. The commission by order [~~will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 and~~] may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the corridor for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. An advisory committee may be composed of members of the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the corridor for which it is created, including facilities to be included in a development plan for that corridor and upgrades and other improvements to be made to existing facilities located in that corridor, and on other corridor level planning and development matters as requested by the department. The corridor advisory committee may also provide information to, coordinate with, or request information relating to the planning and development of a segment of the corridor from a corridor segment advisory committee established under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees). In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. An advisory committee is subject to the requirements for operating procedures and reimbursement of expenses applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. An advisory committee created under this section is abolished December 31, 2017 [~~2015~~], unless the commission amends its rules to provide for a different date.

§1.87. Corridor Segment Advisory Committees.

(a) Purpose. The commission by order may create a corridor segment advisory committee to assist the department in the transportation planning process for any highway corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. A corridor segment advisory committee consists of the following members:

(1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county;

(2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization;

(3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; and

(4) additional members, each of whom:

(A) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment may be located and that is designated by the commission to appoint a member of the committee; or

(B) is an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department. A corridor segment advisory committee may provide information to, coordinate with, or request information from a corridor advisory committee created under §1.86 of this subchapter (relating to Corridor Advisory Committees). In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. A corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. A corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2017 [~~2015~~], unless the commission amends its rules to provide for a different date. [~~The corridor segment advisory committees established for the Interstate Highway 35 corridor and the Interstate Highway 69 corridor are abolished December 31, 2013.~~]

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 27, 2015.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-8630

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER A. GENERAL

43 TAC §25.9

The Texas Department of Transportation (department) proposes amendments to §25.9, concerning Naming of Memorial Highways and Historical Routes.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §25.9 update the statutory citation and reflect department practice on the approval process for local entities to designate memorial highways under Transportation Code, §225.001. The changes outline the procedure for local entities to apply and obtain approval for assigning memorial designations to any part or parts of the highway system. The amendments also clarify requirements for statutorily authorized memorial designations and terms applying to the designation of historical routes.

The amendment to the title of §25.9 replaces "named" with the term "designated" to be consistent with language in Transportation Code, Chapter 225 regarding memorial designations.

Amendments to §25.9(a) correct an outdated cite by replacing the Texas Civil Statute cite with the correct cite in Transportation Code, Chapter 225.

Amendments to §25.9(b) add language regarding statutorily authorized memorial designations so that it is clear that these types of designations are included in subsections (e) and (g) regarding the markers and designations. The language also provides that the cost of designing, constructing and installing these types of memorial markers must be paid for by donation in accordance with statutory requirements.

Amendments to §25.9(c) clarify that the Texas Transportation Commission (commission) cannot, by their own measure, name a road by anything other than a highway number. The current rule creates some confusion in the commission's responsibilities, and this change clarifies the commission's authority.

Amendments to §25.9(d) provide local governments with the department's procedures for assigning memorial designations to any part or parts of the state highway system under the local government's jurisdiction. Local governments are authorized under Transportation Code, §225.002 to assign a memorial or other identifying designation to a part of the highway system. Transportation Code, §225.003 provides that department approval is necessary for the marker. The department has developed procedures for the application and approval process and this amendment provides guidance for this process. Procedures include information necessary for the department to determine that the memorial marker meets the statutory requirements. The department requires that the local government's resolution or order be included to ensure that the request is approved by the governing body of the local government. If the request is for a marker honoring an individual, the department also requires the local government show how the request meets Transportation Code,

§225.001 requirements. In addition, the amendments clarify that the department will not approve a memorial designation, if the highway is assigned a memorial designation when the request is received to avoid excessive signage on the highway. These amendments are necessary to ensure the local governments are provided the department procedures in order to eliminate delays in the application and approval process.

Amendments to §25.9(e) provide details on the markers that will be placed on state highways. Unless noted in the rule, these provisions apply to both statutorily authorized and local government requested memorial designations. The rule provides that the department can install an original marker only if donations are received to cover the costs for design, construction and erection of the marker. This language is consistent with both Transportation Code, §225.004, regarding local government requested memorial designations and §225.021, regarding statutorily authorized designations and follows the department's current position on the installation of original markers. Amendments to §25.9(e)(1) and (e)(2) make non-substantive changes to clarify information regarding the installation of a memorial marker. New §25.9(e)(3) clarifies that the department will maintain the grounds around both types of markers. New §25.9(e)(4) provides that all costs to replace the marker will be the responsibility of the local government to be consistent with Transportation Code, §225.004. New §25.9(e)(5) provides where the markers must be placed and how far apart the markers will be installed. The rule sets out that markers can be placed at the end of the designated limits and, if applicable, at sites approximately 75 miles apart within the limits. This spacing requirement is included in Transportation Code, §225.004 for local markers, and the commission has determined that the guidelines should also apply to statutorily authorized markers to remain consistency between the programs.

Amendments to §25.9(f) replace "sign" with "marker," to be consistent with the terms used throughout the chapter.

New §25.9(g) provides that a memorial designation or marker does not replace the official name, highway number, or the postal address of the highway. There has been some confusion regarding the effect of a memorial designation and the department has included this language to notify all parties involved that the memorial designation has no effect on the official name of the highway.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Ms. Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments. The language regarding the payment of the design, construction, and erection of the marker are current department procedures that are not being changed by these rule amendments.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to clarify the procedures by which roadways in the state highway system are designated as memorial highways or historical routes. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §25.9 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to *RuleComments@txdot.gov* with the subject line "Naming of Highway Rules." The deadline for receipt of comments is 5:00 p.m. on October 12, 2015. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Texas Transportation Code, Chapter 225

§25.9. [~~Naming of~~] Memorial Designated Highways and Historical Routes.

(a) Purpose. Texas Transportation Code, Chapter 225, provides for the memorial designation of roadways on the state highway system. Subchapter A of that chapter [~~Texas Civil Statutes, Article 6673e-4,~~] authorizes local governmental units, if approved by the department, to assign a memorial [~~or other identifying~~] designation to a part of the state highway system, and authorizes a county historical commission to apply to the Texas Historical Commission and the department for the marking with the historical designation [~~name~~] of a farm-to-market or ranch road that follows a historical route. This section prescribes the policies and procedures by which memorial highways and historical routes are designated [~~named~~].

(b) Highways designated as memorial highways in the statute. The department will design, construct, or erect a marker for a memorial highway designated by statute only if all costs of designing, constructing, and erecting the marker have been donated to the department. [~~Commission. Unless otherwise required or authorized by law, the commission shall not officially name any road, bridge, street, or highway on the state highway system for a person or persons, living or dead; nor for any organization or event; nor shall the commission give these parts of the highway system any name or symbol other than the regular highway number.~~]

(c) Transportation Commission. Texas Transportation Code, §225.001, prohibits the Texas Transportation Commission from naming any road, bridge, street, or highway on the state highway system other than by designating it with the regular highway number.

(d) [~~(c)~~] Local governments. Local governmental units, such as a city or county, may submit a request to the department to assign a memorial [~~or other identifying~~] designation to any part or parts of the state highway system within the local government's jurisdiction [~~; provided, however, that any part of the highway system that is named locally will be marked only with the regular highway number~~].

(1) The request to assign a memorial designation to a part of a state highway must:

(A) be sent to the office of the local department district in which the part to be designated is located; and

(B) include:

(i) a description and location of the marker or markers to be erected;

(ii) a statement describing the nature and the objective of the designation, including, if the designation is for a person, the historical significance of the designee; and

(iii) a copy of the order or resolution of the local government's governing body that provides the memorial designation of the highway.

(2) The department will not approve a memorial designation if:

(A) the highway or part of the highway is assigned a memorial designation when the request is received, regardless of whether the markers have been erected; or

(B) the request is to assign a memorial designation for a living person or does not describe the designee's significance in the state's history or in the lives of the people of this state.

(3) Two or more local governmental units may cooperate in seeking a single continuous memorial designation for a highway under their jurisdictions.

(e) [~~(d)~~] Memorial designation markers. The department will design, construct, or erect a memorial designation marker only if all costs for the marker have been donated to the department. [~~Markers.~~]

(1) Local governmental units may [~~buy and~~] furnish to the department for installation a [~~suitable locally identifying~~] memorial marker of a size and type [~~which must be~~] approved by the department.

(2) The [~~Upon request, the~~] department will [~~may~~] erect a memorial [~~such~~] marker at a place most suitable to the department's maintenance operations.

(3) The department will maintain the grounds surrounding the memorial marker.

(4) A marker for a local government memorial designated highway will be replaced only if all costs to replace the marker have been donated to the department.

(5) Memorial markers may be erected at each end of the designated limits, and, if applicable, at intermediate sites so that the markers are approximately 75 miles apart.

~~[(e) Continuous designations. When two or more local governmental units cooperate in seeking a single continuous memorial designation for a highway through their limits, markers may be furnished to the department to be erected at each end of the designated limits, and at such intermediate sites that markers shall be approximately 75 miles apart.]~~

~~[(f) Application. When a memorial designation is planned by a local governmental unit or units, the sponsor or sponsors shall submit to the executive director a complete description of the nature and objectives of the dedication, and the type and full description of the marker or markers to be erected. If approved by the executive director, a period of three months shall be required from date of approval to the actual erection of the marker or markers, in order for the department to select and prepare a proper site.]~~

~~[(g) Maintenance. Maintenance of grounds surrounding such markers shall be the responsibility of the department, but repairs or replacement of the markers shall be made by the sponsoring organizations.]~~

(f) [~~(h)~~] Historical routes.

(1) Application. A county historical commission may apply to the Texas Historical Commission and the department for the marking with a historical name of a farm-to-market or ranch road that follows a historical route.

(2) Certification. Before the department may mark the road with the historical name, the Texas Historical Commission must certify that the name has been in common usage in the area for at least 50 years. The certification must be based on evidence submitted by the applying county historical commission, which must include affidavits from at least five long-time residents of the area.

(3) Installation. On certification by the Texas Historical Commission, the department will prepare and install markers [~~signs~~] along the road indicating the road's historical name. The applying county historical commission shall pay for the preparation of the markers [~~signs~~].

(g) Official highway name, number, and postal address. A memorial designation or marker placed under this section does not replace the official name, highway number, or the postal address of the highway.

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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Deputy General Counsel
Texas Department of Transportation
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SUBCHAPTER J. RESTRICTIONS ON USE OF STATE HIGHWAYS

43 TAC §§25.601, 25.602, 25.605

The Texas Department of Transportation (department) proposes amendments to §25.601, §25.602, and new §25.605, concerning Restrictions on Use of State Highways.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

These proposed amendments and new section implement House Bill No. 3225, 84th Legislature, Regular Session, 2015, regarding lane restrictions for commercial motor vehicles in construction or maintenance work zones. Construction or maintenance work zones can be challenging for drivers to maneuver with many distractions due to signs, equipment, workers and other factors. Commercial motor vehicles traveling through construction or maintenance work zones increase these challenges, especially when these larger vehicles change lanes. Commercial motor vehicles increase risk in work zones when changing lanes. In 2014, commercial motor vehicles were involved in 9.4 percent of all crashes on the state highway system. Commercial motor vehicles were involved in 16.2 percent of crashes in work zones on the state highway system during this same time period. The department believes that if commercial motor vehicles used only one lane in the work zone the number of work-zone crashes could be reduced.

Amendments to §25.601 add that the department may restrict a commercial motor vehicle to a specific lane of traffic in a construction or maintenance work zone under Transportation Code, §545.0653, if a traffic study performed by the department shows that the restriction will improve safety.

Amendments to §25.602 define commercial motor vehicles with the meaning assigned by Transportation Code, §548.001. The amendment defines construction or maintenance work zone with the meaning assigned by Transportation Code, §472.022. These are new terms used in the proposed §25.605.

New §25.605 provides the procedure for department-initiated lane restrictions for commercial motor vehicles in construction or maintenance work zones, in order to improve safety. New §25.605(a) provides that the executive director may restrict a commercial motor vehicle to a specific lane of traffic in a construction or maintenance work zone for a highway that is part of the state highway system, if the executive director determines that, based on traffic study performed by the department to evaluate the effect of the restriction, the restriction is necessary to improve safety. This language tracks the language of the statute.

New §25.605(b) lists the items which must be considered in the traffic study, in order to determine whether the lane restriction will improve safety. These factors include the percentage of all vehicles in the work zone that is anticipated to be commercial motor vehicles, the lane configurations in the work zone, lane widths, the roadway geometry, and the speed limit in the work zone. The percentage of large commercial vehicles should be considered because these types of vehicles can create congestion in work zones when there is slowing down or stopping due to the type of work zone operations. Typically, commercial motor vehicles take much longer to accelerate to the prevailing speed than do passenger vehicles. Congestion in the work zone may develop when this occurs. Lane configurations and roadway geometry can affect the acceleration of trucks which leads to more passenger vehicles making unsafe maneuvers to try to pass the commercial motor vehicles in the work zone. Narrow lanes and transitions should be considered due to the difficulties for commercial motor vehicles to maneuver in these types of situations. The speed limit in the work zone should also be evaluated. Restricting commercial motor vehicles to a specific lane helps remove the conflict of the differential speed between passenger vehicles and the slower accelerating commercial motor vehicles moving through the work zone. Lane changes tend to be more frequent and exaggerated as faster vehicles attempt to move around slower moving commercial motor vehicles. The district engineer will submit the results of the traffic study to the executive director.

New §25.605(c) provides that, if the lane restriction is approved, the department shall erect and maintain official traffic control devices necessary to implement and enforce a lane restriction imposed under this section. This language corresponds with the language in the statute and provides a specific start for enforcement.

New §25.605(d), §25.605(e), and §25.605(f) define the time at which the lane restriction is rescinded or expires and when the traffic control devices can be removed. These provisions all correspond with the language in Transportation Code, §545.0653.

New §25.605(d) provides for the executive director to rescind a lane restriction when it is no longer necessary to improve safety.

New §25.605(e) provides for the lane restriction to expire when the lane is no longer in a construction or maintenance work zone.

New §25.605(f) provides that the traffic control devices can be removed when the lane restriction is rescinded or expires.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section.

Ms. Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be increased safety in construction or maintenance work zones by restricting commercial motor vehicles to certain lanes. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §25.601, §25.602, and new §25.605 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to *RuleComments@txdot.gov* with the subject line "Use of State Highway Rules." The deadline for receipt of comments is 5:00 p.m. on October 12, 2015. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §472.022 and §545.0653

§25.601. Purpose.

(a) Transportation Code, §545.0651 and §545.0652 authorize a municipality, a county, or the Texas Department of Transportation to restrict through traffic, by class of vehicle, to two or more designated lanes of traffic on certain portions of the designated state highway system. Section 545.0651 and §545.0652 require a municipality or county to submit a description of the proposed restriction to the department for review and approval prior to adoption. This subchapter prescribes responsibilities of municipalities and counties relating to restricting use of a highway on the state highway system to designated lanes, and requirements for obtaining department approval of those restrictions. This subchapter also describes the procedures that will be followed by the department when initiating a lane restriction permitted under Transportation Code, §545.0651.

(b) Transportation Code, §545.0653 authorizes the department to restrict a commercial motor vehicle to a specific lane of traffic in a construction or maintenance work zone if a traffic study performed by the department shows that the restriction will improve safety. Section

25.605 of this chapter describes the procedures that the department will follow when lane restrictions are imposed as authorized under Transportation Code, §545.0653.

(c) This subchapter does not apply to the routing of oversize or overweight vehicles for which a permit is issued under Transportation Code, Chapter 623 and Chapter 28 of this title (relating to Oversize and Overweight Vehicles and Loads).

§25.602. Definitions.

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

(1) Class of vehicle--All or any of the types of vehicles, machines, tractors, trailers, or semitrailers, or any combination thereof, propelled or drawn by mechanical power and used on a highway. A class of vehicle includes, but is not limited to:

(A) a semitrailer;

(B) special mobile equipment;

(C) a trailer; or

(D) a truck.

(2) Commission--The Texas Transportation Commission.

(3) Controlled access facility--As defined in Transportation Code, §203.001, a designated state highway to or from which access is denied or controlled, in whole or in part, from or to adjoining real property or an intersecting public or private way, without regard to whether the designated state highway is located in or outside a local jurisdiction as defined in this subchapter.

(4) Department--The Texas Department of Transportation.

(5) District--One of 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(6) Executive Director--The executive director of the Texas Department of Transportation or his or her designee.

(7) Highway--A public roadway that:

(A) is in the designated state highway system;

(B) is designated a controlled access facility; and

(C) has a minimum of three travel lanes, excluding access or frontage roads, in each direction of traffic that may be part of a single roadway or may be separate roadways that are constructed as an upper and lower deck.

(8) Local jurisdiction--A home-rule, general law, or special law municipality, incorporated under the laws of the state of Texas or any of the state's 254 counties.

(9) Order--A resolution or order of a county commissioners court or municipal ordinance.

(10) Restricted lanes--two or more lanes restricted by class of vehicle.

(11) State highway system--The system of highways in the state included in a comprehensive plan prepared by the executive director with the approval of the commission, in accordance with Transportation Code, §201.103.

(12) Written transcript--A verbatim record of a meeting required under this subchapter as prepared and certified by a court reporter or by an employee of a local jurisdiction and certified by an appropriate official of a local jurisdiction.

(13) Commercial motor vehicle--Has the meaning assigned by Transportation Code, §548.001.

(14) Construction or maintenance work zone--Has the meaning assigned by Transportation Code, §472.022.

§25.605. Department Initiated Lane Restrictions in Construction or Maintenance Work Zones.

(a) The executive director may restrict a commercial motor vehicle to a specific lane of traffic in a construction or maintenance work zone for a highway that is part of the state highway system if the executive director determines that, based on traffic study performed by the department to evaluate the effect of the restriction, the restriction is necessary to improve safety.

(b) The traffic study must include a review of:

(1) the percentage of all vehicles in the construction or maintenance work zone that is anticipated to be commercial motor vehicles;

(2) the lane configurations in the work zone;

(3) lane widths in the work zone;

(4) the roadway geometry in the work zone; and

(5) the speed limit in the work zone.

(c) If the executive director imposes a lane restriction under this section, the department shall erect and maintain official traffic control devices informing the driving public of that restriction. A lane restriction may not be enforced until the appropriate traffic control devices are in place.

(d) The executive director may rescind a lane restriction imposed under this section at any time that the executive director determines that the restriction is no longer necessary to improve safety.

(e) A lane restriction imposed under this section expires when the lane that is subject to the restriction is no longer in a construction or maintenance work zone.

(f) The department shall remove traffic control devices erected under this section if the lane restriction is rescinded under subsection (d) or expires under subsection (e).

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 27, 2015.

TRD-201503453
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2015
For further information, please call: (512) 463-8630

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

The Public Utility Commission of Texas (commission) adopts amendments to §24.3 (relating to Definitions of Terms), §24.8 (relating to Administrative Completeness), §24.14 (relating to Emergency Orders), §24.21 (relating to Form and Filing of Tariffs), §24.23 (relating to Time Between Filings), §24.31 (relating to Cost of Service), §24.32 (relating to Rate Design), §24.34 (relating to Alternative Rate Methods), §24.41 (relating to Appeal of Rate-making Pursuant to the Texas Water Code, §13.043), §24.44 (relating to Seeking Review of Rates for Sales of Water Under the Texas Water Code, §11.041 and §12.013), §24.72 (relating to Financial Records and Reports--Uniform System of Accounts), §24.73 (relating to Water and Sewer Utilities Annual Reports), §24.102 (relating to Criteria for Considering and Granting Certificates or Amendments), §24.109 (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction), §24.111 (relating to Purchase of Voting Stock in Another Utility), §24.114 (relating to Requirement to Provide Continuous and Adequate Service), §24.131 (relating to Commission's Review of Petition or Appeal), and §24.150 (relating to Jurisdiction of Municipality: Surrender of Jurisdiction) with changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1607).

The commission repeals §24.11 (relating to Informal Proceedings), §24.22 (relating to Notice of Intent to Change Rates), §24.25 (relating to Rate Change Applications, Testimony and Exhibits), §24.26 (relating to Suspension of Rates), §24.27 (relating to Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code §13.187(b)), and §24.28 (relating to Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b)) as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1607).

The commission adopts new §24.11 (relating to Financial Assurance), §24.22 (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871), §24.26 (relating to Suspension of the Effective Date of Rates), §24.28 (relating to Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 and §13.1871), §24.33 (relating to Rate-Case Expenses Pursuant to Texas Water Code §13.187 and §13.1871), and §24.36 (relating to Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872) with changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1607).

The amendments, repeals, and new sections implement and conform the commission's substantive rules to House Bill 1600 (HB 1600) and Senate Bill 567 (SB 567) of the 83rd Legislature, Regular Session, enacted in 2013, which amended the ratemaking and reporting requirements for water and sewer utilities. In addition to conforming the commission's substantive rules to HB 1600 and SB 567, the amendments and new sections revise the procedures by which a utility can demonstrate financial assurance to the commission. Additional amendments, repeals, and new sections have resulted in the reorganization and/or restructuring of several rule sections to promote clarity. Finally, additional amendments and new sections revise other limited aspects of ratemaking at the commission, including the removal of authorization for stand-by fees; instructions related to identifying a tariff change; clarification of the applicability of a rule section related to time between filings; modification to the allowable recovery on cost of service established via trending studies; clarification of the applicability of a negative acquisition adjustment; description of availability of intangible asset in rate base; removal of single issue rate change as an alternative rate method; clarification of commission authority in the appeal of ratemaking decisions; extension of the deadline by which a utility is required to file an annual report; and modification of the manner in which the commission provides notice of cities that have surrendered jurisdiction to the commission. In addition, the commission implements and conform the commission's substantive rules to SB 1148 of the 84th Legislature, Regular Session, enacted June 16, 2015 and effective September 1, 2015, relating to the economic regulation of water and sewer service. These new sections and amendments are adopted under Project Number 43871.

No public hearing on the amendments or proposed sections was requested or held at the commission offices.

The commission received initial comments on the proposed new sections, amendments, and repeals from the Water IOUs (Investor Owed Utilities) (comprised of Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc. d/b/a Aqua Texas (Aqua Texas), SJWTX, Inc. d/b/a Canyon Lake Water Service Company (CLWSC), SouthWest Water Company (SWWC), and Corix Utilities (Texas) Inc. (Corix)), the City of Houston, the Lower Colorado River Authority (LCRA), the Office of Public Utility Counsel (OPUC), the Texans Against Monopolies' Excessive Rates (TAMER), and the Texas Alliance of Water Providers (TAWP). The commission received reply comments on the proposed new sections, amendments, and repeals from the Water IOUs, the City of Houston, the LCRA, OPUC, and TAMER.

General Comments

TAWP generally urged the commission to consider adopting procedures in rate-cases to allow for early dispute resolution

through a structured settlement process, similar to those that have been adopted in other states, such as Minnesota, stating that these early procedures could save ratepayers millions of dollars. TAWP further recommended that the settlement procedures should include a way for parties to stipulate to uncontested issues of law or fact or provide a way for parties to come to a reasonable settlement agreement without the need for a contested hearing.

Commission response

The commission disagrees that a formal procedure should be adopted to allow for early dispute resolution through a structured settlement process. When appropriate, and possible and after the appropriate information has been provided by the utility, staff encourages settlement and strives to work together with parties to reach a reasonable resolution of all issues in a proceeding. Therefore, the commission does not find it necessary to add a structured process in the rules for a process that commonly occurs at the commission. The commission also recognizes that parties already have the ability to stipulate to uncontested issues of fact pursuant to §22.228 (regarding Stipulation of Facts), and therefore no process needs to be codified in chapter 24. The commission acknowledges that there are instances where settlement may not be possible and, therefore, mandatory settlement conferences before a hearing could result in unnecessary expenses for ratepayers. For these reasons, the commission does not adopt TAWP's proposal, as it is unnecessary in light of the common practices regarding settlement in contested cases.

The Water IOUs generally appreciated the commission's efforts regarding the rules but commented that some of the proposed changes represent substantial new policy changes and do not represent sound policy choices. The Water IOUs pointed out that they are comprised of operations that are smaller than other utilities the commission regulates and that while certain issues should be handled consistently among the utilities the commission regulates, identical treatment may not be warranted in all circumstances. For example, the Water IOUs requested the commission review its filing requirements because those requirements might be too burdensome on smaller water utilities. In addition, the Water IOUs pointed out that no changes to the chapter 22 procedural rules are being considered.

Commission response

The commission's policy determinations made in this rulemaking represent sound policy choices. Through this rulemaking the commission has implemented HB 1600, SB 567 and SB 1148, while also making the chapter 24 rules consistent with the chapter 25 rules where appropriate. The commission has not provided for identical treatment between water and electric utilities in all instances because it recognizes that such consistency is not always possible or appropriate. The commission has implemented rules that will make the treatment of water and electric utilities similar where it is appropriate to do so and has implemented differing treatment where distinctions should be made. For example, the commission has proposed the use of three different rate filing packages for water utilities to recognize the statutory mandate of classifying water utilities by size. The commission points out that any changes to the chapter 22 rules are outside of the scope of this particular rulemaking project, and the commission did not propose amendments to the chapter 22 rules in Project No. 43969.

Section 24.3 - Definitions

The Water IOUs stated that where a defined term is included in the rate filing package that goes beyond explaining what the acronym stands for, the definition should be included in §24.3. In addition, the Water IOUs argued that all definitions in chapter 24 should be consistent with those definitions in the rate filing package, the Texas Water Code Annotated Chapter 13 (West 2008 and Supp. 2014) (TWC), and industry definitions.

Commission response

The commission agrees that all chapter 24 definitions should be consistent with those definitions in the rate filing packages and has modified both the rule and rate filing packages accordingly. In addition, the definitions in this chapter are consistent with the definitions in the TWC. Finally, the commission disagrees with the Water IOUs that a defined term included in the rate filing package, must also be defined in §24.3. The commission finds that for terms used primarily in the water and sewer rate filing packages, it is appropriate to define those terms in the rate filing package rather than the rule.

Section 24.3(4) - Affiliated interest or affiliate

OPUC recommended expanding the definition of "affiliated interest or affiliate" stating that many water and wastewater utilities in Texas are affiliated with larger multijurisdictional entities or other rate regions, or company divisions within the state. Therefore, OPUC recommended the definition state "any person or corporation that allocates or assigns costs to the utility including multi-jurisdictional costs, Texas divisional costs, or costs allocated to the utility from other Texas rate regions."

The Water IOUs disagreed with OPUC's suggested modifications to the definition of "affiliated interest or affiliate," stating that an expansion to the definition cannot occur without a change to the TWC. In addition, the Water IOUs expressed their belief that "rate region" is an "affiliated interest or affiliate," per the TWC definition, and pointed out that a rate region or division will not necessarily be a stand-alone "person" or "corporation" as suggested by the definition OPUC provided. The Water IOUs argued that the term, as used in the TWC, has a very specific meaning that transcends particular allocation methods, which can vary by utility, and stated that allocation by itself does not create an "affiliate." In addition, the Water IOUs asked the commission to define the term "affiliate or affiliated" if these terms are supposed to hold a different meaning than they do in the TWC.

Commission response

At this time the commission does not adopt the proposed modifications to the "affiliated interest or affiliate" definition. The commission notes that the definition used in the proposal for publication tracks the TWC definition found in TWC §13.002(2). The primary purpose of this rulemaking is to align the chapter 24 rules with the TWC and to make the necessary modifications to conform the rules to the commission's current practices. If, in the future, the commission determines that any modifications to this definition are needed such modifications will be made in a separate rulemaking where all issues can be fully considered.

The commission has addressed the comment from the Water IOUs that the term "affiliate or affiliated" should be defined if they are to hold a different meaning than they do in the TWC in the responses to comments on the rate filing packages, found in Project Nos. 43876 and 42967.

Section 24.3(12) - (14) - Class A, Class B, and Class C utilities

OPUC generally commented that the TWC created three new classes of utilities, Class A, Class B, and Class C utilities, based on the size of the utility, stating they are differentiated based on their provisions of service "through" a certain number of "taps or connections." OPUC argued that the commission's current definition of Class A, Class B, and Class C utilities departs from this statutory language by defining these classes of utilities by their provision of service "to" the applicable number of "taps or active connections." Though OPUC does not object to the use of the preposition "to" instead of "through," OPUC objected to the insertion of the word "active" before "connections," stating that this addition might have unintended consequences. In addition, OPUC stated that use of the term "active" should be defined because use of the term could create confusion for systems serving seasonal or intermittent communities. OPUC stated that for these systems the number of active connections could change depending on when the application is filed, and could result in a utilities' classification changing throughout the year. OPUC questioned the statutory basis for this change, stating the commission has not provided an explanation for the modification. Therefore, OPUC recommends that the word "active" be deleted. In contrast, the Water IOUs stated that it is unclear if a "tap" is considered equivalent to an inactive connection or an active connection, and therefore, requested the commission modify the rule to include the term "active" before taps and modify the last section to state "the number of active water taps/connections determines how the utility is classified."

TAWP argued that the definitions for Class A, B, and C utilities should be amended to clarify that provision of both water and sewer service to the same customer consists of one "tap or connection" in order to prevent the misclassification of smaller utilities that provide both water and sewer service. TAWP argued that without this clarification the commission is imposing a greater burden than legislatively intended on smaller utilities. TAWP proposed including in the definition of Class B and Class C utility the following: "For the purpose of this definition, a customer receiving both water and sewer service from the same public utility is counted as one tap or connection." TAWP commented that this proposed language is also consistent with the proposed definition of ratepayer; §24.3(42) treats a customer receiving both water and sewer service from the same company as one "ratepayer" regardless of the number of bills it receives. In addition, §24.3(18) treats someone provided with retail public utility services as one customer, regardless of the number of services received from a particular utility. Therefore, TAWP urged the commission to modify the definitions for Class A, Class B, and Class C utilities. In addition, TAWP asked the commission to clarify that the rule is limited to taps or connections within the State of Texas because many utilities have operations in different states or jurisdictions. In their reply comments, the Water IOUs stated that they shared TAWP's concern that the definitions for utility classification should be clear and stated that the commission should consider their proposed changes, as well as those changes proposed by the Water IOUs.

OPUC argued that instead of the rule containing the provision that if "a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified" the rule should instead contain their recommended alternative language, which states, "if a public utility provides both water and sewer utility service, the number of unique addresses with either a water or sewer connection determines how the utility is classified." OPUC stated its proposed language would ensure that a customer is not counted twice because it receives both water and sewer service while at the same time not leaving any taps or connections uncounted. OPUC appreciated the commission's attempt at providing guidance for how connections should be counted. But, OPUC stated the commission's language fails to consider the situation where a system serves more sewer connections than water connections, which, under the commission's proposed definition, could result in the utility being improperly classified.

The Water IOUs expressed their disagreement with OPUC's suggested modifications, stating the TWC requires the definition to reference the use of taps/connections. The Water IOUs stated a better approach is to maintain consistency with the TWC and clarify that the terms mean "active." The Water IOUs continued to support the commission's proposal to use "active water connections" as the determinative figure for classification but continued to urge the commission to add the word "taps" for consistency purposes. In addition, the Water IOUs expressed their concern with using the term "unique addresses" in the definitions as problems might occur in separating billing addresses from physical addresses.

Commission response

The commission disagrees with OPUC and retains the use of the term "active" before "connections" in the definitions for Class A, Class B, and Class C utilities. In addition, the commission does not find the word "active" to be ambiguous or a material departure from the statutory language. Though the commission recognizes the concerns regarding the use of the term "active" expressed by OPUC, the commission finds that these concerns do not warrant modification of the proposed rule because seasonal fees are charged to seasonal residences. Therefore, those connections would still be "active" connections and thus the number of active connections would not change depending on the time of year. The commission retains the use of the term "active" in reference to "connections" in order to determine the appropriate water or sewer utility classification based on what is actually in use.

The commission does not adopt TAWP's modification because the proposed language does not add clarity to the definitions. TAWP's language would constitute an unnecessary change because TAWP's language does not change the definition proposed by the commission in any substantive way. In addition, the commission does not find it is necessary to clarify that the rule is limited to taps or connections within the State of Texas because the rules promulgated by the commission apply only to Texas utilities. Therefore, the clarification requested by TAWP is unnecessary.

The commission also declines to modify the rule to use the "number of unique addresses with either a water or sewer connection" to "determine how the utility is classified." The commission finds this modification could result in the undercounting of customers. There are customers who receive service via multiple taps, and for purposes of classifying a utility, these unique taps are important, even if they share the same unique address. The purpose of the class structure for water or sewer utilities is to determine the size of the utility, and the number of active connections is the appropriate way to determine the size of a water or sewer utility.

Section 24.3(19) - Customer class

OPUC noted that the definition of "customer class" was amended to include the statement that for "rate-setting purposes, a group of customers with similar cost of service characteristics that take basic utility service under a single set of rates." OPUC stated that

for water and sewer utilities, the existence of "customer classes" for investor owned utilities (IOUs) is rare, and allocation is almost exclusively done by meter size. Though OPUC supported the commission's efforts to identify and standardize new customer classes, OPUC recommended the commission not add the proposed language to the definition of "customer class" because defining new functions and creating new customer classes is complex and would be better served through a separate project or rulemaking. OPUC expressed concern that proposing the issue of new customer classes without any further direction may result in functionalization, allocations, and customer classes that are not fully defined or understood and this could result in interpretations by utilities. Therefore, OPUC recommended this issue be addressed in a separate rulemaking project where the commission can give it the appropriate consideration.

Additionally, OPUC stated that changes to current rate classes could create rate shock to specific customers or groups of customers due to migration from one tariff to another.

However, if the commission chooses to pursue the creation of customer classes in this project, OPUC asked the commission to provide further guidance on the process of functionalizing costs and defining customer classes. The Water IOUs, in their reply comments, generally agreed with OPUC's comments regarding customer classes, expressed their shared concerns about the definition, and urged the commission to retain a broad definition. Although the Water IOUs stated OPUC's suggested edits are acceptable, the Water IOUs urged the commission to modify the definition as proposed in their initial comments. In their initial comments, the Water IOUs noted that the "customer class" definition in chapter 24 is slightly different than the definition in the rate filing packages. The Water IOUs urged the commission to only include the definition in the rule and not in the rate filing package. First, the Water IOUs argued the definition of customer class includes the unclear and undefined term "basic utility service." Second, the Water IOUs argued that it is not clear whether there are particular "customer class" designations that utilities should use going forward. The Water IOUs pointed out that the Texas Commission on Environmental Quality (TCEQ) rules did not define different types of customer classes, but noted that some individual utility tariffs have made such distinctions. The Water IOUs stated that while some tariffs have made distinctions, the primary classifications for water and sewer rates have been identification of rates set for various meter sizes based on meter equivalency factors (unless negotiated otherwise) and classification of system ratepayers as inside versus outside municipalities (who are subject to a different regulatory process). The Water IOUs argued that rates have historically been designed to focus on residential and small commercial customers, with ratepayers who request larger meter size connections being typically commercial. But, the Water IOUs noted that the tariffs do not typically identify different customer classes in that way. The Water IOUs noted their interest in having the option to identify different customer classes, but did not want to be required to have certain authorized customer classes specified in their tariffs. OPUC in its reply comments stated that the request of the Water IOUs to not be required to specify certain customer classes in their tariff is concerning because successful rate regulation requires all utilities to follow the same set of rules and standards when developing methodologies for computing rates. OPUC argued that giving utilities unlimited options might encourage the use of methods that are most advantageous to the utilities without consideration of the ultimate impact to the ratepayers.

The Water IOUs also requested the commission clarify whether a particular meter size rate is a "type of rate" for purpose of this definition so that, for example, a utility may have a 5/8" x 3/4" meter size, customer class, and others. The Water IOUs stated and OPUC agreed that they do not understand how customer classes should be broken down, as required in the rate filing package, without very specific designations of customer classes. OPUC argued that the specific designations needed for a successful ratemaking process are not currently provided. The Water IOUs pointed out that not all cost of service data is maintained according to customer class. In addition, the Water IOUs questioned whether wholesale customers would be considered a "customer class" since the definition of "customer" in the proposed definition only speaks to "service by any retail public utility." The Water IOUs argued that historically water and wastewater tariffs have included retail water or utility service rates approved by the regulatory authority, but not wholesale rates as they are directed by individual contracts. Therefore, the Water IOUs urged the commission to modify the definition of "customer class" to be defined as a "description of a customer group that receives utility service according to a specific designation based on nature of use, meter size, or other type of rate in the utility's tariff."

Commission response

Though the commission is sensitive to the concerns expressed by the parties regarding the term "customer class," the commission does not adopt the majority of the proposed modifications. The commission notes that at issue in this section is the definition of the term "customer class" and that many of the comments provided go to how this definition will be implemented, which is a different issue not being addressed in this rulemaking project. By defining the term "customer class," the commission is not imposing new requirements regarding how rates are to be designed or how customer classes should be broken down, and the commission is not creating specific customer classes. The commission notes that it modified the definition of "customer class" in the rate filing package in Project No. 43876 to be consistent with the definition in this subsection because the commission agrees that a term should be consistently defined in chapter 24 and the rate filing package. In addition, the commission agrees that the undefined term "basic utility service" may be confusing because the commission has not defined "basic service" and has therefore modified the definition to provide greater clarity to the definition.

Section 24.3(22) - Financial assurance

OPUC stated its general support for the commission's proposed definition of "financial assurance" but recommended deleting the phrase "owner's or operator's" because the rule itself identifies the owner or operator as the source of the financial assurance. OPUC argued that without this modification the definition as proposed is circular. OPUC recommended amending the "financial assurance" definition to "[demonstrate] that sufficient or adequate financial resources exist to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area." In their reply comments, the Water IOUs did not oppose the changes suggested by OPUC and argued that the applicable financial assurance rule should govern who is required to make the demonstration, rather than the definition of what constitutes financial assurance. The Water IOUs also argued that the definition may not be necessary and may conflict with §24.11 if it does not specifically reference "financial test."

Commission response

The commission agrees with OPUC and modifies the definition of "financial assurance" consistent with their recommendation. The commission deletes the phrase "owner's or operator's" because new §24.11 (relating to Financial Assurance) identifies the owner or operator as the source of the financial assurance. The commission finds that the definition does not conflict with §24.11 (relating to Financial Assurance).

Section 24.3(47) - Stand-by fee (omitted)

The Water IOUs questioned why the term "stand-by fee," and all use of the term, was deleted from the proposed rules. The Water IOUs asked the commission to justify this deletion.

Commission response

The commission recognizes that the term "stand-by fee" still exists in chapter 24, and therefore, has reinstated the definition that was proposed for deletion in the Proposal for Publication. The definition for "stand-by fee" now appears in §24.3(65).

Section 24.3(55) - Test year

OPUC stated they supported the proposed definition of "test year" because it conforms to the statutory definition. However, OPUC argued there is uncertainty regarding whether this definition would apply to rate appeals from entities that are not required to file original rate applications. OPUC stated that though it is clear that the use of a historical test year is required for Class A, B, and C utilities under Subchapter B of chapter 24, a historical test year is neither required nor prohibited for rate appeals under Subchapter C. OPUC pointed out that the TCEQ did not require political subdivisions to use a historical test year but that the use of budgets and estimates by political subdivisions has resulted in considerable litigation and expense when appellants attempt to ascertain whether an appellee's rates are just and reasonable when not based on a historical test year.

OPUC argued that because the use of a historical test year is neither prohibited nor required, there exists an ambiguity of when and under what circumstances the use of a historical test year will be applied or when budgets and estimates will be allowed. OPUC, therefore, supported the use of a historical test year because it is the standard used at the commission and the use of actual data, rather than estimates, is more reliable and produces more reasonable rates. OPUC urged that a good cause exception should be allowed when it is warranted. OPUC argued this modification will reduce litigation surrounding this issue and will remove any existing ambiguity.

In their reply comments, the Water IOUs pointed out that OPUC had not suggested a change to the proposed definition and disagreed that there is ambiguity about whether non-IOUs must use a historic test year in rate appeals. The Water IOUs pointed out that the TWC does not require "retail public utilities," a more broadly defined term, to follow the same cost of service requirements as the narrower term "utilities." In addition, the Water IOUs argued that the cost of service rules found in §24.31 should dictate whether certain data from outside the test year should be considered to adjust "actual data" from the historic test year for ratemaking purposes.

The LCRA in their reply comments stated that the precedent cited by OPUC from the TCEQ regarding the TCEQ not requiring political subdivisions to use a historical test year obviates the need for any change to the definition of test year because the precedent allows for either a budgeted or historical test year. LCRA agrees with OPUC that flexibility is needed for political subdivisions. However, LCRA expressed concern that OPUC's proposal may be too limiting and would considerably reduce the flexibility that political subdivisions have relied upon in setting wholesale water rates. In addition, the LCRA expressed concern that not all potentially affected parties have been fully engaged in this issue and that if the commission determines a change is appropriate, the commission should consider doing this in a separate rulemaking that specifically addresses the unique circumstances of water rate appeals governed by TWC Chapters 11 and 12.

Commission response

The commission acknowledges OPUC's concerns regarding the application of a "test year" for appeals of ratemaking decisions pursuant to TWC §13.043. However, the commission notes that at issue in §24.3(55) (now §24.3(71)) is the definition of the term and not the substantive cases in which a test year will be used. The commission agrees with the Water IOUs that the proposed definition is not ambiguous and that §24.31 addresses whether certain data from outside the test year should be considered to adjust "actual data" from the historic test year for ratemaking purposes. The commission also agrees with LCRA that flexibility needs to be maintained concerning the use of a test year for political subdivisions and that if the commission decides that modifications are necessary to change the use of a test year, this may be done in a separate rulemaking project.

Other Proposed Definitions

The Water IOUs noted that the rate filing package, being considered in Project No. 43876, contains defined terms that are not included in §24.3. The Water IOUs suggested the commission include definitions intended for use in the rate filing package within §24.3 and that the rate filing package is not the place to include original definitions for key terms. Specifically, the Water IOUs requested the commission define the following terms in §24.3: allocation, amortization, annualization, connections, customer, classes, function, functionalization, general rates revenues, block rates, known and measurable, multi-jurisdictional, normalization, rate region, affiliate or affiliated, and RFP.

Commission response

The commission finds that when a definition is included in the rate filing packages it should also be included in the substantive rule. However, the commission declines to include terms in the substantive rules that appear in the rate filing package as instructional information on how a term should be used. Where terms are not defined identically in both §24.3 and the rate filing packages the commission made modifications so that identical definitions are used in both the rule and rate filing packages, when appropriate. In some instances the definitions differ because additional instructions are included in the rate filing packages.

The Water IOUs urged that if the commission defines "amortization," it should be defined in §24.3 and should derive from generally referenced sources (Investopedia or the Oregon Public Utility Commission) instead of creating an original definition.

The Water IOUs also noted that the commission does not need to adopt a definition for "connections" but if it defines the term in the rate filing package, it should be included in §24.3 and should be modified in order to remove the use of the term "served" or "service" from the definition because the definition of "service" in both the TWC and Chapter 24 is extremely broad and covers utility activities other than just supplying water or collecting wastewater.

The Water IOUs also expressed their belief that the definition of the term "function" belongs in §24.3. The Water IOUs urged the commission to define the term as it is defined in the Glossary of the American Water Works Association; "functional cost category - Costs related to a particular operational function of a utility for which annual operation and maintenance expenses and utility plant investment records are maintained...." The Water IOUs continued by arguing that the proposed electric rate filing package specifically defines which functions are considered "regulated functions," and not the term "function along." But, the Water IOUs noted this approach may not be necessary for the Class A IOUs unless a uniform set of regulated functions is desired but also noted that uniform regulated functions may not be flexible enough to capture all of a utility's functional cost categories.

The Water IOUs argued that if defined, the definition for "general rate revenue" should be included in §24.3 but also noted that as defined in the rate filing package, the definition is unclear.

The Water IOUs requested that the term "block rates" be defined in §24.3 and not in the rate filing package.

The Water IOUs also requested the term "known and measurable" be included in §24.3 but said it should be modified. The Water IOUs argued that known and measurable changes should be allowed if reasonably certain to occur during the time period when rates will be in effect as determined on the date the rate filing package is filed. The Class A IOUs also noted that there would be no record of the known and measurable change to verify on the date the rate filing package is filed, so defining the term as "verifiable on the record as to amount and certainty of effectuation" is improper.

The Water IOUs argued the term "multi-jurisdictional" be included in §24.3 and argued that the term as defined in the rate filing package is unclear. The Water IOUs rationalized that if a utility's parent/holding corporation has subsidiaries that provide service in more than one state, but the Texas utility/subsidiary corporation(s) does not, it is unclear whether that utility is "multi-jurisdictional" under the definition proposed.

The Water IOUs urged the commission to include the definition of "rate region" in §24.3 instead of the rate filing package.

Finally, the Water IOUs urged the commission to define the acronym "RFP" to mean rate filing package for the purpose of providing clarity.

Commission response

The commission finds it is appropriate to define the terms that appear in the rate filing packages in §24.3. The commission acknowledges the concerns expressed by the Water IOUs regarding consistency in definitions between §24.3 and the rate filing packages and has addressed these concerns by incorporating necessary terms into §24.3. The commission notes that additional instructive information is currently proposed to be included in the rate filing packages.

The commission continues to decline to define the term "RFP" in §24.3 because this is an acronym. The commission has not included definitions in §24.3 that only spell out acronyms.

The Water IOUs requested the commission use the definition of "annualization" as this term is used by the Oregon Public Utility Commission, which defines the term as the "process of adjusting a utility company's annual historical information to reflect a full 12-month period for known changes reasonably expected to continue into the future." The Water IOUs also asked the commission to provide any direction related to what should be annualized or how to perform amortization for purposes of the rate filing package.

In addition, the Water IOUs pointed out that as defined in the rate filing package, the term "functionalization" is defined to mean the same thing as "allocation," which might not have been intended.

The Water IOUs also suggested the commission add the definition of "normalization" as defined by the Oregon Public Utility Commission's Glossary of terms: "An accounting method that allows a utility to evenly recover over its year of operation, revenues from customers to pay income taxes."

Commission response

The commission has addressed comments for the definition of "annualization," "functionalization," and "normalization" in the responses to comments on the rate filing packages, found in Projects Nos. 43876 and 42967.

Section 24.8 - Administrative Completeness

OPUC expressed its support of the commission's efforts to conform this rule to HB 1600 and SB 567 and is particularly supportive of the repeal of subsection (b) that provided the ability for rates to go into effect 60 days after the date of filing. OPUC stated that the implementation of rates prior to a commission order approving final rates has been an issue of great concern to ratepayers and that suspension of rates will help alleviate unwarranted rate increases until the filing can be reviewed to determine if the request is reasonable.

The Water IOUs asserted that the proposed procedures for administrative completeness impose an unfair requirement on filings and are more stringent than the prior TCEQ version and should therefore not be adopted. The Water IOUs argued the revised TWC Chapter 13 provides discretion to the commission to suspend the proposed effective date for rate changes in TWC §13.187(e) and §13.1871(g) for a limited period of time. However, TWC §13.187(d) and §13.1871(e) only permit rejection of a statement of intent if it is "not substantially complete" or "does not comply with the regulatory authority's rules." The Water IOUs argued that suspensions are limited in duration and are not potentially infinite, as the commission's language suggests. In addition, the Water IOUs argued there must be a good reason for suspensions and a fair opportunity to contest and/or cure perceived deficiencies as afforded to electric utilities under §22.75 (Examination and Correction of Pleadings and Documents). The Water IOUs argued that the proposed rule does not include current rule language regarding "material deficiencies" and argued that without this modifier, any type of deficiency could prompt rejection of an application, which constitutes a drastic policy change that does not meet the Legislature's intent in HB 1600 and SB 567. In addition, the Water IOUs stated there are due process concerns related to this proposed rule. Therefore, the Water IOUs requested the commission include a similar process in either chapter 22 or chapter 24 for addressing application deficiencies in the administrative review process that mimics §22.75, Examination and Correction of Pleadings and Documents. In addition, the Water IOUs requested a similar rule to §22.76, relating to Amended Pleadings.

In their reply comments, OPUC argued that the Water IOUs' presumption that a proposed effective date of a rate change cannot be changed or suspended was based on a flawed interpretation of the TWC, specifically §13.187 and §13.1871, which apply

to Class A and Class B water utilities, respectively. OPUC argued that the TWC authorizes the commission to reject a utility's rate change application or statement of intent or suspend the effective date of the rate change if the application or statement of intent is not substantially complete or does not comply with commission rules. In contrast, OPUC argued that in the case of subsection (d-1) and (e), a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date after providing notice to the utility, and the commission may suspend the effective date of a rate change for not more than 150 days from the proposed effective date after providing notice to the utility. OPUC contended these subsections also state that if the regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. However, OPUC also argued that neither of these subsections creates an exception to subsection (d), which relates to the sufficiency of the application or statement of intent. OPUC argued the process established in TWC §13.187 depends on the utility's filing of a substantially complete statement of intent and application and that each period is calculated based on a "proposed effective date," which cannot be determined until after the utility files a valid statement of intent and application. Because the TWC expressly states that both the statement of intent and application for a rate change must include the information required by the regulatory authority's rules, OPUC argued the commission has discretion to determine in a rulemaking what must be included in the statement of intent and application before the time periods established in the statute begin to run. OPUC further contended that if the legislature intended that the date proposed in the utility's application be the actual effective date in all cases, there would be no need to use the phrase "proposed effective date." OPUC asserted that if the Water IOUs' interpretation was adopted, a Class A utility could impose its proposed rates after 185 days even if the "application" was filed consisting of a single page with the proposed rates and no other supporting documents. Finally, OPUC argued that the position taken by the Water IOUs ignores the legislative intent to allow the commission to adopt rules regarding the sufficiency of statements of intent and rate change applications and reject these items when not in compliance.

TAWP urged the commission to modify §24.8(b) to read

If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, effective date of the notice or application may be suspended, until the deficiencies are corrected. To the extent that the retail public utility fails to correct the deficiencies within a reasonable time, the commission may reject the application.

TAWP argued that as written, the commission has the ability to reject an application with only minor deficiencies, which could potentially require re-filing and re-noticing, both costly endeavors for small utilities. TAWP urged the commission to only reject a filing outright if the utility fails to correct deficiencies within a reasonable time to conserve resources and promote efficiency for smaller utilities. In their reply comments, the Water IOUs stated the commission should consider the suggested revisions made by TAWP, along with their own suggested revisions.

Commission response

The commission's amendments to §24.8 are consistent with TWC §13.187(d) and §13.1871(e). The commission disagrees that §24.8 potentially allows for the indefinite suspension of the effective date of a proposed rate change and the assertion that this provision is inconsistent with TWC §13.187(e) and §13.1871(g).

TWC §13.187(d) and §13.1871(e) state that, if an application or statement of intent is not substantially complete or *does not comply with the commission's rules,* the effective date of the proposed change may be suspended until a "properly completed application is accepted by the regulatory authority and a proper statement of intent is provided." Accordingly, in the case of an application that does not comport with the commission's rules, the adopted §24.8 permits the suspension of the effective date until the deficiencies are corrected and an administratively complete application is filed. However, in response to the concerns expressed by the Water IOUs, the commission modifies subsection (b) to state that the commission may reject the application or filing if any deficiencies exist in "an application, statement of intent, or other requests for commission action addressed by this chapter" and deleted the word "pleadings."

In response to the Water IOUs' request to adopt a rule similar to §22.76 (relating to Amended Pleadings), the commission notes that pursuant to §22.1(b), the commission's chapter 22 procedural rules govern proceedings under the TWC. Therefore, §22.76 applies to water and sewer retail public utilities and, therefore, does not need to be incorporated into chapter 24.

In response to the Water IOUs' concern that there must be an opportunity to contest and/or cure deficiencies, as afforded to electric utilities under §22.75 (Examination and Correction of Pleadings and Documents), the commission takes the position that §22.75, §22.78, and the current commission practice provide such an opportunity. Although §22.75(c) applies to rate changes for electric utilities, §22.75(a) and (b) apply to all pleadings and documents and §22.75(b)(2) states that upon notification by the presiding officer of a deficiency in a pleading or document, the responsible party shall correct or complete the pleading or document in accordance with the notification. Further, §22.78 (relating to Responsive Pleadings and Emergency Action) provides for responsive pleadings. Therefore, all regulated entities have the opportunity to contest and/or cure deficiencies.

Repealed Section 24.11 - Informal Proceedings

OPUC stated they did not oppose the repeal of §24.11 related to informal proceedings. However, OPUC pointed out that water and sewer utilities are not provided any guidance as to what is meant by an "informal proceeding" under the TWC §13.015, without this section. Therefore, OPUC recommended that the commission either provide guidance as to what is meant by informal proceeding under TWC §13.015 or specifically indicate that provision will no longer be used. Similarly, the Water IOUs requested clarification as to whether any type of "informal proceedings" rule will apply to TWC Chapter 13 application matters, and argued that some type of informal proceeding should be allowed, especially because §22.35, relating to Informal Disposition, cannot apply to water utilities without a chapter 22 revision.

TAWP argued that TWC §13.1871 provides that a hearing for Class B utilities could be informal but that there are currently no parameters for what constitutes an informal hearing. Therefore, TAWP suggested the commission incorporate language from former §24.11 into the rules in order to facilitate efficiency and early resolution of cases. The Water IOUs agreed with TAWP's concerns and stated that the revisions suggested by TAWP should be considered along with other means of restoring the "informal proceeding" option.

Commission response

The commission has provided guidance regarding informal proceedings under TWC §13.015 in a separate project, Project No. 42079. In Project No. 42079 the commission delegated informal disposition authority to Commission Advising and Docket Management for certain water and sewer proceedings pursuant to §22.35 (relating to Informal Disposition). In the order issued on October 3, 2014, in Project No. 42079 the commission explicitly provided guidance to water and sewer utilities as to what proceedings qualify for informal disposition and can therefore be considered "informal proceedings." Due to this delegation of authority and the current §22.35, the commission finds §24.11 to be unnecessary, and therefore, maintains the repeal of this section.

New Section 24.11 - Financial Assurance

OPUC generally supported the addition of this substantive rule but recommended adding language to clarify the applicability of the financial assurance requirements. Because the financial assurance provisions in §24.11 only apply to proceedings for Certificates of Convenience and Necessity (CCN) and the Sale, Transfer, or Merger (STM) of retail public utilities, OPUC recommended that the scope of §24.11(a) be refined by adding "these criteria are to be used to determine financial assurance in proceedings before the commission involving Certificates of Convenience and Necessity and the Sale, Transfer, or Merger of utility systems" in order to provide clarity.

In their reply comments, the Water IOUs stated that they did not oppose the language OPUC proposed, but stated that it is unclear whether it is appropriate and expressed concern about the intent of the rule. The Water IOUs argued that in the past, financial assurance was required where TCEQ staff viewed a CCN or STM applicant as possessing thin financial resources and TCEQ staff wanted financial assurance, such as an irrevocable stand-by letter of credit that could be drawn upon in order to ensure that a CCN was not granted to a retail public utility without the means to construct their contemplated water or sewer facilities.

The Water IOUs questioned OPUC's comments and suggestions stating that OPUC indicated an understanding that this rule's intended applicability, including the "financial test" found in subsection (e) is for all CCN/STM applications. The Water IOUs stated that they are not sure when the proposed rule will apply. Therefore, the Water IOUs suggested that if the proposed rule is intended to apply to all CCN/STM application matters, it might be overly prescriptive in terms of the different financial mechanisms specified. Thus, the Water IOUs urged the commission to carefully review and potentially restructure the rule based on its intended purpose.

TAWP argued that clarification is needed as to when an existing utility must be required to provide financial assurance, if at all. TAWP therefore suggested the commission add language to clarify that financial assurance is only required for existing utilities if there is a finding that the existing utility has failed to provide continuous and adequate service.

The Water IOUs stated they generally agreed with the concept proposed by TAWP as it is generally consistent with historic practice. However, the Water IOUs reasserted that creating a "financial assurance" requirement applicable to all CCN/STM applications, as suggested by OPUC, would be a new policy, if this is the intent of the rule.

Commission response

The commission declines to modify the rule as suggested by the parties because it is not necessary to list in §24.11 each type of proceeding to which the new rule can be applied. For each type of proceeding in which financial assurance may be required, the relevant substantive rules include a cross-reference to §24.11. However, the commission makes modifications to the rule as described below.

The commission notes that this provision applies to new and existing retail public utilities required to provide financial assurance pursuant to this chapter, and maintains that the policy to require that an owner or operator of a retail public utility has the financial resources to provide continuous and adequate service is consistent with the prior practice at the TCEQ.

The commission agrees with the Water IOUs that it is appropriate to carefully review and potentially restructure or modify the rule based on its intended purpose. Although the financial assurance rule is not directly related to TWC amendments as a result of HB 1600 and SB 567, this rule is being established because the chapter references the form for financial assurance as specified in 30 TAC Chapter 37, Subchapter O (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

This form for financial assurance references in Chapter 24 are a carry-over from when TCEQ had jurisdiction over water and sewer CCNs and, therefore, must be updated to specify financial assurance requirements within the commission's substantive rules. Therefore, the commission takes this opportunity to carefully review and modify the rule based on its intended purpose, which is to ensure that water and sewer CCN owners and operators have the financial means, commitment, and ability to fund capital infrastructure necessary to provide retail water and/or sewer service, fund contracts for the provisions of such service, and for operations and maintenance expenses of such contracts and infrastructure over the long-term to provide continuous and adequate service for their customers.

For these reasons, the commission modifies the rule to maintain maximum flexibility in what it may require of CCN owners and operators who are required to provide financial assurance with this section. The commission, therefore, modifies subsection (c) as follows: "Financial assurance must be demonstrated by compliance with subsection (d) or (e) of this section, unless the commission requires compliance with both subsections (d) and (e)." This modification provides discretion to require that an owner or operator provide an irrevocable stand-by letter of credit for a period of not less than five years in addition to the requirement to meet the financial test, including the leverage and operations tests.

Section 24.11(d) - Irrevocable stand-by letter of credit

OPUC stated they would provide comments regarding the stand-by letter of credit form in Project No. 43968, which is currently pending at the commission.

Commission response

The commission makes a non-substantive change to §24.11(d) of this subsection to clarify that the irrevocable stand-by letter of credit must permit the commission's executive director or the *executive director's* designee to draw upon the irrevocable letter of credit, subject to the conditions specified in the rule. Any comments regarding the form of the irrevocable stand-by letter of credit will be addressed in Project No. 43968, PUC Form Revisions for Phase II of the Implementation of the Economic Regulation of Water and Sewer Utilities (Additional Water Forms).

Section 24.11(e) - Financial test

OPUC urged the commission to clarify that meeting the financial test requires that both the leverage test and the operations test be met, which OPUC stated appears to be the intent of the rule. The Water IOUs, in their reply comments, stated that they agree with OPUC that this issue requires clarification; but, stated they are unsure whether OPUC's suggestion is appropriate without a clear understanding of the intent of the rule.

Commission response

The commission agrees to modify subsection (e)(4) and (6) consistent with the recommendation made by OPUC to clarify that both the leverage test and the operations test must be met. The commission modifies subsection (e)(2) to specify that to satisfy the leverage test the owner or operator must meet one *or more* of the listed criteria. The commission further modifies subsection (e) to specify that an owner or operator may demonstrate financial assurance by satisfying both the leverage and operations tests "unless the commission finds good cause exists to require only one of these tests." The commission makes this modification to maintain flexibility and make exceptions to this requirement, when appropriate.

Section 24.21 - Forms and Filing of Tariffs

Section 24.21(a) - Approved tariff

The Water IOUs expressed their disagreement that the TWC authorizes suspension of a proposed effective date stating the TWC only permits limited suspension of the effective date of a rate change to periods that run from the "proposed effective date" stating that the "proposed effective date" cannot be changed or suspended. OPUC expressed its disagreement with this position stating that it was directly contrary to the plain language of TWC §13.187(e), which specifically states "the utility commission may suspend the effective date of a rate change for not more than 150 days from the proposed effective date." Therefore, OPUC concluded there is clear authority for the commission to suspend the effective date and the commission should reject the language proposed by the Water IOUs.

The Water IOUs also argued that if suspended or interim rates are not adopted, the TWC permits a utility to charge changed rates for service on or after the effective date, but not "before." The Water IOUs requested the rule language be modified to express this understanding of the TWC.

Commission response

The commission finds that TWC §13.187(e) specifically grants the commission the authority to "suspend the effective date of a rate change for not more than 150 days from the proposed effective date."

The commission agrees to modify the rule, as requested by the Water IOUs, to confirm the understanding that if suspended or interim rates are not adopted the TWC permits a utility to charge changed rates for service on or after the effective date, but not before. Therefore, the commission adopts the following language for §24.21(a): "may charge the rates proposed under TWC §13.187 or §13.1871 on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the commission sets interim rates."

Section 24.21(b) - Requirements as to size, form, identification, minor changes, and filing of tariffs

The Water IOUs argued that minor tariff changes are an example of the type of approval that the commission should permit by an "informal disposition" procedure. OPUC agreed that minor tariff changes should be subject to a process that is more streamlined than a full rate-change proceeding. However, OPUC recommended that the commission develop such a process in a separate rulemaking to ensure that the new process includes sufficient checks and balances to protect customers.

The Water IOUs requested that subsection (b)(2)(A) - (B) be modified to allow for approval of extension policy additions/changes through a minor tariff change. The Water IOUs argued that extension policy additions/changes do not warrant a rate filing and noted that the TWC does not prohibit their treatment as a minor tariff change. OPUC, in their reply comments, pointed out that extension policies have traditionally been approved or amended as part of a rate change application because section 3.0 of the standard Water Utility Tariff covers these policies and that to the extent a utility proposes to amend the standard tariff terms and conditions, these amendments should only be done as part of a rate change application.

In addition, the Water IOUs requested that temporary water rates and purchased water/sewer pass-through provisions be allowed as minor tariff changes. The Water IOUs argued that these proceedings do not warrant an expansive rate filing, and noted that such additions/revisions may be appropriate between large rate filings.

OPUC argued that the current rule proposal does not seek changes to §24.21(b)(2)(A)(iii), which allows for the implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, a government agency, or other authority, or water use fee provision previously approved by the commission. OPUC, however, pointed out that the proposed rule provides for amendment to §24.21(l), which governs a temporary water rate provision for mandatory water reduction. OPUC expressed belief that there appears to be overlap with between §24.21(l) and §24.21(b)(2)(A)(iii) and therefore, OPUC recommended that these sections be combined where possible. However, OPUC cautioned that this would make the temporary water rate provision allowable through a minor tariff change as suggested by the Water IOUs. OPUC asked that temporary water rate provisions receive specific review by the commission prior to approval because temporary water rate provisions represent extraordinary rate relief.

Finally, the Water IOUs requested the commission incorporate the same provisions found in §24.21(l) that create an exception from the time between filings rules for rate change filings seeking to add or revise such a provision. The Water IOUs also requested that the rule be modified to allow for e-mail notice for implementation if the customer agrees, as is currently in §24.21(h).

Commission response

The commission agrees that a minor tariff change may be appropriate for informal disposition. In Project No. 42079, the commission issued an order on October 3, 2014 delegating authority to Commission Advising and Docket Management to informally approve specific categories of applications pursuant to §22.35, including informal tariff proceedings filed pursuant to §24.11(b). Therefore, at this time, the commission declines to adopt a separate process. The commission finds that through the delegation of authority, pursuant to §22.35 (relating to Informal Dispo-

sition), minor tariff changes are already handled in a streamlined process.

The commission disagrees with the Water IOUs' proposal to include extension policy additions/changes in the list of items that can be approved through a minor tariff change. The commission finds that these provisions are properly part of §24.22 and should only be handled in a full rate package so that customers will receive notice of proposed service policy changes and have an opportunity to participate in the proceeding. The commission agrees with the rationale provided by OPUC that extension policies have traditionally been approved or amended as part of a rate change application. To the extent a utility proposes to amend the standard tariff terms and conditions, these amendments should be done as part of a full rate-change proceeding.

The commission disagrees with the Water IOUs that temporary water rates and the *establishment of new* purchased water/sewer pass-through provisions should be allowed as revisions through the minor tariff change procedure as these are significant changes. The commission clarifies that pursuant to §24.21(h)(2) the *establishment* of the purchased water or sewage treatment provision formula must be approved by the commission in a TWC §13.187 or §13.1871 proceeding. Once the formula is established in a full rate proceeding, purchased water or sewage treatment increases are allowed pursuant to §24.21(h)(4) and are eligible for informal disposition.

The commission declines to modify the rules as requested by OPUC. Although OPUC pointed out that §24.21(l) potentially overlaps with §24.21(b)(2)(A)(iii), the commission declines to combine these sections. The commission finds the rule is clear and although the provisions may overlap, the provisions are distinct.

The commission agrees that it is appropriate to modify the proposed §24.21(h) to allow for e-mail notice, if the customer has agreed to receive electronic communications. The commission recognizes that this same standard for e-mail notice is allowed under §24.21(l) and finds that it is reasonable to include it in §24.21(h).

Section 24.21(i) - Approved tariff

OPUC stated they generally supported §24.21(i) because the rule as published provides that the effective date is the proposed date on the notice to customers and the commission, unless suspended by the commission. OPUC argued that because the current practice at the commission is to routinely suspend matters, it is appropriate to allow for the effective date to be suspended as well. OPUC rationalized that by providing for the suspension of the effective date, this proposed rule adequately addresses concerns of ratepayers that significant rate increases were going into effect without any regulatory oversight. The Water IOUs stated, in their reply comments, that they do not share OPUC's enthusiastic support of subsections (a) and (i).

Commission response

The commission agrees with OPUC's comments and does not modify §24.21(i).

Section 24.21(l) - Temporary water rate provision for mandatory water use reduction

OPUC contended that temporary water rates may be needed to maintain the financial integrity of a utility during times of mandatory water use restrictions but stated that this remedy should be an extraordinary form of rate relief that merits additional scrutiny and overview by the commission. Therefore, OPUC recommended that a temporary water rate not be implemented unless the commission finds good cause for such a rate pursuant to a specific action requiring the reduction. In addition, OPUC urged the commission to modify subsection (l) in order to limit this form of rate relief to no more than six (6) months, unless the applicant proves to the commission that the mandatory water use restrictions are still in effect and that good cause continues to exist for the temporary water rates. The Water IOUs expressed their disagreement with OPUC's position on this section as well as OPUC's suggested changes and stated that the rule provides a useful opportunity for a utility to make up at least some portion of lost revenue caused by mandatory water use reductions that are out of the utility's control. Specifically, the Water IOUs argued that the suggested six month limit, without further proof, is arbitrary and the "good cause" justification is unwarranted if existing rule requirements are met.

The Water IOUs requested the commission include an option in this section to defer recovery of up to 100% of the lost revenues described in the rule and allow for the recovery of those revenues in a future rate proceeding, instead of through the methods prescribed in subsection (l) if the lost revenues are not recovered through implementation of a temporary water rate for mandatory water use reduction. The Water IOUs rationalized that this approach would result in additional lost revenues not being lost forever, providing for the opportunity to potentially recover them later. In their reply comments, OPUC recognized that 100% relief might be appropriate in some cases to protect the financial integrity of the utility, but argued that this must be balanced with protecting ratepayers and allowing the deferral of these revenues for recovery at a later time grants too much latitude to the utility without fair representation of the customers. Therefore, OPUC urged the commission to reject this recommendation. In addition, the Water IOUs stated the defined terms "temporary water rate provision for mandatory water use reduction" and "temporary water rate for mandatory water use reduction" should be used throughout, if the definitions remain as proposed in §24.3(53) and §24.3(54).

Commission response

The commission acknowledges the comments regarding this section; however, these comments request changes beyond the scope of the project. At this time, the commission declines to modify this section as proposed. The commission finds that it may be appropriate to consider the requests in a separate, future rulemaking project where the issues can be fully considered. Specifically, the commission finds it premature to make any determination on what amount of lost revenue should be recovered because there is disagreement as to when lost revenue should be recovered and how ratepayers can be protected when temporary water rates are used for mandatory water use reduction. The commission recognizes there may be circumstances in which it is appropriate to consider recovery for lost revenues; but, the commission also recognizes that in times of mandatory water use reductions, a utility is able to charge more for the water and/or sewer service it sells. Due to the complexity of these issues, the commission finds that they are better addressed in a future project.

The commission agrees that the defined terms "temporary water rate provision for mandatory water use reduction" and "temporary water rate for mandatory water use reduction" should be used consistently throughout the chapter. Therefore, the commission accordingly modifies subsection (l).

Section 24.21(p) - Energy cost adjustment clause

The Water IOUs requested the commission examine this provision to see how it may be used more easily by water/wastewater utilities and provide options for incentivizing "green" energy investments and initiatives. In addition, the Water IOUs requested the commission examine all available options for pass-through tariff provisions and rules for recovery of costs outside the control of utilities in order to avoid the frequency of TWC §13.187 or §13.1871 rate change applications. However, the Water IOUs noted they have no specific changes to offer. In their reply comments, OPUC stated that it viewed the Water IOU's request as overly broad and argued the risk associated with utility service should remain with a utility's investors who are earning a return on that risk. OPUC further argued that to allow additional pass-through provisions without a fully vetted rulemaking could inappropriately shift that risk to the utility's ratepayers.

OPUC recommended that the energy cost adjustment clause described in §24.21(p) be amended to conform with the rules that apply to electric utilities for obtaining a purchased power capacity cost recovery factor. OPUC stated, as published, subsection (p) allows for the inclusion of an energy cost adjustment clause in a utility's tariff and that a water and/or wastewater utility can request an automatic pass-through of increases or decreases in electricity and natural gas costs. However, OPUC argued that the proposed rule does not provide enough guidance as to how long these specific rates will remain in effect. Therefore, OPUC urged the commission to include the following language:

Upon the establishment of a utility's energy adjustment clause, the utility shall annually file an application for an adjustment of the energy adjustment clause. The cost year used in an annual energy adjustment clause shall be the 12-month period that immediately follows the cost year used to set the existing energy adjustment clause. In addition, the utility shall file the application to adjust the energy adjustment clause promptly after the relevant cost-year data become available. The commission may establish a schedule for the filing of such applications. A utility may terminate its energy adjustment clause as part of any annual energy clause adjustment review. The final decision including the termination of an energy adjustment clause shall specify the date by which the utility shall be required to file an application for the final reconciliation of the costs and revenues associated with the terminated energy adjustment clause. Commission staff may petition at any time to terminate a utility's energy adjustment clause.

OPUC argued that because such pass-through charges are a form of extraordinary rate relief, the commission should include OPUC's offered language to ensure that ratepayers are not being unduly burdened.

In their reply comments, the Water IOUs expressed their disagreement with the additions suggested by OPUC. The Water IOUs argued that none of OPUC's suggested additions are required by the TWC and because this rule is based on TWC §13.188, OPUC's comments should be rejected in favor of maintaining the current rule provisions. In addition, the Water IOUs argued that the rule will lose its usefulness if more procedural burdens are put in place, which is contrary to the intent of the rule to establish a simplified process to pass-through a discrete set of costs. In addition, the Water IOUs disagree with OPUC's general statement that "pass-through charges are extraordinary rate relief." The Water IOUs instead stated that the intent is to provide interim rate relief for specific reasons to reduce the frequency and impact of full rate proceedings, thus ultimately reducing rate-case expenses. The Water IOUs urged the commission to expand the pass-through provisions to allow for more frequent use.

Commission response

The commission appreciates the suggested modifications to this section; however, the commission declines to adopt the suggested modifications because it finds only the minor modifications made in the proposed rules should be made to §24.21(p) at this time. The primary focus of this project has been the implementation of HB 1600 and SB 567, and modifications made to this section were designed to track the changes made by HB 1600 and SB 567. The changes suggested by the parties for §24.21(p) exceed the scope of this project. The commission may consider the proposed modifications in a future rulemaking project in which the parties are provided the opportunity to comment on proposed rule changes.

Section 24.22 - Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871

OPUC stated its general support for new §24.22 but urged the commission to adopt a few modifications specifically related to identified provisions.

Commission response

The commission appreciates the general comment made by OPUC and will address specific comments below.

Section 24.22(b) - Contents of application

OPUC pointed out that the proposed rule omits the billing comparisons required by TWC §13.187(a-1)(2) and §13.1871(b)(2), and are included in the current §24.22 proposed for repeal. OPUC argued that the billing comparisons required by TWC §13.187(a-1)(2) and §13.1871(b)(2) should continue to be included within this section. OPUC argued that while the billing comparisons requirement is reflected in the proposed application forms and notice forms, it should also be included in the rule. The Water IOUs did not oppose OPUC's proposed changes but, requested that these should be minimum requirements and argued that bill comparisons at other volumes should be permitted. In addition, the Water IOUs argued that if the rate filing package requires certain specified bill comparisons as additional minimum requirements, those requirements should also be incorporated into the rule as additional minimum requirements if OPUC's suggestion is adopted.

Commission response

The commission declines to modify the rule to include provisions requiring billing comparisons. Because TWC §13.187(a-1)(2) and §13.1871(b)(2) require billing comparisons, the commission finds that billing comparisons are not necessary in the rule at this time. Billing comparisons are included in the rate filing package being considered in Project No. 43876 and the form notice to customers being considered in Project No. 44706. The commission finds the TWC and the rate filing package provide sufficient guidance on this topic.

Section 24.22(c) - Notice required

TAWP requested the commission amend the rule to make clear that notice is considered completed upon mailing, not actual delivery. The Water IOUs agreed but stated the rule should be modified to include "mailing, e-mailing, or hand delivery."

The Water IOUs commented that subsection (c)(1)(B) and (d)(1)(B) require a utility to use the "commission-approved form

included in the rate application" for rate application notices but argued that this needs to be more flexible for two reasons. First, the Water IOUs stated the proposed Class A rate filing package proposed in Project No. 43876 has no notice form, or sample notice form, included. Second, the Water IOUs argued the notice forms adopted from the TCEQ are not adequate to provide all the information a utility may wish to convey to its customers for a particular rate application filing. The Water IOUs pointed out that the forms do not provide adequate space for all meter sizes and billing comparisons, and, in some instances, create inconsistencies with the rate design section of the rate application form. The Water IOUs also stated that there might be instances where multiple tariff rate schedules are proposed for change, which would require multiple comparisons between existing and proposed rates and bills at various use volumes. In addition, utilities with multiple meter reading cycles may want to pick a single effective date on which to start charging new rates on a prorated basis since modern billing software provides for this ability. The Water IOUs urged the commission to provide approved sample notice forms in the rate filing package that include the minimum information required, but leaves room for modification according to the needs of each utility and each unique rate application.

Regarding subsections (c)(2) and (d)(2)(A), the Water IOUs stated they were unclear as to what an "affected...county" is because it is not a defined term. In addition, the Water IOUs commented that it is unclear what a utility's responsibilities for notice of the hearing is, when the commission requires "the utility to complete this notice requirement" as provided.

Commission response

The commission agrees to modify subsections (c) and (d) to specify that notice is considered completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

The commission recognizes that proposed notice forms were not included in the rate filing packages in Project Nos. 43876, 43967 and 44462; therefore, the commission modifies subsection (c)(1)(B) to require use of a "commission-approved form." The commission notes that proposed notice forms were published on May 21, 2015, in Project No. 44706, Annual Report Forms and Forms for Notice of Application to Change Rates for Water and Sewer Utilities. Once approved, utilities must use the commission-approved forms when notice is required; however, utilities may seek a good cause exception to include additional information in its notice to customers.

The commission declines to modify subsections (c)(2) and (d)(2)(A) because the rule language tracks TWC §13.187(g-1) and §13.1871(m), and both provisions require notice to affected municipalities or counties. In addition, the commission finds that any confusion regarding a utility's responsibility for notice of a hearing will be minimized because the presiding officer will order the utility, in clear terms, to provide reasonable notice. In addition, the commission finds that it is unreasonable for a utility to not know what municipalities and counties must receive notice, as they are the municipalities and counties located within the utility's service area.

Section 24.22(d)(1)(A) - Notice requirements specific to applications filed pursuant to Texas Water Code §13.1871

OPUC requests modification of the rule to require that OPUC receive notifications of Class B rate applications in the same way it is required for Class A rate applications. OPUC argued that TWC §13.1325 allows OPUC to receive a copy of information provided during a rate proceeding and therefore requests modification of §24.22(d)(1)(A) to include "and to the Office of Public Utility Counsel." OPUC stated that they anticipate that they will participate in some Class B rate-cases and that notice would be helpful in order to ensure that they remain aware of all requested rate changes. In the alternative, OPUC recommended that it be served with applications filed under the Class A and Class B rate filing packages which can be accomplished informally through the delivery of a copy of the application in OPUC's box in central records or through email service to the agency.

In their reply comments, the Water IOUs opposed the additions suggested by OPUC and argued that TWC §13.1325 specifically states that the information provided to the commission shall be provided to OPUC, *upon request*, at no cost. In addition, the Water IOUs pointed out that TWC §13.1871(c) omitted a similar provision for Class B utility rate filing packages and therefore should likewise not be included in commission rules. Finally, the Water IOUs stated their opposition to requiring service of Class A or Class B rate filing packages on OPUC since OPUC has the option to elect not to participate in rate proceedings. Therefore, the Water IOUs urged the commission not to adopt OPUC's requested modifications.

Commission response

The commission agrees to modify §24.22(d)(1)(A) to require a utility to provide OPUC with notifications of Class B rate applications in the same way it is required for Class A rate applications. The commission finds that it is reasonable to modify the subsection to provide OPUC with this notification so that OPUC can track and participate in these proceedings. In addition, the commission modifies §24.22(d)(1)(B) to clarify that an individual in these proceedings must file a "protest" rather than a "complaint."

Section 24.22(d)(1)(C) - Notice requirements specific to applications filed pursuant to Texas Water Code §13.1871

OPUC noted that §24.22(d)(1)(C) require that a utility filing an application pursuant to TWC §13.1871 must only include a docket number in the notice if the utility serves more than 1,000 active taps or connections. OPUC rationalized that because Class B utilities are defined as serving 500 or more active taps or connections, and this provision applies to Class B utilities, it does not make sense that a docket number would only be required for some Class B utilities. OPUC stated that it is unclear why the rule has been structured to only apply to utilities with 1,000 or more active taps or connections. OPUC therefore recommended that the commission align the rule with the definition of a Class B utility by reducing the number to 500.

The Water IOUs expressed their general agreement with OPUC's proposed revision.

Commission response

The commission agrees and modifies subsection (d)(1)(C) to require that a docket number be included in the notice for all Class B applications filed pursuant to TWC 13.1871. The commission finds it beneficial to require Class B utilities to include the docket number in notice sent to customers.

Section 24.22(d)(2)(B) - Notice requirements specific to applications filed pursuant to Texas Water Code §13.1871

TAWP proposed the elimination of the requirement that a Class B and Class C utility mail notice to each affected ratepayer 20 days

before the hearing in a matter pursuant to TWC §13.1871. TAWP argued this requirement will result in the need to provide multiple notices to consumers, which will lead to customer confusion as to whether an additional rate increase is sought. In addition, TAWP argued that small utilities often do not have the time or staff to complete large mail-outs and therefore tend to use third party services that can cost thousands of dollars. TAWP also pointed out that there is no requirement that Class A utilities provide separate mailed notice of a hearing nor is there a similar requirement for electric or gas utilities within the state. TAWP argued this requirement is contrary to the legislative intent of HB 1600 and SB 567 because it requires a greater burden on Class B and Class C utilities than Class A utilities. TAWP stated that they believed the initial notice of the rate increase, with instructions on how to intervene in the proceeding or file a complaint, is sufficient to allow ratepayers an opportunity to comment or participate in any proposed filing and that this with the requirement to provide "reasonable notice" constitutes adequate protection to ratepayers.

TAWP also requested that the commission clarify why a municipality within two miles of a service territory is considered "affected" by a rate change.

In their reply comments, OPUC urged the commission not to adopt TAWP's recommendation because it may hinder ratepayer participation. OPUC argued that ratepayers should be granted every opportunity to participate in the ratemaking process and should be provided with the necessary information in order to do this. In addition, OPUC pointed out that the cost of notice, if reasonable, would be eligible for recovery as a rate-case expense.

The Water IOUs generally commented that the commission should review all notice requirements before adopting any revisions.

Commission response

The commission declines to eliminate the requirement that a utility mail notice to each affected ratepayer before the hearing in a matter filed pursuant to TWC §13.1871. The requirement in §24.22(d)(2) is consistent with the requirement in TWC §13.1871(n) that provides that a utility shall mail notice of the hearing to each ratepayer before the hearing, and that the notice must include a description of the process by which a ratepayer may intervene in the ratemaking proceeding. Although the statute uses the term "hearing," the context of the statute (requiring notice to include a description of the process by which a ratepayer may intervene in the proceeding) contemplates that such notice be provided prior to a prehearing conference. Further, the commission finds that this provision is consistent with the existing requirements in former §24.28(2), meaning that no new burden is imposed on Class B or Class C utilities. The commission finds that ratepayers should be granted the opportunity to participate in the ratemaking process and therefore should be provided with the necessary information in order to participate.

Finally, the commission notes that TAWP commented on the strawman and that certain provisions relating to this section were not included in the Proposal for Publication, specifically the requirement to provide "reasonable notice" was removed from the Proposal for Publication. The commission maintains its position that affected ratepayers should be provided notice of a pre-hearing conference.

Section 24.22(e) - Line extension and construction charges

The Water IOUs commented that the current rule requires that a utility "request in a rate change application that its extension policy be approved or amended" but noted the proposed rule changes "extension policy" to "line extension and construction charges" stating this change is improper because most of these charges are negotiated and not specifically stated in a utility's tariff. In addition, the Water IOUs requested that these changes should be allowed through a minor tariff change. OPUC agrees that the rule should be amended to change the word "charges" to "policies." However, OPUC noted that amendments to extension policies should only be done as part of a rate change application, and not as a minor tariff revision.

Commission response

The commission modifies §24.22(e) to replace the word "charges" with the word "policies" as the commission recognizes that most of these charges are negotiated and not specifically stated in a utility's tariff and, therefore, the appropriate term is policies.

In addition, the commission declines to modify this subsection to allow for line extension and construction policies to be changed through a minor tariff change. The commission concludes that these changes are more appropriately sought through a full rate change application so that affected ratepayers receive notice of proposed changes. The commission finds that notice of these changes is essential and therefore finds that classifying them as a minor tariff change would not adequately protect ratepayers.

Repealed Section 24.22(f) - Stand-by fees

OPUC stated its support for the repeal of this section because there is no statutory authority to support it. The Water IOUs requested the commission explain why this section was removed and stated they do not support the repeal of the stand-by fee rule without a sound justification by the commission. In their reply comments, OPUC noted that stand-by fees were initially prohibited by rule at the Texas Water Commission (a TCEQ predecessor) because a stand-by fee was not considered a duly authorized rate as it is not collected in exchange for service, product, or commodity. In addition, OPUC pointed out that there is no clear guideline for who would be required to pay a stand-by fee and that if a utility is collecting a stand-by fee, it is offsetting its investment risk by shifting costs to landowners. OPUC reiterated that TWC Chapter 13 does not authorize the use of stand-by fees and that the stand-by fee goes against the requirement that a property be "used and useful" in providing service in order to be included in "invested capital." Therefore, OPUC urged the commission to repeal this section.

Commission response

The Water IOUs were the only party that provided comments opposed to the repeal of §24.22(f); but, the Water IOUs did not articulate statutory or policy reasons to retain the subsection. Therefore, the commission declines to reinstate this subsection.

Section 24.22(f) and (g) - Capital improvements surcharge and debt repayment surcharge

OPUC commented that surcharges for capital improvements and debt repayment are extraordinary forms of relief and therefore should only be permitted after thorough review and analysis. OPUC therefore recommended that all surcharges collected under §24.22(f) and (g) be subjected to the escrow requirements found in §24.30(b). However, OPUC also stated that if suspension of rates will not be routine pursuant to §24.26, then they recommend the commission adopt language to

these provisions to prohibit the collection of these burdensome surcharges until the commission has determined that their collection is reasonable. In their reply comments, the Water IOUs expressed their disagreement with OPUC's recommended changes and argued that these provisions are already required to be requested through the requirement of a rate proceeding. The Water IOUs contended that adding more procedural impediments to using these types of charges further reduces the already limited opportunity for their use.

The City of Houston argued, and OPUC agreed, that subsection (g), like subsection (f), does not address the accounting treatment for the "additional revenues" and urged the commission to treat these "additional revenues" as an offset to rate base; the City of Houston suggested "additional revenues" be treated as a contribution in aid of construction, an offset to plant in service. The Water IOUs, in their reply comments, stated that they were not sure this suggested change was proper and argued that whether there should be an offset to rate base probably depends on whether the debt being repaid through the surcharge relates to funds actually spent on rate base itself. Therefore, the Water IOUs stated that this issue is sufficiently covered by §24.31(c)(3), and thus no change is necessary.

Commission response

The commission finds that it may not always be necessary to escrow the surcharges collected under §24.22(f) and (g) and, therefore, maintains its discretion to escrow these surcharges when appropriate on a case-by-case basis.

The commission finds that the accounting treatment for "additional revenues" is adequately covered by §24.31(c)(3), and therefore, declines to modify the rule as proposed by the City of Houston. The commission finds that flexibility is important and, thus, the accounting treatment will be based on the specific facts of each case.

Section 24.23 - Time Between Filings

TAWP and the Water IOUs urged the commission to delete subsection (a), relating to the application, from the adopted rule. TAWP rationalized that many Class B utilities have varied service areas consisting of smaller water and/or sewer systems, which often operate as separate stand-alone companies with separate rate structures. TAWP further argued that when a particular system is overearning or under-earning, there is a need for a utility to file a statement of intent pertaining to that system. Conversely, if a particular system is not under-earning or overearning, there is no need to file a statement of intent for that system. Therefore, TAWP argued that requiring a utility to file a rate-case pertaining to several different rate structures and systems or risk losing the right to file for those systems adds an unnecessary level of complexity to the filing and brings additional work to the utility, parties, and staff, thus creating a more burdensome requirement for smaller utilities. TAWP maintained their disagreement with the commission's inclusion of this provision in §24.23 and urged the commission to consider amending the rule to allow for separate rate filings for separate systems and rate structures, when appropriate.

OPUC disagreed that subsection (a) should be deleted but argued the term "system-wide" creates confusion and should be amended as it is not defined. OPUC argued that "system" is a shorthand term of art meaning "public drinking water system" and thus a utility may be composed of multiple "systems." Therefore, OPUC suggests the commission remove use of the term "system-wide" and instead use the phrase "consolidated or regional tariffs."

The Water IOUs also asked the commission to revise subsection (b) in order to be more flexible with respect to when a utility must wait to file a new rate application to further promote regionalization and the legislative intent of the applicable statute. In addition, the Water IOUs generally commented that this rule has been problematic for utilities with multiple systems, tariffs, CCNs or affiliated entities that provide retail water or sewer utility service in different parts of the state under different sets of rates. The Water IOUs stated that the problems that have arisen regarding this rule might have been a result of the interpretation given to it by the TCEQ and not because of the rule itself.

The Water IOUs noted that water utilities operate under multiple tariffs and different sets of rates that affect different ratepayers in distinct service areas and should therefore be able to file applications that seek changes to different tariffs or rate schedules that affect different ratepayers more than once in a twelve-month period. The Water IOUs stated that without being allowed to do this, ratepayers will be burdened and regionalization efforts will be thwarted, which the Water IOUs believe the commission should be facilitating and encouraging.

The Water IOUs requested the commission adopt a pro-regionalization approach to this issue, especially in light of the fact the TWC provides that "a utility or two or more utilities under common control or ownership may not file a statement of intent to change its rates more than once in a 12-month period," and argued that the use of "its rates" could be interpreted as a reference to a particular set of rates and not necessarily "any rate" that may apply to that utility or its affiliate utilities throughout the state. In their reply comments, the Water IOUs stated that if their suggested revisions are not adopted, the commission should consider modifying the rule as suggested by TAWP.

OPUC argued that with respect to the suggestions TAWP and the Water IOUs made to subsection (b), the commission should disregard these modifications as they clearly ignore the statutory language of §13.187(p) and §13.1871(w). In addition, OPUC asked the commission to reject TAWP and the Water IOUs' request to amend the rule to allow utilities to file more than one notice of intent to increase rates within a 12-month period, as long as rates for particular customers are not changed more than once in 12-months, because this was rejected not only by TCEQ but also the Legislature.

In contrast, OPUC stated its support of the clarifications the commission made to this rule. In their reply comments, the Water IOUs reiterated their opposition to the proposed changes to this rule.

Commission response

The commission recognizes that a rate case that includes different rate structures and systems may add complexity to the filing; however, absent a legislative change the commission declines to substantively modify the rule as proposed by TAWP and the Water IOUs. The commission finds that TWC §13.187(p) clearly states that, with certain exceptions, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period.

The commission agrees to modify §24.23(a) as proposed by OPUC because the undefined term "system-wide" has the po-

tential to create confusion. The commission, therefore, replaces the term "system-wide" with the term "regional."

The commission further modifies §24.23(b) to reorganize it for clarity and to track the language in TWC §13.187(p).

Section 24.26 - Suspension of Effective Date of Rates

OPUC stated that it is of the belief that the commission intends to suspend the effective date of proposed increases, as it does in electric rate filings, until such time as the final just and reasonable rates are determined. OPUC stated its support for this position and continued to encourage the commission to take this action whenever possible in order to minimize the over-collection of revenue from customers. OPUC pointed out that the implementation of water and wastewater rate increases prior to the determination of just and reasonable rates has historically led to confusion and has resulted in the difficulty of providing customer refunds. Therefore, OPUC concurred with the commission in the modifications made to this rule.

The Water IOUs expressed their concern over the proposed procedure for the suspension of an effective date. The Water IOUs argued that it is unclear at what point in the process between filing and the proposed effective date a utility may expect notice of what should be a commission order regarding a suspension, and whether a utility will be afforded an opportunity to contest/cure any perceived filing deficiencies.

In addition, the Water IOUs expressed concern over the apparently infinite nature of the possible suspension of an effective date, and stated that the TWC only provides for limited suspension durations where there is good reason for the suspension. The Water IOUs stated their primary concern is that the limited suspension periods set forth in the TWC are followed and not circumvented because if they are, the time during which new rates cannot be charged will be unreasonably extended. The Water IOUs argued that proposed subsection (b)(1) not only suggests that an infinite effective date suspension is possible, but they argued it broadens potential reasons for this type of suspension from those provided in TWC §13.187(d) and §13.1871(e), which only allow for suspension when the "application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules." Under their interpretation of the proposed rule, the Water IOUs stated the proposed rule goes beyond the requirement that an application be substantially incomplete or violate a rule for a rejection and suspension to occur, but allows "rejection of an application or statement of intent via §24.8 for any reason at all (even if there was a good faith attempt to comply with commission rules for same), followed by an unlimited suspension period until an application is revised and filed according to an unspecified set of standards." The Water IOUs argued that as written the proposed rule would cause disputes to occur over whether a utility's cost of service was properly proposed, which would occur without the benefit of a contested case hearing. The Water IOUs reiterated their belief that the possibility of unlimited rate suspensions was not within the legislative intent of HB 1600 or SB 567. OPUC, in their reply comments, stated the process proposed in §24.26 is within the commission's authority to implement, and the commission should therefore reject the changes proposed by the Water IOUs.

As to subsection (c), the Water IOUs disagreed that the commission is authorized to require "a new proposed effective date," and stated that this seems to be an attempt to shift the utility's proposed effective date that commences the limited time period for suspensions under TWC §13.187(e) and §13.1871(g) and would unjustly prolong the time to complete a hearing. In addition, the Water IOUs argued that there should not be a second round of notice required if the commission suspends a utility's proposed effective date because not only would it be expensive, it would also be unnecessary and is not required by the TWC. The Water IOUs contended that, in the event of a suspension, the hearing should determine the final effective date for the proposed rate change without further notice being required. OPUC argued a utility's failure to file a substantially complete statement of intent or an application that complies with the commission's rules could cause the original notice that was distributed to be insufficient, therefore, OPUC argued due process may require additional notice and that this additional notice should be required when necessary.

Generally the Water IOUs urged the commission to substantially amend §24.8, consistent with their recommendations, because as written, the rule gives rise to serious due process concerns and goes beyond what was contemplated in TWC.

The City of Houston generally commented that subsection (g) allows the commission to require the refund of money collected, including interest, under a proposed rate but does not identify the appropriate interest rate. The Water IOUs urged the commission to set the bar high for "good cause" before a utility is required to "refund money collected, including interest, under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate." The Water IOUs rationalized that it would be an expensive administrative burden that will ordinarily apply to a very short period of time, if any, and should ordinarily be resolved at the end of a hearing along with other issues. The Water IOUs, in their reply comments, stated that interest should not be required for the type of refunds contemplated by subsection (g), which only addresses a rare "good cause" situation that would require refunds for what is expected to be a brief period, if any, between the proposed effective date and the suspension. The Water IOUs stated that even if interest was required for subsection (g), it would not be appropriate to identify a specific interest rate within the rules because the commission adjusts its annual interest rate for overbillings and under-billings annually.

Commission response

The commission understands the concerns expressed by the Water IOUs but declines to modify the rule as suggested. The commission finds that it has statutory authority to suspend an effective date until all deficiencies in an application are cured as discussed in its response regarding §24.8 above.

The commission modifies subsection (a)(2) to conform the provision to SB 1148 by changing "205 days" to "265 days." In response to the Water IOUs concerns that the proposed rule may cause disputes over whether a utility's cost of service was properly proposed, the commission modifies subsection (b)(1) to delete the phrase "has included in the cost of service for the noticed rates rate-case expenses other than those necessary to complete and file the application." The language regarding cost of service was a carry-over from the current rule that is not needed at this time. Additional non-substantive changes are made to subsection (b)(1) to further clarify the language.

Regarding the commission's authority to require a new effective date, if a utility sends a deficient statement of intent in violation of TWC §13.187(a-1) or §13.187(b) such that a revised statement of intent is necessary, a revised effective date may be required pursuant to the same statute. TWC §13.187(a-1)

and §13.1871(b) also require that notice is provided at least 35 days before the effective date of the proposed change. However, the commission notes that not all deficiencies may result in requiring a revised statement of intent and therefore, the suspension of an effective date may not always require a revised statement of intent. The commission modifies subsections (b) and (c) to clarify that if the commission suspends the effective date, the requirement under §24.28(b)(1) (relating to Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871) to begin a hearing within 30 days of the effective date does not apply. The commission also modifies subsection (f) to clarify rule language and to specify that it is the *effective date* that is suspended rather than *rates* that are suspended.

Regarding the appropriate interest rate for refunds ordered pursuant to subsection (g), the commission deletes ", including interest," from subsection (g). In the current subsection (g), interest is not authorized and as noted by the Water IOUs interest would apply infrequently and for brief periods of time.

Section 24.28 - Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871

OPUC expressed its general support of the proposed amendments to this substantive rule. The Water IOUs expressed their concern over the reference in §24.28(b)(1) and (c)(1) to an "effective date of the rate change," and argued that there is a potential for conflict between requirements related to a "proposed effective date" and the "effective date," if these dates are different. The Water IOUs argued that in the event of a suspension, a final "effective date" may not be known until the end of a hearing, but the "proposed effective date" would be known because it is the date from which all suspension periods are required to run and cannot be changed even if the actual "effective date" is changed. Therefore, the Water IOUs urged the commission to reference the "proposed effective date" as opposed to the "effective date" in order to prevent confusion and the potential for delay in conducting a hearing.

The City of Houston argued that §24.28(b), as proposed, makes the referral to the State Office of Administrative Hearing (SOAH) the beginning date of the "hearing". The City of Houston argued that under this provision, the resulting period would be insufficient and would deny interested parties necessary time to prepare for hearing. Therefore, the City of Houston recommended the commission strike "and the referral shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection." The Water IOUs stated they do not share this concern because there will ordinarily be a procedural schedule that will dictate the pace of the hearing once it begins. The Water IOUs, however, also emphasized that the limited suspension periods should be followed and that hearings should be conducted quickly.

TAWP urged the commission to include a provision that would allow for early settlement conferences for TWC §13.1871 proceedings within 90 days of filing the case in order to facilitate efficiency and early resolution. TAWP urged the commission to adopt the following language:

Within 90 days of filing the parties shall convene a settlement conference. If during the settlement conference the parties reach an agreed settlement of all facts in controversy, the case shall not be considered a contested case and no proposal for decision or findings of fact are required.

TAWP argued that to the extent that rates are suspended for 205 days, regulatory lag is a significant concern for small utilities without significant resources and access to capital. Therefore, TAWP argued that to the extent that large capital expenditures have been made or operating expenses have significantly increased, rate relief is necessary on a more immediate basis for small utilities. TAWP also stated that they believe the suspension guidelines previously used by the TCEQ considered the unique needs of small water and sewer companies within the state. The Water IOUs expressed their support for this suggested requirement of early settlement conferences.

In contrast, OPUC argued that the language proposed by TAWP would require parties to a rate case convene a settlement conference within 90 days of the filling of an application, should not be adopted. While OPUC recognized the potential cost-savings benefits of early settlement, OPUC argued that settlement discussions should not be imposed because they are sometimes not appropriate and can cause unnecessary delay and result in increased expenses. OPUC argued that the settlement procedures available at SOAH are adequate and that parties should be able to use their best judgment as to when settlement discussions will be productive.

Commission response

The commission declines to modify §24.28(b)(1) and (c)(1) to include the word "proposed" before effective date because the published language is consistent with TWC §13.187(f) and §13.1871(k). The commission also declines to modify §24.28(b) as suggested by the City of Houston. The commission disagrees that under the current language the period for conducting a hearing at SOAH would be insufficient and deny interested parties the time necessary to prepare for a hearing. Additionally, the Legislature recently passed SB 1148 that extended the suspension period for applications filed pursuant to TWC §13.1871 from 205 days to 265 days.

As discussed in further detail above, the commission declines to modify any of the rules to require a settlement conference. The commission maintains that settlement conferences regularly take place on an informal basis, and it is not necessary to include them as a requirement in this chapter.

Consistent with the discussion regarding changing the term "complaint" to "protest" in §24.22(d)(1)(B), above, the commission modifies subsection (c) to replace the words "complaint" and "complaints" with "protest" and "protests" when referring to affected ratepayers. Consistent with the discussion regarding removing "with interest" above in §24.26, "including interest" is also deleted in subsection (e).

TWC §13.187(f) requires that not later than the 30th day after the effective date of the change, the commission shall begin a hearing to determine the propriety of the change. The commission modifies subsections (b) and (c) to clarify when a hearing is deemed to have begun for a matter that is not referred to the State Office of Administrative Hearings. The commission adds subsections (b)(3) and (c)(3) to state that if a matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing.

Section 24.29 - Interim and Bonded Rates

TAWP stated they disagreed with §24.29(c)(1)(A), which contemplates a finding of "unjust or unreasonable rates," which they argued is an ultimate issue to be determined after reviewing all

of the evidence in the case. In addition, TAWP argued that the §24.29(b)(1)(B) requirement that a utility prove that its existing rates are just and reasonable is confusing. TAWP argued that the premise behind a rate filing by a utility is that existing rates are not just and reasonable and therefore the provision would only apply when the rate application is an application to reduce rates brought by a party other than the utility.

The Water IOUs also argued §24.29 should be modified even though the commission has not proposed any changes to this section. Despite this, the Water IOUs argued the language that allows for interim rate hearings to become a hearing on the ultimate issues in the rate case should be removed. The Water IOUs noted that in the event of a suspension, this will likely be moot but argued that it should be removed anyway. In addition, the Water IOUs noted that there is no proposed language implementing the new bonded rate statutory provisions found in TWC §13.187 and §13.1871, and stated that this language could be added to §24.29, or to another commission rule. OPUC stated that they are not clear exactly what language the Water IOUs are requesting be removed as the quoted language is part of a series of bases upon which interim rates can be granted, but disagrees with any word removal as the statutory basis for interim rates is set out in the TWC, which the commission has implemented.

In their reply comments, the City of Houston took exception to the Water IOUs' request to remove language that allows interim rate hearings to become hearings on the ultimate issues in the case. The City of Houston argued that the commission or the Administrative Law Judge (ALJ) should be allowed adequate flexibility to determine the most appropriate form of action based on the facts available for a given situation. The City of Houston further argued that it is in the public interest to provide customers and the commission with as many potential avenues available to address unique situations that may arise.

OPUC, in its reply comments, clarified that in the past, water utilities have enjoyed a quasi-presumption of just and reasonable rates simply by filing a rate application because they were able to charge their proposed rates without a hearing on the merits. OPUC stated the interim rate language opposed by the Water IOUs simply removes this presumption. In addition, OPUC pointed out that an interim rate hearing is not an evidentiary hearing but can be based on oral arguments as well as on whether the rates "could" result in unjust or unreasonable rates. However, OPUC noted, if the rates are not suspended in a particular case, the relief provided by this interim rate provision is essential to prevent the imposition of potentially unjust and unreasonable rates.

Commission response

The commission declines to adopt the suggested changes to §24.29 as no changes to this section were included in the published notice of this rulemaking. During the strawman phase of this project, commission staff discussed with stakeholders potential changes to §24.29. However, the commission did not propose any changes to §24.29 to comply with the TWC amendments pursuant to HB 1600 and SB 567 and no changes are necessary to the rule at this time. The commission may consider amending §24.29 in a future rulemaking project.

Section 24.31 - Cost of Service

TAWP urged the commission to add a provision in this section that would incorporate the rate-case expense reimbursement provisions found in §25.245 (relating to Rate-Case Expenses). The Water IOUs, in their reply comments, agreed that TAWP's suggestion was an acceptable option but noted that "size of the utility and number and type of consumers served" should be removed as a consideration since so many water and wastewater utilities are smaller than electric utilities.

The Water IOUs argued that the proposed rule has included provisions that are not required by HB 1600 and SB 567 and constitute "substantial departures" from TCEQ rulemaking practice and are contrary to established legal precedent. In addition, the Water IOUs stated their belief that certain additions would constitute retroactive law and would result in retroactive ratemaking. Therefore, the Water IOUs urged the commission to revise these sections or delete them in order to prevent the commission from issuing "confiscatory rate orders."

Commission response

At this time, the commission declines to incorporate the rate-case expense reimbursement provisions found in §25.245 (relating to Rate-Case Expenses) into §24.31. The commission may consider modifying the rule in a future rulemaking project in which the issues may be more fully considered with input from all interested stakeholders.

To the extent commenters took specific issue with §24.31, and addressed instances where the commission included provisions in this section that are not required by HB 1600 and SB 567 and allegedly constitute substantial departures from TCEQ rulemaking practices, these comments will be addressed below. However, the commission notes that it disagrees that it is adopting changes to this section that are contrary to established legal precedent and finds that none of the changes made to the chapter 24 rules constitute retroactive ratemaking. The rule against retroactive ratemaking prohibits the commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. *State v. Public Utility Commission of Texas,* 883 S.W.2d 190, 199 (Tex. 1994) (*State).* While some of the adopted provisions in this rule relate to the accounting treatment for a utility's previous transactions, no part of the adopted rule authorizes the commission to make a retrospective inquiry to determine whether a prior rate was reasonable and imposing a surcharge when rates were too low or a refund when rates were too high. *State* at 119. Accordingly, no provision in the adopted rule implicates retroactive ratemaking.

Section 24.31(b)(1)(B) and (c)(2)(B)

The Water IOUs expressed concern over how the proposed rule addresses depreciation stating the TWC was amended to provide that the rule adopted under TWC §13.131(c) "must require the book cost less net salvage of depreciable plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated gas and electric utilities in this state." The Water IOUs proposed the commission review the rules for consistency with electric utility requirements and simplify the rules so that the system of accounts used by each utility dictates the appropriate treatments, instead of trying to incorporate them into specific rule requirements, stating the electric utility rules do not have such provisions. The Water Utilities rationalized that group depreciation is something the National Association of Regulatory Utility Commissioners (NARUC) system of accounts has historically recognized as a common practice, but one that TCEQ was slow to recognize. The Water IOUs argued the provisions are confusing and are not all necessary and therefore subsections (b)(1)(B) and (c)(2)(B) should be revised.

In their reply comments, OPUC noted that while they generally support the rules regarding depreciation as proposed, they agree with the Water IOUs that additional refinement through a separate rulemaking project is desired.

The City of Houston disagreed with the assertion made by the Water IOUs that §24.31 was "very confusing" and argued that the Water IOUs failed to provide customers with appropriate price signals as it relates to capital recovery. The City of Houston rationalized that the reference to NARUC made by the Water IOUs was not proper because the referenced NARUC publications have not been recently updated and may no longer reflect mortality characteristics derived from current statistical methods such as actuarial analysis. The City of Houston urged the commission not to adopt the modification because in their opinion the publications referenced by the Water IOUs do not provide "better" guidance.

Commission response

The commission declines to make the changes proposed by the Water IOUs because the commission does not intend to address depreciation, at this time, as proposed by the Water IOUs. The commission may consider changing the standards for how depreciation is treated and accounted for in a future rulemaking project in which the issues may be more fully considered with input from all interested stakeholders.

Section 24.31(b)(1)(D) - Federal income tax expense

TAMER noted that the proposed rule would not alter subsection (b)(1)(D), which allows federal income tax as an expense, and further noted that the commission did not elaborate on the commission's understanding of how that expense will be determined. TAMER pointed out that at the TCEQ, even limited partnerships that pay no federal income tax could assert a 35% federal income tax rate for purposes of calculating the ratepayers' duty to cover a utility's expenses. TAMER urged the commission to alter the text of this subsection in order to elaborate that the method of tax calculation used by the utility to derive this expense item must generally reflect the weighted average of the actual tax burdens borne by the ultimate federal tax payers on net income derived from, including tax savings attributable to, the utility. TAMER and OPUC argued that ratepayers should no longer be burdened with reimbursement of "phantom" federal income taxes that are not, in fact, paid by anyone. OPUC expanded that to the extent that a water or wastewater utility is a member of an affiliated group that files a consolidated return, the federal income tax computation for purposes of setting rates should take into account the savings that are achieved. OPUC urged the commission to modify the rule in order to reflect this requirement and provide for a computation that complies with TWC §13.185(f).

In their reply comments, the Water IOUs stated they do not agree with TAMER's suggested revisions to this subsection. In addition, the Water IOUs pointed out that TAMER did not provide any alternative rule language for them to comment on. The Water IOUs expressed their belief that TAMER incorrectly implies that allowing federal income tax provisions for limited partnerships was a practice unique to the TCEQ and pointed out the commission also has such a policy as seen in PURA §36.060(a) and (b). The Water IOUs argued that a consolidated tax adjustment (CTA) reduces a utility's tax expense (or rate base) when setting rates by the tax benefit of non-regulated affiliate corporations, and the federal income tax of a regulated utility is reduced by a portion of the tax benefits generated by non-regulated affiliates. The Water IOUs argued that a CTA confiscates a portion of the tax benefits generated by affiliated non-regulated companies and allocates those benefits to the ratepayers of the regulated entity and therefore violates the basic regulatory principles of cost allocation. In addition, the Water IOUs pointed out that historically, public utility commissions have consistently eliminated non-regulated investments and the associated revenue/expenses from the determination of rate base and cost of service when determining authorized retail rates charged to the utility's customers. Commissions have tried to eliminate the possibility of the ratepayer being charged for non-regulated activities that would have the result of subsidizing the non-regulated operations. The Water IOUs urged the commission to follow this trend and continue to treat regulated companies on a stand-alone basis in order to prevent subsidizing non-regulated activities.

Commission response

The commission did not propose changes to subsection (b)(1)(D), and the commission declines to adopt the changes proposed by TAMER and OPUC. The commission has previously determined that federal income tax expense is appropriately calculated on a normalized basis, and the "actual taxes paid" methodology advocated by TAMER and OPUC is inconsistent with this method. The commission notes that the language of TWC §13.185(f) is consistent with language that was included in PURA §36.060 until it was amended in the 83rd Legislative session in 2013. The commission operated under and applied this statute for many years by incorporating a reference to the statute within its chapter 25 substantive rules, however, the commission points out that it did not include explicit methodologies or practices in the chapter 25 substantive rules. The commission's position is that, where possible, the rules should maintain flexibility especially in areas where methodologies and practices may change. This flexibility allowed the commission to avoid having to amend its chapter 25 rules when the Legislature amended PURA in 2013 and the commission determines that the same flexibility should be maintained in the chapter 24 substantive rules.

Section 24.31(b)(1)(F) - Allowable expense

OPUC recommended changing the word "energy" to "water" in subsection (b)(1)(F)(i) as the proper reference would be to conserving water and not energy. The Water IOUs agreed but expressed their confusion as to the intent of the rule as it could include both energy and water.

LCRA expressed their concerns over the proposed limits included in §24.31(b)(1)(F) relating to advertising, contributions, and donations stating that the maximum limit included in the proposed rule, particularly as pertaining to advertising related to conserving energy, methods or water or wastewater savings, and water quality protection, places undue and counter-productive scrutiny on efforts that LCRA argued clearly provide benefit to water suppliers who are required by regulation to adopt and implement programs for water conservation and who play a role in water quality protection. LCRA pointed to Texan voters' approval in November 2013 that authorized the deduction of $2 billion in public funds for water infrastructure projects, which included a dedication of a portion of the money to water conservation efforts as proof that Texans favor increasing water supplies. LCRA further argued that water suppliers at all levels should not be unreasonably restricted from implementing policies and promoting methods that improve the efficient use of water throughout the state stating that the formula-determined limits on the advertising of an entity's efforts and programs in

these areas may, in fact, discourage these efforts and programs and may not appropriately recognize the value they provide for Texans. Therefore, LCRA recommended the removal of the words relating to "the calculation of the three tenths of 1% (0.3%) maximum" including subsections (b)(1)(F)(i)-(iii) and replacing this with a provision stating "However, advertising expenses related to water conservation, water quality protection and energy conservation shall not be limited by the foregoing and will be separately evaluated as a reasonable and necessary expense of providing service." The Water IOUs shared the concerns expressed by the LCRA and stated that if the intent of the rule is to promote the specific expense items it purports to limit, it should be restructured in order to achieve this goal. In their reply comments, OPUC argued LCRA's proposal is unreasonable and should not be adopted. OPUC argued the three-tenths of 1% limitation is meant to encourage cost-efficient and prudent advertising spending decisions and that advertising limitations ensure that utilities restrict their advertising spending to essential safety, conversation, and other messages that provide direct benefits to ratepayers rather than image-enhancing advertising that relays few, if any, customer benefits. In addition, OPUC argued that limitations help ensure that safety and conservation advertising does not become unduly repetitive where the marginal cost of the additional advertising exceeds the marginal benefit occurring from additional expenditures. Therefore, OPUC continued to support the rule as published.

The Water IOUs asked the commission to clarify the source and purpose of this new provision, specifically, the language regarding a 0.3% maximum of gross receipts maximum. The Water IOUs also stated it is unclear whether the intent of subsection (b)(1)(F)(i)-(iii) is to limit what may be included in the 0.3% maximum or to encourage such expenditures by not including those items. The items listed appear to be conservation-oriented.

Commission response

The commission agrees to modify subsection (b)(1)(F)(i) to change the word "energy" to "water" as the proper reference would be to conserve water and not energy. The commission finds that this change makes clear that this is a reference to water conservation.

The commission recognizes that a limit must be placed in subsection §24.31(b)(1)(F) relating to advertising, contributions, and donations to promote water conservation because at a certain point the expenditure is no longer reasonable or beneficial. The commission finds that a reasonable limit must be placed on these activities in order to promote responsible spending that will result in actual conservation. A limit encourages cost-efficient and prudent advertising spending decisions. In addition, the commission declines to modify the rule as proposed by LCRA to provide for separate, case-by-case, evaluation of the expenditures because this could lead to subjective and potential arbitrary analysis, and is not an efficient use of administrative resources. By limiting the expenditures to 0.3%, the commission has established an objective and reasonable amount for certain expenses to promote conservation. The commission developed the 0.3% gross receipts maximum based upon a similar provision for electric utilities in §25.231(b)(1)(E). In response to the comment from the Water IOUs stating that it is unclear what may be included in the 0.3% maximum, the commission modifies this rule to clearly indicate that §24.31(b)(1)(F)(i) - (iii) is an exhaustive list.

Section 24.31(b)(2)(J) - Allowable expense

The Water IOUs requested the commission either delete or revise the existing rule so that expenses for purchased groundwater may be recovered in situations where surface water purchased is mixed with supplemental groundwater from within a priority groundwater management area (PGMA) and in situations where an emergency requires the purchase of groundwater within a PGMA even though surface water is available. The Water IOUs argued that the provision, as written, is overly restrictive and should therefore be deleted or revised with these situations in mind, which would make the purchase of groundwater and recovery of its costs entirely reasonable despite the conservation-minded policy the rule promotes. OPUC urged the commission not to adopt this modification arguing that PGMAs are areas where within the next 50 years, the area is expected to experience a critical groundwater problem, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal and contamination of groundwater supplies. OPUC contended that given the expected constraints on groundwater supply in PGMAs, the use of groundwater from these areas should not be encouraged. OPUC argued that if a wholesale supply of surface water is available, then the costs incurred by a utility for purchasing groundwater from within a PGMA should not be allowed as a component of a utility's cost of service. Therefore, OPUC argues no change is appropriate.

TAMER argued that the Water IOUs do not make a case as to why groundwater purchases in situations where wholesale surface water purchases are possible should generate allowable expenses. TAMER urged the commission not to abandon its support of the state policy, absent a more rational argument than the Water IOUs' conclusions that mixing waters should "over-rule" the policy or that there may be some "unexplained emergency" that make use of available surface water imprudent.

Commission response

The commission did not propose any changes to §24.31(b)(2), and therefore declines to make the proposed modifications to the rule at this time. The purpose of this project is to amend the Chapter 24 to comply with the TWC amendments as a result of HB 1600 and SB 567, along with related ratemaking changes consistent with moving the economic regulation of water and sewer utilities to the PUC. The commission may consider the proposed modifications in a future rulemaking project where the issues related to this section can be fully considered and analyzed, and where parties are provided the opportunity to comment on proposed rule changes.

Section 24.31(c) - Return on invested capital

TAWP and the Water IOUs expressed concern over the definition of "debt capital" and argued there should be flexibility in determining the appropriate cost of debt and capital structure, particularly for small water or sewer utilities. TAWP argued that the risk characteristics of Class B and Class C utilities vary greatly depending upon factors such as location, size, need for growth, and age of the system, and that allowing flexibility and the ability to determine reasonableness on a case-by-case basis would allow for the commission to consider all relevant factors. In their reply comments, the Water IOUs maintained their position that there should be flexibility in proposing reasonable cost of debt and capital structures. In their reply comments, OPUC argued that the commission has well-established precedent that requires the use of the embedded cost of debt in setting the cost of capital and that the need for flexibility in setting a cost of debt that varies from the embedded cost should be limited to extraordi-

nary circumstances, and therefore concluded the existing rule is appropriate.

Commission response

The commission addresses specific comments regarding cash working capital in the relevant subsection, below.

Subsection 24.31(c)(2)(B)(i)

The Water IOUs applauded the commission's recognition and acceptance in the proposed rule for the long-established practice in the TCEQ rate-cases of allowing water/wastewater utilities to use trending studies for acquired assets where reliable and verifiable historical records are not available. The Water IOUs argued this practice promotes regionalization by allowing a purchasing utility to establish rate base for acquired assets even though the selling utility may not have kept good asset records or the asset records kept are insufficient.

However, the Water IOUs also requested the commission make substantial modifications to this section, arguing that the subsections' apparent shortcomings make it unacceptable. First, the Water IOUs expressed concern that there may be systems in Texas which may not qualify as a "nonfunctioning system or utility" under the proposed definition in §24.3(33). The Water IOUs asserted that the nonfunctioning system or utility may have problems, and may want to sell, but may not have good asset records (or any asset records) for a variety of reasons. The Water IOUs argued that allowing asset trending for those systems without a reduction in rate of return would promote regionalization and prevent more capable utilities from walking away from those potential transactions for fear of not being able to earn a return on the purchased assets. Second, the Water IOUs argued that the entire concept of lowering the reasonable rate of return on equity by 3% for trended assets is arbitrary and unreasonable and rationalized that the point of trending is to come up with a reliable estimate of the original cost of the assets so that proper return and depreciation expense amounts can be established in the rate-case. The Water IOUs maintained that calculating a reliable estimate of the original cost of an asset, just to lower a portion of return, defeats the purpose of trending, which is to ensure a reasonable return based on original cost, less depreciation. The Water IOUs rationalized that, if anything, a utility taking such a risk should receive a higher rate of return on equity for undertaking the risk. By reducing a return on equity by 3%, the Water IOUs argued, the commission would be discouraging the acquisition of these types of assets. Finally, the Water IOUs argued the proposed rule would apply without limitation to all "cost of plant and equipment allowed in the cost of service that has been estimated by trending studies or other means which has no historical records for verification purposes," without specifying that the rule would apply to acquired assets prospectively only. The Water IOUs expressed fear that the rule will result in retroactive ratemaking by applying to previously acquired trended assets, and recommending setting the standards for trending studies in a separate rulemaking.

The City of Houston disagreed with the Water IOUs that subsection (c)(2)(B)(i) has "many problems" and disagreed with their recommended changes. The City of Houston argued that the Water IOUs are seeking reward for reliance on trending studies where reliable and verifiable historical records are not available for the acquired assets. The City of Houston asserted that the commission should not be rewarding older "mom and pop" systems who chose not to maintain adequate records by allowing a higher purchase price. The City of Houston argued that reliance on indices like the Handy-Whitman Index would overstate costs because they recognize increases in overhead costs like pensions and healthcare which might not exist for "mom and pop" systems. In addition, the City of Houston disagrees with the assertion made by the Water IOUs that it would be unjust and unfair for the commission to decide to reduce return on equity for all Water IOU's assets when a utility could not have foreseen the possibility now presented at the time of an acquisition. The City of Houston argued that utilities are granted an opportunity to earn a rate of return, which includes a return on equity above the cost of debt, to compensate for financial risk, which includes items that could or could not be reasonably foreseen, but that may transpire in the future. In addition, the City of Houston pointed out that the return level is never expected to be constant. The City of Houston expressed that they are of the opinion that the commission's proposed rules properly address a change in rate of return to all assets on a going forward basis and does not constitute retroactive ratemaking.

In their reply comments, TAMER stated their belief that it is not clear if this section, as proposed, sanctions trended valuation of capital plant. TAMER pointed out that the legislature transferred jurisdiction to the commission because of a perception that some TCEQ practices and policies were not in accord with good regulation and therefore urged the commission to not feel compelled to defer to the TCEQ's prior judgments regarding when or if ever trending studies may be used in lieu of actual purchase prices. In addition, TAMER added that trended valuations allow a purchaser of a system to establish an "original cost" of plant that bears no relationship to the price of the plant that the purchaser purchased. TAMER argued that absent an explicit tie between the allowable trended valuation for an asset and what the purchasing utility actually paid for the asset, trended valuations should not be allowed.

In their reply comments, OPUC disagreed that trending studies are an adequate replacement for original cost calculation and should therefore not be recognized. However, OPUC noted that if the commission determines that trending studies may be used to estimate original cost in extraordinary circumstances, then there must be some appropriate means to counter their inherent unreliability. OPUC argued that trending studies are an estimate of original cost and not the actual cost amounts and that because experts are determining these estimates, two experts performing separate studies can arrive at vastly different figures using different, yet equally plausible, assumptions. OPUC concluded that the commission is not bound to adopt the TCEQ practice allowing trending studies and that the commission should reject trending study estimates as a substitute for actual original costs except in extraordinary circumstances because they are unreliable and susceptible to manipulation.

Commission response

The commission recognizes that at TCEQ trending studies were sometimes used because some utilities' books and records were not properly kept or were destroyed. The commission establishes a rule for trending studies and seeks to incentivize water and sewer utilities to obtain and keep proper books and records. As a general rule, the commission discourages the use of trending studies except when historical records are unavailable from any source. Trending studies are a subjective estimate of depreciable utility plant, which is the single most significant cost driver in most rate cases. Adjustments to a utility's rate base and/or rate of return on equity may be warranted when a trending study is used to estimate a utility's level of invested capital

on which the utility may earn a rate of return. The commission acknowledges that there are benefits to healthy utilities acquiring non-functioning utilities. The commission modifies published subsection (c)(2)(B)(i) to provide flexibility on a case-by-case basis, rather than requiring a mandatory 3 percent reduction to the rate of return on equity. The commission further modifies the rule to allow an adjustment to rate base in addition to a reduction to the rate of return on equity, if warranted. If trending studies were not permitted and no records existed for a utility, the alternative would be assigning assets $0 or market value, which could be inflated or deflated, and neither option provides for an accurate assessment of a utility's reasonable return on invested capital. Therefore, for instances in which adequate books or records are not available and the use of a trending study may be necessary, the commission maintains the discretion to make adjustments to the utility's rate base and/or rate of return as appropriate.

Because the commission modifies subsection (c)(2)(B)(i) as described above, the commission deletes the following sentence, "[i]f, however, the cost of plant and equipment is estimated using a trending study for a nonfunctioning utility where there are no historical records, the commission may consider other factors when establishing a reasonable rate of return."

The commission modifies subsection (c)(1) and (2) for additional clarity, and this change results in renumbering the remainder of subsection (c).

Section 24.31(c)(2)(B)(iii)

OPUC argued that §24.31(c)(2)(b)(iii) does not conform to TWC §13.131 and §13.184 and that as written, the subsection provides for the accounting for a return on a retired asset in the accumulated depreciation balances. OPUC stated that under TWC §13.184 "the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public." Therefore, OPUC concluded that a utility is only authorized to obtain a return on investment for utility plant that is "used by and useful to the utility in providing service." In addition, OPUC stated that the language of TWC §13.131 provides for the accounting for retired assets to be reflected in the accumulated reserve for depreciation based on the original book cost of the retired asset less net salvage. OPUC asserted that based on TWC §13.131 and §13.184, it would appear that allowing a return on a retired asset is not appropriate when the plant is not used and useful. Therefore, OPUC urged the commission to strike the sentence in this subsection which reads: "Return is allowed for assets removed from service after June 19, 2009, that results in an increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially prudent, unavoidable, necessary because of technological obsolescence, or otherwise reasonable."

In their reply comments, the Water IOUs expressed their disagreement with OPUC's recommendations and stated that the entire depreciation section needs to be reviewed for consistency with electric regulation in a separate rulemaking.

Commission response

The commission's proposed changes to published subsection (c)(2)(B)(iii) in the proposal for publication were limited to the re-numbering of the subsection; therefore, the commission declines to make the substantive changes proposed by the Water IOUs. However, the commission acknowledges the OPUC's comments and modifies published subsection (c)(2)(B)(iii) to state that return "may be allowed" rather than return "is allowed" to harmonize this subsection with TWC §13.131 and §13.184. To the extent that the entire subsection may need to be reviewed for consistency with electric regulation, the commission agrees with the Water IOUs that it would be appropriate in a separate, future rulemaking project where the issues related to this section can be fully considered and analyzed and where parties are provided the opportunity to comment on proposed rule changes.

Subsection 24.31(c)(2)(C)(i)

The Water IOUs asked the commission to clarify how the commission plans to determine whether materials and supplies inventories are "unreasonable, excessive, or not in the public interest." The Water IOUs argued the language seems to set the stage for arbitrary reductions to the working capital allowance, but that it would be helpful to know if the commission had some criteria it would be using to make this determination.

Commission response

The commission finds that the language in §24.31(c)(2)(C)(i) does not set the stage for arbitrary reductions to the working capital allowance because the commission will base its decision on the evidence and the facts of each specific case. The Water IOUs expressed general concern about the rule language but did not propose specific changes. Accordingly, the commission does not modify the rule.

Section 24.31(c)(2)(C)(iii)

OPUC requested the commission make a minor modification to subsection (c)(2)(C)(iii)(IV) in order to create uniformity. OPUC rationalized that the rules refer to Class C utilities and then to Class B utilities before discussing in sub-clause IV that "Operations and maintenance expense does not include depreciation, other taxed, or federal income taxes, for purposes of sub-clauses (I), (II), (III), and (V) of this clause." OPUC suggested the commission restructure the subsection so that sub-clause IV would be moved to the beginning or end of §24.31(c)(2)(C)(iii). The Water IOUs agreed that there needs to be a correction made to the numbering of this section, however, they are unsure if OPUCs suggested correction in fact corrects the problem.

The Water IOUs, TAWP, and the City of Houston requested the commission clarify why there are different default amounts for cash working capital for Class A versus Class B versus Class C utilities in the proposed rule. In addition, TAWP asked the commission for the rationale behind the utilization of 1/12th of operations in maintenance expense for Class B utilities. Similarly, the Water IOUs stated it is unclear how the 1/12th operations and maintenance (O&M) amount was derived for Class B utilities and why the default of 1/8th O&M cannot be maintained for all, like has historically been the case. The City of Houston pointed out that the 1/8th rule has been in place for approximately 100 years and is no longer valid based on computerized billing systems and modern technology. The City of Houston therefore urged the commission to adopt a negative 1/8th rule for Class A utilities that do not perform a valid and realistic lead-lag study to better reflect the abilities of "more capable utilities." In addition, the City of Houston argued that a zero cash working capital allowance should be adopted as the default position for Class B and Class C utilities.

The Water IOUs expressed their appreciation for the default provision of zero cash working capital, however, they expressed their belief that the reference in proposed subsection (c)(2)(C)(iii)(VI) should be (c)(2)(C)(iii)(IV), in order to allow for the default.

In their reply comments, OPUC supported the implementation of lead-lag studies in determining allowed cash working capital allowances for Class A utilities as they are appropriate given the size of a Class A utility. OPUC noted that while it may be appropriate to use a default amount for smaller utilities, it is not appropriate for the Class A utilities and therefore the commission should allow the utility to use a lead-lag study completed within five years of the application date unless the study is no longer valid, which should reduce the overall expense of conducting such studies. OPUC also noted they do not support the proposal in §24.31(c)(2)(C)(iii)(VI) of including a default allowance of zero when a utility has failed to file a lead-lag study or where the study is unreliable and argued that if a utility has not provided a lead-lag study and has not provided an explanation, the commission should deem the application materially deficient. Therefore, OPUC concluded that a utility should not be allowed to use a default of zero when a negative number may be more appropriate.

Commission response

The commission agrees to reorder the subsection as suggested by OPUC because it finds it does not change the substance of the rule, but merely reorders the provisions in a manner that enhances clarity in the organization of the rule.

The commission established different default amounts for cash working capital for Class A, Class B, and Class C utilities because these utilities, by definition, vary in size. As the Water IOUs have noted in this project, while certain issues should be handled consistently among the utilities the commission regulates, identical treatment may not be warranted in all circumstances, particularly with respect to the smaller Class C utilities. The commission finds the 1/12th ratio is more appropriate for Class B utilities because of their general size and is within a reasonable range.

In addition, the commission finds the 1/12th ratio appropriate for Class B utilities because utilities of this size may have the capital to pay for a lead-lag study, which would replace this default provision if it is demonstrated that a different cash working capital is necessary. In addition, the commission points out that the 1/8th ratio was the default before utilities were classified based on size.

The commission also finds that, for the most part, it is unreasonable to require a Class B or Class C utility to perform a lead-lag study in all cases because of the size of the utility and the cost of the study. The commission finds it unreasonable to adopt a zero cash working capital allowance for these utility classes because the small size of the utility increases the effects of variations in cash collections and disbursements which may subsequently affect financial integrity, particularly with a system maintaining an older infrastructure.

For Class A utilities, the commission recognizes that in the past these larger utilities used a 1/8th ratio as a default allowance. However, the commission finds that 1/8th is not an appropriate estimate for companies of this size. Therefore, the commission adopts the zero default for Class A utilities but notes that a utility may prepare a lead-lag study to support a request for additional cash working capital.

Section 24.31(c)(3)

OPUC referenced their discussion in Project No. 43876 regarding the rate filing package for Class A utilities stating that there has historically been some disagreement with water and wastewater utilities regarding the need to deduct cost free capital items from rate base. OPUC expressed its general support for the proposed changes in §24.31(c)(3) because it clarifies a topic that has been debated; however, OPUC requested that the commission delete the provision in §24.31(c)(3)(F) which reverses these requirements for Class C utilities. OPUC stated that regardless of a utility's size and affiliation to other entities or companies, cost free capital represents a resource to the utility that has not resulted in the incurrence of cost and therefore even Class C utilities should be required to deduct these costs from rate base. OPUC argued that to allow a utility to include these items in rate base, and then obtain a return on them, violates the core tenets of rate regulation and would be an inappropriate windfall to the utilities. The Water IOUs stated they have no position on this issue because there may be a sound reason for the different treatment.

Commission response

The commission agrees with OPUC's comments that allowing a utility, regardless of size, to include cost-free capital in its rate base and earn a return thereon is inconsistent with basic principles of rate regulation. Cost-free capital provides to a utility a source of funds for which the utility does not actually incur a cost, and allowing such amounts to be included in the utility's return-earning rate base results in an inappropriate windfall to the utility. Accordingly, the commission has deleted §24.31(c)(3)(F) from the rule.

Section 24.31(c)(4)

OPUC expressed its support for the clarification found in this section that construction work in progress (CWIP) is an extraordinary form of relief. The Water IOUs disagree that this statement is necessary and argued it adds nothing to the ratemaking process, arguing that the requirements for proving CWIP is already required.

Commission response

The commission agrees that it clarified §24.31(c)(4) regarding CWIP in the proposal for publication, and the commission now adopts the change. The commission's intent was to state that inclusion of CWIP is an exceptional form of relief, consistent with its policy and precedent for electric utilities. Therefore, the commission declines to modify this section because it finds it provides clarity regarding the commission's policy on CWIP.

Section 24.31(e) - Negative acquisition adjustments

OPUC expressed its support for the inclusion of this section on negative acquisition adjustment stating that because the previous rule did not specifically address negative adjustments, some utilities have argued that the rules prohibit negative adjustments. However, OPUC argued that if a utility pays less than the net original cost of a system, then a negative acquisition adjustment may be reasonable and should therefore be authorized, which is why OPUC supports the inclusion of a negative acquisition adjustment in the proposed rule. The Water IOUs disagreed with the position taken by OPUC and argued that the proposed rule does not allow any discretion to include or not include a negative acquisition adjustment but in fact requires a negative acquisition adjustment for all utility property acquired in an STM since September 1, 1997.

The Water IOUs noted that practice at the TCEQ was to exclude all acquisition adjustment amounts for ratemaking purposes while allowing acquisition adjustment amounts to be carried on a utility's books for accounting purposes. In addition, they pointed

to a 1994 case, *Technology Hydraulics,* at the Texas Natural Resource Conservation Commission (a TCEQ predecessor), which found that pursuant to "Section 13.185(j) of the TWC, a negative acquisition adjustment cannot be applied to reduce a utility's depreciation expense on the currently used, depreciable property owned by the utility." They also pointed out that the TWC does allow for specific alternate ratemaking methodologies, such as incorporation of acquisition adjustments for utilities in limited circumstances, but that these must be adopted by commission rule. In addition, the Water IOUs argue TWC §13.183(c) requires a rule about incorporation of a negative acquisition adjustment in ratemaking, and noted that such rule must be adopted before it can be applied to an administratively complete application. The Water IOUs argued that the commission proposed a rule that: (1) reverses course on negative acquisition adjustments; (2) would apply negative acquisition adjustments retroactively to acquisitions since September 1, 1997, which directly contradicts the TWC and the Texas Constitution; (3) could result in unlawful retroactive ratemaking due to the proposed inquiry into past transactions; (4) would act as a disincentive to regionalization; and (5) does not propose to apply negative acquisition adjustments in the correct manner as an amortized amount credited against depreciation over time until it is extinguished.

The Water IOUs urged the commission to modify all of the rules to promote regionalization and sound business decisions. The Water IOUs expressed fear that if the commission adopted the proposed language of the rule, it could discourage broader investment in Texas water and wastewater utilities. The Water IOUs stated that if the commission must adopt a negative acquisition adjustment rule, it should do so in a separate rulemaking project so that the commission can fully consider the issue and that a fair and balanced approach should be taken when addressing negative acquisition adjustment alongside positive acquisition adjustment. In the alternative, the Water IOUs suggested the commission adopt a more limited rule that simply instructs how a utility may prospectively request an accounting order for its negative and positive acquisition adjustment amounts so that they may be maintained for accounting purposes on a utility's books, but instructing that the amount will not be used for ratemaking unless a positive acquisition adjustment amount is requested, and if they are, will be amortized against depreciation expense over time. As a third alternative, the Water IOUs asked the commission to consider adopting a balanced prospectively applicable rule that would allow both positive and negative acquisition amortized amounts in either depreciation or rate base over time until extinguished, combined with relaxed requirements for allowing positive acquisition adjustments compared to those currently found in subsection (d). Optimally, however, the Water IOUs expressed their desire to have subsection (e) removed from the rule all together.

In their reply comments, OPUC argued that the negative acquisition adjustment provision is necessary to clarify that it is available for use, given that its absence has been alleged by utilities to mean that it is disallowed. Because there has been so much confusion on whether a negative acquisition adjustment is allowed absent a rule specifically allowing for it, OPUC urged the commission to adopt a negative acquisition adjustment rule to finally settle this controversy. OPUC argued that negative acquisition adjustment is an important tool and that the proposed rule would fill the silence and would allow an ALJ to speak to the authority for disallowing un-purchased value as a basis for return. OPUC argued that a negative acquisition adjustment flows naturally from the exclusion of cost free capital from the utility's rate base, and a rule is needed to ensure that utilities do not receive a "windfall" and that customers are not charged twice for the same plant. In addition, though OPUC agrees with the Water IOUs that regionalization is desired, OPUC disagreed that a negative acquisition adjustment would deter regionalization and argued that a key benefit of regionalization and larger systems acquiring smaller, possibly failing, systems is that the larger system will invest capital in improving those systems. Therefore, OPUC continued to support the inclusion of a negative acquisition adjustment in the proposed rule and urged the commission to adopt the published language.

OPUC also commented that the 1997 date appears to be unnecessary and could therefore be deleted.

OPUC also noted that §24.31(d) was tailored specifically to the water utility industry, with input from stakeholders, to make it equally available to large and small utility companies, without favoring the large utilities that might have stronger purchasing power. OPUC concluded that as a result the proposed rule language is more appropriate for water utilities than the language proposed by the Water IOUs.

In contrast, the City of Houston strongly disagreed with the recommendation of the Water IOUs to delete proposed §24.31(e) and stated that the commission should permit the equitable recognition of cost benefits obtained for customers when systems are acquired at a cost lower than net book cost. Likewise, in their reply comments, TAMER urged the commission to retain the current form of the proposed rule stating that if the Water IOUs actually have a reason for an exception, they should petition for a rule change and explain the situations that justify expansion of the exception.

The City of Houston argued that they did not believe this rule constituted retroactive ratemaking because utilities already received the benefits of a higher return and received substantial benefits of the purchase of a system at a price less than net book value. The City of Houston stated its belief that the recognition of a negative acquisition adjustment does not result in a claw back of prior returns, would impact returns only on a going forward basis, and is therefore not retroactive ratemaking. In addition, the City of Houston disagrees that the rule would act as a disincentive to regionalization, although the city acknowledged that the level of return a Water IOU may obtain could be diminished if a negative acquisition adjustment is implemented. The City of Houston pointed out that there has been no demonstration that such single action would eliminate an acquisition by a Water IOU or other potential purchaser. The City of Houston urged the commission not to adopt the recommendations made by the Water IOUs stating that they failed to consider the customer when balancing public interest.

Commission response

After considering the comments of the stakeholders, the commission is convinced that it is appropriate to modify the final rule language to give the commission the flexibility to recognize a negative acquisition adjustment in the ratemaking process to the extent the commission believes the facts lead to such a conclusion. Conversely, the provision as revised does not require the commission to take such action. Indeed, the commission recognizes the importance of adopting a policy that will encourage financially healthy retail water companies to purchase distressed retail water companies in order to ensure that all Texans have

access to healthy, affordable drinking water. The rule has been modified accordingly.

Although the commission retains the ability to recognize a negative acquisition adjustment in the ratemaking process, it finds that the reference to September 1, 1997 is no longer necessary and modifies the rule accordingly.

The commission also finds the inclusion of a negative acquisition adjustment does not constitute retroactive ratemaking. As discussed above, the rule against retroactive ratemaking prohibits the commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. *State* at 199. To recognize a negative acquisition adjustment in the ratemaking process does not involve an inquiry into the reasonableness of a utility's previously tariffed rates and, therefore, does not implicate the rule against retroactive ratemaking. Further, the commission disagrees that accounting for a negative acquisition adjustment in the ratemaking process discourages regionalization.

Section 24.31(f) - Intangible assets

The Water IOUs argued that subsection (f) is contrary to established legal precedent and should therefore not be adopted. The Water IOUs stated that the authority to include utility "property" in rate base, both tangible and intangible assets under original cost ratemaking, was decided in *State,* a case in which the Texas Supreme Court interpreted the section of the Public Utility Regulatory Act equivalent to TWC §13.185(c). The Texas Supreme Court determined that original cost is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use. The Water IOUs argued the court in *State* determined that the plain meaning of the term "property" includes intangible assets that could be included in rate base. Additionally, the TWC defines "facilities" to include "all tangible and intangible real and personal property without limitation." The Water IOUs urged the commission to modify the rule in order to lower the bar for what intangible assets can be included in rate base. The Water IOUs specifically pointed out that subsection (f)(3) is confusing as written in that intangible assets are "actual assets" but stated that it is unclear whether organization costs toward acquisition of intangible CCN rights could be included in rate base under this standard, and argued that if they cannot, regionalization efforts could be chilled. Therefore, the Water IOUs urged the commission to modify the rule in such a way that intangible assets "shall be allowed in rate base, shall not be disallowed from rate base because the assets are intangible, and shall not be amortized as annual expense items unless requested by the utility." In addition, the Water IOUs requested the commission remove subsection (f)(1)-(4).

In contrast, OPUC argued that there is nothing in *State* that prohibits establishing standards that must be met for including intangible assets in rate base and argued that the decision merely states that intangible assets are "property" within the ordinary meaning and, as such may be included in rate base. OPUC contended that intangible assets, by their nature, require greater substantiation than physical plant, which is all the rule requires. OPUC reasoned that intangible assets therefore should only be included in rate base when the reasonableness of such assets can be proven and the benefit to the consumer can be justified. Therefore, OPUC supports the proposed rule and requested the commission not adopt the Water IOUs' proposed changes.

Commission response

The commission declines to modify §24.31(f) because it finds that intangible assets shall only be allowed in rate base if it meets one of the stated requirements, which each provide some justification for the amount the intangible asset is worth. The requirements of this subsection address the reasonableness of the assets and justify their inclusion in rate base. By their very nature, intangible assets cannot be physically touched or seen. The value of an intangible asset must be supported by evidence to support its recovery. In addition, the commission finds that there is nothing in *State* that prohibits the commission from establishing standards that must be met for including intangible assets in rate base.

Section 24.32 - Rate Design

The Water IOUs and the City of Houston urged the commission to consider clarifying how costs related to providing fire flow or otherwise providing water for fire protection services should be recovered for areas where a utility is required to provide such water or has elected to do so. They stated that this clarification could be appropriate at this time or in a separate rulemaking project, and the Water IOUs argued that this issue must be addressed as it was left unresolved at the TCEQ due to the impending transfer of economic regulation to the commission.

In their reply comments, OPUC stated its general support of the comments made by the Water IOUs regarding clarification of the allocation and recovery of costs associated with fire protection. OPUC noted that the proper handling of fire protection cost is related to functionalization as well as customer class cost allocation. In addition, OPUC agreed that the issue should be handled in a separate rulemaking project.

Commission response

The commission's proposed changes to this section were nonsubstantive in nature, and therefore, the commission declines to modify the rule as proposed. The commission may consider addressing fire flow and fire protection issues in a separate, future rulemaking project in which the issues can be fully considered and parties are provided the opportunity to comment on proposed rule changes.

Section 24.33 - Rate-case Expenses Pursuant to Texas Water Code §13.187 or §13.1871

OPUC and TAMER expressed their general support for the inclusion of this section and OPUC stated that rate-case expenses are not expressly authorized in TWC Chapter 13 and that if rate-case expenses will continue to be allowed under commission rules, their collection should be limited. OPUC stated that the proposed rule for water and sewer utilities regarding rate-case expenses is consistent with the practices at TCEQ, and therefore, do not result in a change in practice and should be adopted. TAMER also expressed their belief that the proposed rule will have the result of encouraging settlement by providing a strong incentive to the utilities to propose reasonable rates in the first instance.

In contrast, the Water IOUs urged the commission to substantially modify the proposed rule because it is not consistent with the practices and policies of the commission. The Water IOUs stated that one of their prime concerns since the jurisdictional transfer has been the recovery of rate-case expenses and the means of minimizing these expenses before they are incurred. The Water IOUs rationalized that water and sewer utilities are not as large as the electric utilities the commission regulates, have smaller staffs, and have fewer customers among whom

they may spread rate-case expense costs. They argued that the rule, as carried over from the TCEQ, arbitrarily prohibits recovery of reasonable rate-case expenses based on either 51% recovery or settlement offer circumstances, both of which are unfair and unjust, especially in light of more stringent filing requirements. The Water IOUs argued that there will always be some amount of rate-cases expenses that will be reasonable, even if the application is not fully approved, and therefore recovery of rate-case expenses should not be limited as proposed in the rule. In addition, the Water IOUs noted that the commission, in Project No. 41622 relating to rate-case expenses, has expressed that mechanical/formulistic approaches to rate-case expenses should only be used as a last resort. The Water IOUs also disagreed with the commission's inclusion of the settlement offer rate-case expense provision because it is inconsistent with the commission's adopted stance on whether such a rate-case expense rule is appropriate for electric utilities. The Water IOUs pointed out that the commission has stated that such provisions are "not practical to implement because there exist many components to a settlement proposal other than revenue requirement." In addition, the Water IOUs argued that the provision will have a chilling effect on settlement negotiations and would create a need for the commission to analyze confidential settlement offers and related communications in order to determine the reasonableness of rate-case expenses.

The Water IOUs asked the commission to clarify why subsection (d) was included and argued that if it is not universally applicable, it should be deleted. Overall the Water IOUs urged the commission to either: (1) adopt the remainder of the proposed rule without subsections (b) or (c); (2) adopt a version of §25.245 applicable to water and wastewater utilities; or (3) delete proposed (b) and (c) and open a separate rulemaking project to consider whether to apply a version of §25.245 to water and wastewater utilities.

The City of Houston, in their reply comments, argued against the proposal made by the Water IOUs to eliminate proposed §24.33 and argued that the commission's concern regarding the allowable recovery of rate-case expenses is valid considering the limited customer base of water and sewer utilities, and the unfair bargaining position of the utility. The City of Houston contended that the Water IOUs were not considering the balancing of the public interest as it relates to customers and that absent a concern for recovery of rate-case expenses there is little incentive for a utility to enter into meaningful and fair settlement discussions. The City of Houston supported the commission's efforts stating that the proposed rule provides somewhat of a level playing field and encourages meaningful settlement activities.

In their reply comments, OPUC reiterated that there is no statutory basis for water or sewer utilities to collect rate-case expenses within TWC Chapter 13, and therefore, for a water or sewer utility to recover any rate-case expenses, it must be included in a rule. OPUC reiterated its concern for removing the 51% threshold noting that a utility may have an incentive to overreach in their rate applications if it believes that the customer will ultimately bear all rate-case expenses. OPUC stated its support that there should be clearly set instances when rate-case expenses will be considered unreasonable, unnecessary, and against the public interest. OPUC continued to express their support for checks on the collection of rate-case expenses especially in light of the fact that in water cases, rate-case expenses can have a crushing effect on a water customer's bill because water utilities usually have a smaller pool of customers to spread the expense over. OPUC argued that without incentive on both sides of the meter, a utility could set unreasonable rates, and then when protested, incur rate-case expenses that dwarf the rate base itself and concluded that though imperfect, the 51% rule and the settlement offer rule serve an important check on rate-case expenses.

Commission response

The commission recognizes all of the comments provided regarding §24.33; however, the commission declines to modify this rule at this time. The commission determines that enhanced clarity and organization of chapter 24 was achieved by moving the rate-case expense provisions from the current §24.28 into a separate and distinct rule. The commission finds that the adopted rule is not substantively different than the previous rule provisions regarding rate-case expenses, with the exception of the addition of subsection (d). The commission adds subsection (d) to confirm the commission's practice to not include unamortized rate-case expenses as a component of invested capital for rate of return calculation purposes. In the future, the commission may decide to review the rate case expense rule provisions for water and sewer utilities; but, declines to make substantive modifications to the rule at this time.

Section 24.34 - Alternative Rate Methods

OPUC supported the deletion of the "single issue rate change" subsection as proposed and the Water IOUs opposed this modification.

The Water IOUs asked why subsection (b), related to single issue rate changes, is proposed for repeal. The Water IOUs stated that it seems like this subsection could be a useful tool for situations where a pass-through provision revision is requested if it is not included within the list of available minor tariff changes or where a miscellaneous fee change is requested, so that the expense of a full rate proceeding is not needed. In their reply comments, OPUC expressed its support of the commission's proposed repeal of subsection (b) and rationalized that single-issue rate changes are not specifically required by statute. In addition, OPUC noted that while they agree that rate-case expenses to customers should be limited where possible, they argued that this should be coupled with sufficient checks and balances to ensure that rate increases to customers are thoroughly reviewed and that ratepayers are protected. Therefore, OPUC concluded that methods of extraordinary rate relief should be properly reviewed and vetted by the commission and the application of such methods should be limited so as to provide the necessary protections to ratepayers.

Commission response

The commission adopts the repeal of the subsection relating to "single issue rate change." The commission finds that single-issue rate changes to reflect a change in "any one specific cost component" do not appear to be authorized by the TWC. However, the commission notes that TWC §13.188 provides statutory authority for specific pass-through adjustments for changes in energy costs, and such adjustments are addressed in §24.21(p). The commission finds it reasonable to ensure that any other rate increases to customers are thoroughly reviewed in a full rate proceeding. Accordingly, the commission repeals the provisions providing for a single issue rate change.

Section 24.36 - Application for a Rate Adjustment by a Class C Utility Pursuant to §13.1872

OPUC supported the commission's use of the U.S. Department of Commerce - Bureau of Economic Analysis Department's

(BEA) Gross Domestic Product Implicit Price Deflator (GDP Deflator) as the price index for Class C water and sewer utilities found in subsection (g). OPUC argued that the use of the GDP Deflator results in protecting both the utility and ratepayers from inflationary and deflationary pressures because it accounts for inflation by converting output measured at current prices into constant-dollar GDP; the GDP Deflator shows how much a change in the base year's GDP relies upon changes in the price level. OPUC further argued that the GDP Deflator reflects changes in consumption patterns or the introduction of new goods and services automatically and is the measure of choice when economists need precision in the analysis of inflation and related macroeconomic occurrences. OPUC expressed its support of the commission's use of the GDP Deflator as the price index, urging the commission to continue to adopt its use because it provides a more comprehensive measure of the price level and thus inflation making it a more accurate measure of the price level. The Water IOUs stated in their reply comments that they took no position on these issues.

Commission response

The commission modifies subsection (c) to remove a duplicative provision. The commission modifies §24.36(f) to clarify that the requirement to stagger applications filed pursuant to TWC 13.1872 is effective beginning January 1, 2016. The commission also modifies subsection (g) for greater clarity, and to confirm that the price index percentage difference established in the rule is for calendar year 2015 until the commission adopts its first order establishing a price index. The commission acknowledges OPUC's support for the use of the GDP Deflator as the price index for Class C water and sewer utilities. The commission agrees that the use of the GDP Deflator results in the protection of both the utility and ratepayers from inflationary and deflationary pressures.

Section 24.72 - Financial Records and Reports

TAWP argued that there is an inconsistency in the definitions of Class A, Class B, and Class C utilities between §24.3(12)-(14) and §24.72 because §24.72 uses annual revenue and not the number of "taps or connections." TAWP urged the commission to amend the rule to conform to the definitions found in §24.3(12)-(14) because the inconsistency could result in utilities being categorized into different classes for reporting purposes versus rate proceedings. The Water IOUs, in their reply comments noted that, in their opinion, this issue was resolved in the published version of the rule.

Commission response

The commission notes that it appears that TAWP filed their comments based upon the strawman publication in this project. The commission agrees with the Water IOUs that the issues raised by TAWP regarding §24.72 were addressed in the published version of this rule. Therefore, the commission declines to modify §24.72.

Section 24.73 - Water and Sewer Annual Reports

TAWP urged the commission to change the filing date for annual reports to May 1st, at the earliest, if filed tax return information is included. In the alternative, TAWP argued the requirement of including filing filed tax return information should be removed if the commission does not change the filing date for the annual reports. In their reply comments, the Water IOUs noted that the date was changed to May 15 in the published version of the rule.

Commission response

The commission agrees that the filing date for the annual report should be changed, and modifies subsection (a) to establish June 1 as the deadline to file annual reports. The commission further modifies subsection (a) to delete "unless otherwise specified in a form prescribed by the commission" because this language from the current rule is no longer necessary.

Section 24.93 - Adequacy of Water Utility Service

The Water IOUs proposed the following addition to the first paragraph: "Sufficiency of service shall not be determined based upon whether a retail public utility provides access to its public drinking water system by emergency service providers for fire protection." The Water IOUs argued that continuous and adequate service should be judged based on the supply of drinking water to consumers and not upon whether the system offers fire protection.

In their reply comments, OPUC stated that they did not support the proposed additions to §24.93 proposed by the Water IOUs regarding adequacy of utility service. OPUC argued that if a utility is required to provide fire flow service, then the adequacy of this service must also be included when considering the system. OPUC concluded that they could support this proposal if it was amended to include "Except where fire flow service is required of the retail public utility by rule or is provided by agreement with ratepayers," before the language proposed by the Water IOUs.

Commission response

The commission declines to adopt any suggested changes to §24.93 because no proposed changes to this rule were published. Though the commission appreciates the concerns and comments expressed by the parties, the commission declines to modify §24.93 as it not a rule that is open for consideration at this time. The commission may consider amending §24.93 in a separate rulemaking project in which the commission can fully consider all issues and parties have the opportunity to comment on proposed rule changes.

Section 24.106 - Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications

TAMER expressed their concern that the notice provisions for sale, transfers, and mergers need to be clarified because both the to-be-subsumed/transferred and the subsuming/transferred utilities ratepayers should be given notice of an impending CCN transfer or merger because the ratepayers of both entities have an interest in the rate impacts. TAMER argued that §24.106 and §24.109 do not ensure the necessary level of notice.

In their reply comments, the Water IOUs noted that TAMER did not offer a specific modification to either §24.106 or §24.109 and therefore argued that no change should be made. The Water IOUs further stated that the type of notice TAMER is requesting is unreasonable and would call for a great deal of speculation. The Water IOUs pointed out that under the current practice rates will not change in the near-term as a result of an acquisition or CCN amendment because a rate application has historically been required for this; rate filings still provide the primary context for a rate discussion and a rate notice will outline very specifically what the rate differences will be. The Water IOUs further argued that the specific rate impact years after a CCN or STM filing will be the result of a variety of factors, many of which cannot be known at the time of filing. The Water IOUs concluded by stating that absent a procedural change, utilities will not have the ability to include the requested information, but instead can only include the fact that rates will change if authorized.

Commission response

The commission declines to modify §24.106 because no proposed changes to this rule were published for public comment. The commission may consider amending §24.106 in a separate rulemaking project in which the commission can fully consider all issues and parties are provided the opportunity to comment on proposed rule changes.

Section 24.109 - Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction

TAMER argued that §24.109 does not consider the possibility that though there may be situations in which all ratepayers are positively served by a sale, transfer, or merger event, this is not always the case and there are some instances where there are clear "winners" and "losers." TAMER urged the commission that in these situations, the public interest must be balanced which is not currently provided for in §24.109. TAMER urged the commission to modify this substantive rule in order to provide for the appropriate balance.

Commission response

The commission declines to make any modifications to §24.109 because the amendments to this section are solely to update the reference on financial assurance to ensure all stakeholders and the regulated community are aware that the financial assurance rule applies to this section. The commission finds that any other modifications to this section may be appropriate in a separate rulemaking project in which the commission can fully consider all issues contemplated in this rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.3, 24.8, 24.11, 24.14

These new and amended sections are adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.3. Definitions of Terms.

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

(1) Acquisition adjustment--

(A) The difference between:

(i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property; and

(ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.

(B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.

(C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.

(2) Active connections--Water or sewer connections currently being used to provide retail water or sewer service, or wholesale service.

(3) ADFIT--Accumulated deferred federal income tax--The amount of income tax deferral, typically reflected on the balance sheet, produced by deferring the payment of federal income taxes by using tax advantageous methods such as accelerated depreciation.

(4) Affected county--A county to which Local Government Code, Chapter 232, Subchapter B, applies.

(5) Affected person--Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(6) Affiliated interest or affiliate--

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(7) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Department of Insurance Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.

(8) Allocations--For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas. A non-municipal allocation is the division of plant, revenues, expenses, taxes and reserves between affiliates, jurisdictions, rate regions, business units, functions, or customer classes defined within a retail public utility's operations for all retail public utilities and affiliates.

(9) Amortization--The gradual extinguishment of an amount in an account by distributing the amount over a fixed period (such as over the life of the asset or liability to which it applies).

(10) Annualization--An adjustment to bring a utility's accounts to a 12 month level of activity

(11) Base rate--The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, which does not vary due to changes in utility service consumption patterns.

(12) Billing period--The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(13) Block rates--A rate structure set by using blocks, typically inclining cost for increased usage, which changes the cost per 1,000 gallons as usage increases to the next block.

(14) Certificate--The definition of certificate is that definition given to certificate of convenience and necessity in this subchapter.

(15) Certificate of Convenience and Necessity (CCN)--A permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

(16) Certificate of Public Convenience and Necessity--The definition of certificate of public convenience and necessity is that definition given to certificate of convenience and necessity in this subchapter.

(17) Class A Utility--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(18) Class B Utility--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(19) Class C Utility--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. A Class C utility filing an application pursuant to TWC §13.1871 shall be subject to all requirements applicable to Class B utilities filing an application pursuant to TWC §13.1871. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(20) Code--The Texas Water Code (TWC).

(21) Commission--The Public Utility Commission of Texas or a presiding officer, as applicable.

(22) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the TWC.

(23) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(24) Customer class--A description of utility service provided to a customer that denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(25) Customer service line or pipe--The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

(26) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(27) Financial assurance--The demonstration that sufficient or adequate financial resources exist to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.

(28) Functional cost category--Costs related to a particular operational function of a utility for which annual operations & maintenance expenses and utility plant investment records are maintained.

(29) Functionalization--The assignment or allocation of costs to utility functional cost categories.

(30) General rate revenue--A rate or the associated revenues designed to recover the cost of service other than certain costs separately identified and recovered through a pass-through or any specific rate such as a surcharge. For water and wastewater utilities, generally rates typically include the base rate and gallonage rate.

(31) Inactive connections--Water or wastewater connections tapped to the applicant's utility and that are not currently receiving service from the utility.

(32) Incident of tenancy--Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(33) Known and measurable (K&M)--Verifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year.

(34) Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(35) License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(36) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, with-

drawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the TWC.

(37) Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(38) Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(39) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(40) Membership fee--A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of TWC §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(41) Multi-jurisdictional--A utility that provides water and/or wastewater service in more than one state, country, or separate rate jurisdiction by its own operations, or through an affiliate.

(42) Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(43) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(44) Net Book Value--The amount of the asset that has not yet been recovered through depreciation. It is the original cost of the asset minus accumulated depreciation.

(45) Nonfunctioning system or utility--A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN or a retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §24.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(46) Person--Any natural person, partnership, cooperative, corporation, association, or public or private organization of any character other than an agency or municipality.

(47) Point of use or point of ultimate use--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

(48) Potable water--Water that is used for or intended to be used for human consumption or household use.

(49) Potential connections--Total number of active plus inactive connections.

(50) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(51) Public utility--The definition of public utility is that definition given to water and sewer utility in this subchapter.

(52) Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(53) Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(54) Rate--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(55) Ratepayer--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(56) Rate region--An area within Texas for which the applicant has set or proposed uniform tariffed rates by customer class.

(57) Reconnect fee--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §24.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request

(58) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(59) Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(60) Return on invested capital--The rate of return times invested capital.

(61) Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in TWC §15.602.

(62) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(63) Service line or pipe--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(64) Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(65) Stand-by fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(66) Tap fee--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(67) Tariff--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(68) TCEQ--Texas Commission on Environmental Quality.

(69) Temporary water rate provision for mandatory water use reduction--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(70) Temporary rate for services provided for a nonfunctioning system--A temporary rate for a retail public utility that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider.

(71) Test year--The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(72) Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.

(73) Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(74) Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

(75) Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(76) Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§24.8. Administrative Completeness.

(a) An application to change rates, including a minor rate change, applications for sale, acquisition, lease, rental, merger, or consolidation, assignment of facilities or certificates; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility and applications for certificates of convenience and necessity shall be reviewed for administrative completeness within thirty calendar days of receipt of the application. If notice is required, upon determination that the notice or application is administratively complete, the applicant shall be notified of that determination.

(b) If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.

(c) In cases involving a proposed sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

(d) A report of sale, acquisition, lease, rental, merger, or consolidation; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility; and applications for certificates of convenience and

necessity are not considered filed until the commission makes a determination of administrative completeness.

§24.11. Financial Assurance.

(a) Purpose. This section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.

(b) Application. This section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance pursuant to this chapter.

(c) Financial assurance must be demonstrated by compliance with subsection (d) or (e) of this section, unless the commission requires compliance with both subsections (d) and (e) of this section.

(d) Irrevocable stand-by letter of credit. Irrevocable stand-by letters of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The retail public utility must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than five years, payable to the commission, and permit a draw to be made in part or in full. The irrevocable stand-by letter of credit must permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit if the retail public utility has failed to provide continuous and adequate service or the retail public utility cannot demonstrate its ability to provide continuous and adequate service.

(e) Financial test.

(1) An owner or operator may demonstrate financial assurance by satisfying a financial test including the leverage and operations tests that conform to the requirements of this section, unless the commission finds good cause exists to require only one of these tests.

(2) Leverage test.
To satisfy this test, the owner or operator must meet one or more of the following criteria:

(A) The owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets;

(B) The owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments;

(C) The owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Restricted cash includes monetary resources that are committed as a debt service reserve which will not be used for operations, maintenance or other payables;

(D) The owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc.; or

(E) The owner or operator must demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must be found to satisfy the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph.

(3) Operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

(4) To demonstrate that the requirements of the leverage and operations tests are being met, the owner or operator shall submit the following items to the commission:

(A) An affidavit signed by the owner or operator attesting to the accuracy of the information provided. The owner or operator may use the affidavit included with an application filed pursuant to §24.105 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) pursuant to the commission's form for the purpose of meeting the requirements of this subparagraph; and

(B) A copy of one of the following:

(i) the owner or operator's independently audited year-end financial statements for the most recent fiscal year including the "unqualified opinion" of the auditor; or

(ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); or

(iii) internally produced financial statements meeting the following requirements:

(I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; or

(II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility shall provide all documents supporting projected lot sales or customer growth.

(C) In lieu of meeting the leverage and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.

(5) If the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of $100,000, the applicant must provide the following:

(A) The owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger; or

(B) The owner must submit loan approval documents or firm capital commitments affirming funds are available to install plant and equipment necessary to serve projected customers in the first two years of projections or a new water system or substantial addition to a currently operating water system if the application includes added CCN area with the intention of serving a new area or subdivision.

(6) If the applicant is a nonfunctioning utility, as defined in §24.3(45) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder has the capability of meeting the leverage and operations tests.

§24.14. Emergency Orders.

(a) The commission may issue emergency orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; and/or

(3) to establish reasonable compensation for the temporary service required under paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(b) The commission may also issue orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities):

(1) to appoint a temporary manager under TWC §5.507 and §13.4132; and/or

(2) to approve an emergency rate increase under TWC §5.508 and §13.4133 in certain circumstances:

(A) for which a temporary manager has been appointed under TWC §13.4132; or

(B) for which a receiver has been appointed under TWC §13.412; and

(C) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(c) If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

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 24, 2015.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: March 20, 2015
For further information, please call: (512) 936-7223

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16 TAC §24.11

This repeal is adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §§24.21 - 24.23, 24.26, 24.28, 24.31 - 24.34, 24.36

These new and amended sections are adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.21. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under TWC §13.187 or §13.1871 on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the commission sets interim rates. The regulatory assessment required in TWC §5.235(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for wastewater services on behalf of another retail public utility on the same bill

with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement. A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for certificates of convenience and necessity.

(A) Every public utility shall file its tariff with the commission containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. The tariff must be on the form the commission prescribes or another form acceptable to the commission.

(B) Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

(2) Minor tariff changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county may change rates for water or wastewater service without commission approval but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission may approve the following minor changes to tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(iii) implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(iv) surcharges over a time period determined to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or as appropriate, other governmental requirements beyond the utility's control;

(v) addition of the regulatory assessment as a separate item or to be included in the currently authorized rate;

(vi) addition of a provision allowing a utility to collect wastewater charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs;

(viii) addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons; or

(ix) implementation of an energy cost adjustment clause.

(B) The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) Tariff revisions and tariffs filed with rate changes.

(A) The utility shall file its revision with the commission. Each revision must be accompanied by a cover page that contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Symbols for changes. Each proposed tariff sheet accompanying an application filed pursuant to TWC §13.187 or §13.1871 shall contain notations in the right-hand margin indicating each change made on the sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page, which clearly shows the exact number of lines being changed.

(4) Rate schedule. Each rate schedule must clearly state the territory, subdivision, city, or county in which the schedule is applicable.

(5) Tariff sheets. Tariff sheets must be numbered consecutively. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) a table of contents;

(2) a list of the cities and counties, and subdivisions or systems, in which service is provided;

(3) the certificate of convenience and necessity number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms required to be completed under 30 TAC §290.46(j) (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the form used deviates from that specified in 30 TAC §290.47(d) (relating to Appendices);

(6) the extension policy;

(7) an approved drought contingency plan as required by 30 TAC §288.20 (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers); and

(8) the form of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's model tariff or any modifications of a rule in the model tariff must be clearly noted. All tariff sheets must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariffs must comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and must include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission a copy of its current tariff that has been authorized by the municipality.

(h) Purchased water or sewage treatment provision.

(1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated and affects customer billings.

(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.

(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The review of a proposed revision is an informal proceeding. Only the commission staff, or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.

(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(A) submit a written notice to the commission; and

(B) e-mail (if the customer has agreed to receive communications electronically) or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (purchased sewer) (water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased) (water) (sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee) (purchased) (water) (sewage treatment)."

(5) Notice to the commission must include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(i) Effective date. The effective date of a tariff change is the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under TWC §13.187 or §13.1871 is the proposed date on the notice to customers and the commission, unless suspended by the commission.

(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, three complete copies of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the certificate of convenience and necessity number and in which counties or cities it is effective.

(k) Surcharge.

(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(2) If specifically authorized for the utility in writing by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(A) sampling fees not already included in rates;

(B) inspection fees not already included in rates;

(C) production fees or connection fees not already included in rates charged by a groundwater conservation district; or

(D) other governmental requirements beyond the control of the utility.

(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the notice or application submitted by the utility to the commission. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of commission.

(l) Temporary water rate provision for mandatory water use reduction.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover from customers' revenues that the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate

is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to account for the supplemental water supply and to limit over recovery of revenues from customers. A temporary water rate provision may not be implemented by a utility if there exists an available, unrestricted, alternative water supply that the utility can use to immediately replace, without additional cost, the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.

(2) The temporary water rate provision must be approved by the commission in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions through a limited rate proceeding. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is:
Figure: 16 TAC §24.21(l)(3) (No change.)

(A) The utility shall file a temporary water rate provision for mandatory water use reduction application and provide customer notice as required by the commission, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the customer class(es) affected, the rates affected, information on how to protest the rate change, the address of the commission, the time frame for protests, and any other information that is required by the commission in the temporary water rate application. The utility's existing rates are not subject to review in the proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.23 of this title (relating to Time Between Filings).

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the commission to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the commission in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate into effect only after:

(A) the temporary water provision has been approved by the commission and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its rates using the temporary water rate provision for mandatory water use reduction as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. Only the commission or the utility may request a hearing on the proposed implementation.

(7) A utility that wishes to place a temporary water rate for mandatory water use reduction into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate for mandatory water use reduction takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the commission; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility shall stop charging a temporary water rate as soon as is practical after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate ends and that its rates will return to the level authorized before the temporary water rate was implemented.

(9) If the commission initiates an inquiry into the appropriateness or the continuation of a temporary water rate, it may establish the effective date of its decision on or after the date the inquiry is filed.

(m) Multiple system consolidation. Except as otherwise provided in subsection (o) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(n) Regional rates. The commission, where practicable, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 with a consolidated tariff and rate design for more than one system.

(o) Exemption. Subsection (m) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(p) Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file an application with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, e-mail or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the dates of such delivery shall be filed with the commission by the applicant utility as part of the application. Notice must be provided on the notice form included in the commission's application package and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the application form.

(3) The commission's review of the utility's application is an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested public meeting on the application if requested by a member of the legislature who represents the area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass through, whether an increase or decrease, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly complete the application or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case pursuant to TWC §13.187, §13.1871, or §13.1872.

§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.

(a) Purpose. This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice pursuant to TWC §13.187 or §13.1871.

(b) Contents of the application. An application to change rates pursuant to TWC §13.187 or §13.1871 is initiated by the filing of a rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities pursuant to subsection (c) of this section.

(1) The application shall include the commission's rate filing package form and include all required schedules.

(2) The application shall be based on a test year as defined in §24.3(71) of this title (relating to Definitions of Terms).

(3) For an application filed pursuant to TWC §13.187, the rate filing package, including each schedule, shall be supported by pre-filed direct testimony. The pre-filed direct testimony shall be filed at the same time as the application to change rates.

(4) For an application filed pursuant to TWC §13.1871, the rate filing package, including each schedule, shall be supported by affidavit. The affidavit shall be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

(5) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the date(s) of such delivery shall be filed with the commission by the applicant utility as part of the rate change application.

(c) Notice requirements specific to applications filed pursuant to TWC §13.187.

(1) Notice of the application. In order to change rates pursuant to TWC §13.187, a utility must comply with the following re-

quirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may intervene in the proceeding.

(C) This notice shall state the docket number assigned to the rate application. Prior to the provision of notice, the utility shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed if the customer has agreed to receive communications electronically, or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement.

(d) Notice requirements specific to applications filed pursuant to TWC §13.1871.

(1) Notice of the application. In order to change rates pursuant to TWC §13.1871, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change and to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may file a protest pursuant to TWC §13.1871(i).

(C) For Class B utilities, the notice shall state the docket number assigned to the rate application. Prior to providing notice, Class B utilities shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed if the customer has agreed to receive communications electronically, or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the following notice requirements shall apply.

(A) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement.

(B) The utility shall mail notice of the hearing to each affected ratepayer at least 20 days before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the proceeding.

(e) Line extension and construction policies. A request to approve or amend a utility's line extension and construction policy shall be filed in a rate change application under TWC §13.187 or §13.1871. The application filed under TWC §13.187 or §13.1871 must include the proposed tariff and other information requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

(f) Capital improvements surcharge. In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from the customers pursuant to a surcharge to provide funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.

(g) Debt repayments surcharge. In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from customers pursuant to a surcharge to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.

§24.23. Time Between Filings.

(a) Application. The following provisions are applicable to utilities, including those with consolidated or regional tariffs, under common control or ownership with any utility that has filed a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871.

(b) A utility or two or more utilities under common control and ownership may not file a statement of intent to increase rates pursuant to TWC §13.187 or §13.1871 more than once in a 12-month period except:

(1) to implement an approved purchase water pass through provision;

(2) to adjust the rates of a newly acquired utility system;

(3) to comply with a commission order;

(4) to adjust rates authorized by §24.21(b)(2) of this title (relating to Form and Filing of Tariffs);

(5) when the regulatory authority requires the utility to deliver a corrected statement of intent; or

(6) when the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

(A) cover reasonable and necessary operating expenses;

(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements specific to utility operations; or

(C) support a determination that the utility is able to provide continuous and adequate service to its existing service area.

(c) A Class C utility under common control or ownership with a utility that has filed an application to change rates pursuant to TWC §13.187 or §13.1871 within the preceding 12 months may not file an

application to change rates pursuant to TWC §13.187 or §13.1871 unless it is filed pursuant to an exception listed in subsection (b) of this section.

§24.26. Suspension of the Effective Date of Rates.

(a) Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (b) of this section, after written notice to the utility, the commission may suspend the effective date of a rate change for not more than:

(1) 150 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.187; or

(2) 265 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC §13.1871.

(b) Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (a) of this section, the commission may suspend the effective date of a change in rates requested pursuant to TWC §13.187 or §13.1871 if the utility:

(1) has failed to properly complete the rate application as required by §24.22 of this title (relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871), has failed to comply with the notice requirements and proof of notice requirements, or has for any other reason filed a request to change rates that is not deemed administratively complete until a properly completed request to change rates is accepted by the commission;

(2) does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission; or

(3) is delinquent in paying the regulatory assessment fee and any applicable penalties or interest required by TWC §5.701(n) until the delinquency is remedied.

(c) If the commission suspends the effective date of a requested change in rates pursuant to subsection (b) of this section, the requirement under §24.28(b)(1) of this title (relating to Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871) to begin a hearing within 30 days of the effective date does not apply and the utility may not notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(d) A suspension ordered pursuant to subsection (a) of this section shall be extended two days for each day a hearing on the merits exceeds 15 days.

(e) If the commission does not make a final determination on the proposed rate before the expiration of the suspension period described by subsections (a) and (d) of this section, the proposed rate shall be considered approved. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

(f) The effective date of any rate change may be suspended at any time during the pendency of a proceeding, including after the date on which the proposed rates are otherwise effective.

(g) For good cause shown, the commission may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate.

§24.28. Processing and Hearing Requirements for an Application Filed Pursuant to Texas Water Code §13.187 or §13.1871.

(a) Purpose. This section describes requirements for the processing of applications to change rates filed pursuant to TWC §13.187 or §13.1871.

(b) Proceedings pursuant to TWC §13.187. The following criteria apply to applications to change rates filed by Class A utilities pursuant to TWC §13.187.

(1) Not later than the 30th day after the effective date of the change, the commission shall begin a hearing to determine the propriety of the change.

(2) The matter may be referred to the State Office of Administrative Hearings and the referral shall be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(3) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing required by paragraph (1) of this section.

(c) Proceedings pursuant to TWC §13.1871. The following criteria apply to applications to change rates filed by a Class B utility or a Class C utility pursuant to TWC §13.1871.

(1) The commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(2) The commission shall set the matter for a hearing if it receives a complaint from any affected municipality or protests from the lesser of 1,000 or 10 percent of the affected ratepayers of the utility over whose rates the commission has original jurisdiction, during the first 90 days after the effective date of the proposed rate change.

(A) Ratepayers may file individual protests or joint protests. Each protest must contain the following information:

(i) a clear and concise statement that the ratepayer is protesting a specific rate action of the water or sewer service utility in question; and

(ii) the name and service address or other identifying information of each signatory ratepayer. The protest shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer.

(B) For the purposes of this subsection, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The protest is properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(3) Referral to SOAH at any time during the pendency of the proceeding is deemed to be setting the matter for hearing as required by paragraphs (1) and (2) of this subsection.

(4) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference shall be deemed to be the beginning of the hearing required by paragraph (2) of this section.

(d) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of the law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(e) The utility may begin charging the proposed rates on the proposed effective date, unless the proposed rate change is suspended by the commission pursuant to §24.26 of this title (relating to Suspen-

sion of the Effective Date of Rates) or interim rates are set by the presiding officer pursuant to §24.29 of this title (relating to Interim Rates). Rates charged under a proposed rate during the pendency of a proceeding are subject to refund to the extent the commission ultimately approves rates that are lower than the proposed rates.

§24.31. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's test year expenses as adjusted for known and measurable changes may be considered. A change in rates must be based on a test year as defined in §24.3(71) of this title (relating to Definitions of Terms).

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in TWC §13.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service. On all applications, the depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The depreciation rate and expense must be calculated on a straight line basis over the expected or remaining life of the asset. Utilities must calculate depreciation on a straight line basis, but are not required to use the remaining life method if salvage value is zero. When submitting an application that includes salvage value in depreciation calculations, the utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. Such evidence will be included for the asset group in deprecation studies for those utilities practicing group accounting while such evidence will relate to specific assets for those utilities practicing itemized accounting;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes must be computed according to the provisions of TWC §13.185(f), if applicable);

(E) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership; and

(F) advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the water or wastewater utility for services rendered to the public. The following expenses are the only expenses that shall be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving water;

(ii) funds expended advertising methods by which the consumer can effect a savings in total water or wastewater utility bills; and

(iii) funds expended advertising water quality protection.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;

(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(A) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(B) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) Original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service;

(B) Original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility; and

(i) For original cost under subparagraph (A) of this paragraph or this subparagraph, cost of plant and equipment allowed in the cost of service that has been estimated by trending studies or other means, which has no historical records for verification purposes, may receive an adjustment to rate base and/or an adjustment to the rate of return on equity.

(ii) Original cost under subparagraph (A) of this paragraph or this subparagraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system. On all assets retired from service after June 19, 2009, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation(s) in its net plant calculation(s) in the first full rate change application (excluding alternative rate method applications as described in §24.34 of this title (relating to Alternative Rate Methods)) it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset shall be combined with over accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount shall be amortized over a reasonable period of time taking into account prudent regulatory principles. The following list shall govern the manner by which depreciation will be accounted for.

(I) Accelerated depreciation is not allowed.

(II) For those utilities that elect a group accounting approach, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

(-a-) investment by homogenous category;

(-b-) expected level of gross salvage by category;

(-c-) expected cost of removal by category;

(-d-) the accumulated provision for depreciation as appropriately reflected on the company's books by category;

(-e-) the average service life by category;

(-f-) the remaining life by category;

(-g-) the Iowa Dispersion Pattern by category; and

(-h-) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(iii) Reserve for depreciation under subparagraph (A) of this paragraph or this subparagraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. If individual accounting is used, a utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation shall include any additional depreciation expense accrued past the estimated useful or remaining life of the asset. If salvage value is zero, depreciation must be computed on a straight line basis over the expected useful life or remaining life of the item or facility. If salvage value is not zero, depreciation must also be computed on a straight line basis over the expected useful life or the remaining life. For an asset removed from service after June 19, 2009, accumulated depreciation will be calculated on book cost less net salvage of the asset. The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered. Return may be allowed for assets removed from service after June 19, 2009, that result in an increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially prudent, unavoidable, necessary because of technological obsolescence, or otherwise reasonable. The utility must also provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered, the useful life of the asset (or remaining life as may be appropriate), the date the asset was taken out of service, and the accumulated depreciation up to the date it was taken out of service. Additionally, the utility must show that it used due diligence in recovering maximum salvage value of a retired asset. The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets only apply to those utilities using itemized accounting. For those utilities practicing group accounting, the depreciation study will provide similar information by category. TWC §13.185(e) relating to dealings with affiliated interests, will apply to business dealings with any entity involved in the retirement, removal, or recovery of assets. Assets retired subsequent to June 19, 2009, will be included in a utility's application for a rate change if the application is the first application for a rate change filed by the utility after the date the asset was retired and specifically identified if the utility uses itemized accounting. Retired assets will be reported for the asset group in depreciation studies for those utilities practicing group accounting, while retired assets will be specifically identified for those utilities practicing itemized accounting;

(iv) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC §13.185(e);

(v) utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and

(C) Working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service. This amount excludes inventories found by the commission to be unreasonable, excessive, or not in the public interest;

(ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests are subject to the standards set forth in TWC §13.185(e); and

(iii) a reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for water and wastewater utilities shall in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) For Class C utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or through charges other than base rate and gallonage charges, prepayments will be considered a reasonable allowance for cash working capital.

(III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long-term debt and dividends on preferred stock), will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the water or wastewater utility.

(-d-) All funds received by the water or wastewater utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the water or wastewater utility (e.g., lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For water and wastewater utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all noninterest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the midpoint of the annual service period and the actual payment date of the water or wastewater utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under subclause (VI) of this clause and either the water or wastewater utility does not file a lead-lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, zero will be presumed to be the reasonable level of cash working capital.

(VI) A lead lag study completed within five years of the application for rate/tariff change shall be deemed adequate for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

(VII) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(3) Deduction of certain items from rate base, which include, but are not limited to, the following. Unless otherwise determined by the commission, for good cause shown, the following items will be deducted from the overall rate base in the consideration of applications filed pursuant to TWC §13.187 or §13.1871:

(A) accumulated reserve for deferred federal income taxes;

(B) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(C) contingency and/or property insurance reserves;

(D) contributions in aid of construction; and

(E) other sources of cost-free capital, as determined by the commission.

(4) Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of relief. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

(A) the inclusion is necessary to the financial integrity of the utility; and

(B) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.

(5) Requirements for post-test year adjustments.

(A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:

(i) the addition represents plant which would appropriately be recorded for investor-owned water or wastewater utilities in NARUC account 101 or 102;

(ii) the addition comprises at least 10% of the water or wastewater utility's requested rate base, exclusive of post-test year adjustments and CWIP;

(iii) the addition is in service before the rate year begins; and

(iv) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility or the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

(I) plant which was appropriately recorded in the accounts set forth in subparagraph (A) of this paragraph;

(II) plant held for future use;

(III) CWIP (mirror CWIP is not considered CWIP); or

(IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents plant that has been removed from service, sold, or removed from the water or wastewater utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) Recovery of positive acquisition adjustments.

(1) For utility plant, property, and equipment acquired by a utility from another retail public utility as a sale, merger, etc. of utility service area for which an application for approval of sale has been filed with the commission on or after September 1, 1997, and that sale application closed thereafter, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

(A) the property is used and useful in providing water or sewer service at the time of the acquisition or as a result of the acquisition;

(B) reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;

(C) as a result of the sale, merger, etc.:

(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service) was achieved; or

(iii) the acquiring system will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) any and all transactions between the buyer and the seller entered into as a part or condition of the sale are fully disclosed to the commission and were conducted at arm's length;

(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired;

(F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997 and February 4, 1999 is exempt from the requirement for commission notification at the time of the approval of the initial sale, but must provide such notification by April 5, 1999; and

(G) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

(2) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.

(4) The acquisition adjustment can only be included in rates as a part of a rate change application.

(e) Negative acquisition adjustment. When a retail public utility acquires plant, property, or equipment pursuant to §24.109 of this chapter (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and the original cost of the acquired property less depreciation exceeds the actual purchase price, the utility shall record the negative acquisition adjustment separately from the original cost of the acquired property. For purposes of ratemaking, the following shall apply:

(1) If a utility acquires plant, property, or equipment from a nonfunctioning retail public utility through a sale, transfer, or merger, receivership, or the utility is acting as a temporary manager, a negative acquisition adjustment shall be recorded and amortized on the utility's books with no effect on the utility's rates.

(2) If a utility acquires plant, property, or equipment from a retail public utility through a sale, transfer, or merger and paragraph (1) of this subsection does not apply, the commission may, at its sole discretion, recognize the negative acquisition adjustment in the ratemaking proceeding, by amortizing the negative acquisition adjustment through

a bill credit for a defined period of time or by other means determined appropriate by the commission. Except for good cause found by the commission, the negative acquisition adjustment shall not be used to reduce the balance of invested capital.

(3) Notwithstanding paragraph (2) of this subsection, the acquiring utility may show cause as to why the commission should not account for the negative acquisition adjustment in the ratemaking proceeding.

(f) Intangible assets shall not be allowed in rate base unless:

(1) The amount requested has been verified by documentation as to amount and exact nature;

(2) Testimony has been submitted as to reasonableness and necessity and benefit of the expense to the customers; and

(3) The testimony must further show how the amount is properly considered as part of an actual asset purchased or installed, or a source of supply, such as water rights.

(4) If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount shall be amortized over a reasonable period and the amortization shall be allowed in the cost of service. The amount shall be considered a non-recurring expense. Unamortized amounts shall not be included in rate base for purposes of calculating return on equity.

§24.32. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses (unless an alternative rate method is used as set forth in §24.34 of this title (relating to Alternative Rate Methods), and preserve the financial integrity of the utility.

(b) Conservation.

(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage within any customer class.

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the TCEQ's minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A) to reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's approved drought contingency plan required by 30 TAC §288.20 (TCEQ rules relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers) included in its tariff in order to:

(i) comply with mandatory reductions directed by a wholesale supplier or underground water district; or

(ii) conserve water supplies, maintain acceptable pressure or storage, or other reasons identified in its approved drought contingency plan;

(B) to generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production, or distribution capacity.

(3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:

(A) must be accounted for separately and reported to the commission, as requested; and

(B) are considered customer contributed capital unless otherwise specified in a commission order.

(c) Volume charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

§24.33. Rate-case Expenses Pursuant to Texas Water Code §13.187 and §13.1871.

(a) A utility may recover rate-case expenses, including attorney fees, incurred as a result of filing a rate-change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are just, reasonable, necessary, and in the public interest.

(b) A utility may not recover any rate-case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.

(c) A utility may not recover any rate-case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

(d) Unamortized rate-case expenses may not be a component of invested capital for calculation of rate-of-return purposes.

§24.34. Alternative Rate Methods.

(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The commission may prescribe modified rate filing packages for these alternate methods of establishing rates.

(b) Phased and multi-step rate changes. In a rate proceeding under TWC §13.187 or §13.1871, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.

(1) A utility may request to use the phased or multi-step rate method:

(A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with TCEQ or commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;

(B) to provide additional construction funds after major milestones are met;

(C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;

(D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;

(E) to phase in increased rates when a utility has been acquired by another utility with higher rates;

(F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or

(G) when requested by the utility.

(2) Construction schedules and cost estimates for new facilities that are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.

(3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.

(4) At the time each rate step is implemented, the utility shall review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the commission prior to implementing the next phase or step. Unless otherwise specified in a commission order, the utility may:

(A) refund or credit the overage to the customers in a lump sum; or

(B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.

(5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the commission 30 days prior to the implementation of each step.

(6) A utility that requests and receives a phased or multi-step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:

(A) the utility can prove financial hardship; or

(B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.

(c) Cash needs method. The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.

(1) A utility may request to use the cash needs method of setting rates if:

(A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or

(B) the utility can demonstrate that use of the cash needs basis:

(i) is necessary to preserve the financial integrity of the utility;

(ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and

(iii) will result in higher quality and more reliable utility service for customers.

(2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements, and extensions that are not debt-financed; and a reasonable cash reserve account.

(A) Allowable operating and maintenance expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.

(B) Depreciation expense. Depreciation expense may be included on any used and useful depreciable plant, property, or equipment that was paid for by the utility and that has a positive net book value on the effective date of the rate change in the same manner as described in §24.31(b)(1)(B) of this title (relating to Cost of Service).

(C) Debt service costs. Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:

(i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed; and

(ii) prospective loans to be executed after the new rates are effective. Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

(D) Recurring capital improvements, replacements, and extensions that are not debt-financed. Capital assets, repairs, or extensions that are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses that are specifically debt-financed.

(E) Cash reserve account. A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the commission. The utility shall account for these funds separately and report to the commission. Unless the utility requests an exception in writing and the exception is explicitly allowed by the commission in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that explains the method used to calculate the amounts to be refunded. Each customer must receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the commission.

(3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)(E) of this subsection and are subject to the same restrictions.

(4) If the utility demonstrates to the commission that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the commission may allow the utility to retain 50% of the savings that result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.

(5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover through rates, the depreciation expense for capital assets that were not paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.

§24.36. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.

(a) Purpose. This section establishes procedures for a Class C utility to apply for an adjustment to its water or wastewater rates pursuant to TWC §13.1872.

(b) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) Application--An application for a rate adjustment filed pursuant to this section and TWC §13.1872.

(2) Price index--a price index established annually by the commission for the purposes of this section.

(c) Requirements for filing of the application. Subject to the limitations set out in subsection (f) of this section, a Class C utility may file an application with the commission.

(1) The utility may request to increase its tariffed monthly fixed customer or meter charges and monthly gallonage charges by the lesser of:

(A) five percent; or

(B) the percentage increase in the price index between the year preceding the year in which the utility requests the adjustment and the year in which the utility requests the adjustment.

(2) The application shall be on the commission's form and shall include:

(A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and

(B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.

(d) Processing of the application. The following criteria apply to the processing of an application.

(1) Determining whether the application is administratively complete.

(A) If commission staff requires additional information in order to process the application, commission staff shall file a notification to the utility within 10 days of the filing of the application requesting any necessary information.

(B) An application may not be deemed administratively complete pursuant to §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under subparagraph (A) of this paragraph.

(2) Within 30 days of the filing of the application, Staff shall file a recommendation stating whether the application should be deemed administratively complete pursuant to §24.8 of this title. If Staff recommends that the application should be deemed to be administratively complete, Staff shall also file a recommendation on final disposition, including, if necessary, proposed tariff sheets reflecting the requested rate change.

(e) Notice of Approved Rates. After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility shall send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:

(1) a statement that the utility requested a rate adjustment based on the commission's approved price index and must state the percentage change in the price index during the previous year;

(2) the existing rate;

(3) the approved rate; and

(4) a statement that the rate adjustment was requested pursuant to TWC §13.1872 and that a hearing will not be held for the request.

(f) Time between filings. The following criteria apply to the timing of the filing of an application.

(1) A Class C utility may adjust its rates pursuant to this section not more than once each calendar year and not more than four times between rate proceedings described by TWC §13.1781.

(2) Effective January 1, 2016, the filing of applications pursuant to this section is limited to a specific month based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below unless good cause is shown for filing in a different month. For a utility holding multiple CCNs, the utility may file an application in any month for which any of its CCN numbers is eligible.

(A) January: CCNs ending in 00 through 09;

(B) February: CCNs ending in 10 through 18;

(C) March: CCNs ending in 19 through 27;

(D) April: CCNs ending in 28 through 36;

(E) May: CCNs ending in 37 through 45.

(F) June: CCNs ending in 46 through 54;

(G) July: CCNs ending in 55 through 63;

(H) August: CCNs ending in 64 through 72;

(I) September: CCNs ending in 73 through 81;

(J) October: CCNs ending in 82 through 90; and

(K) November: CCNs ending in 91 through 99.

(g) Establishing the price index. The commission shall, on or before December 1 of each year, establish a price index as required by TWC §13.1872(b) based on the following criteria. The price index will be established in an informal project to be initiated by commission staff.

(1) The price index shall be equal to Gross Domestic Product Implicit Price Deflator index published by the Bureau of Economic Analysis of the United States Department of Commerce for the prior 12 months ending on September 30 unless the commission finds that good cause exists to establish a different price index for that year.

(2) For calendar year 2015, until the commission adopts its first order establishing a price index pursuant to this subsection, applications for an annual rate adjustment will use a price index percentage difference of 1.57%. The percentage difference of 1.57% is calculated using indices set in paragraph (3) of this subsection.

(3) For the purpose of implementing this section, the initial indices are equal to:

(A) 106.923 for 2014; and

(B) 108.603 for 2015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §§24.22, 24.25 - 24.28

These repeals are adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

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SUBCHAPTER C. RATE-MAKING APPEALS

16 TAC §24.41, §24.44

These amendments are adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.41. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving copies on all parties to the original rate proceeding.

(b) An appeal under TWC §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) in an appeal under the TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;

(2) in an appeal under the TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;

(3) establish the effective date;

(4) order refunds or allow surcharges to recover lost revenues;

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(2) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission shall approve the water supply corporation's water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

§24.44. Seeking Review of Rates for Sales of Water Under the Texas Water Code §12.013.

(a) Ratepayers seeking commission action under TWC §12.013 should include in a written petition to the commission, the following information:

(1) the petitioner's name;

(2) the name of the water supplier from which water supply service is received or sought;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking commission action under TWC §12.013 should include in a written petition for relief to the commission, the following information:

(1) petitioner's name;

(2) the name of the ratepayers to whom water supply service is rendered;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

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SUBCHAPTER D. RECORDS AND REPORTS

16 TAC §24.72, §24.73

These amendments are adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.72. Financial Records and Reports--Uniform System of Accounts.

Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A Utility, as defined by §24.3(17) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the (NARUC) for a utility classified as a NARUC Class A utility.

(B) Class B Utility, as defined by §24.3(18) of this title; the uniform system of accounts as adopted and amended by NARUC for a utility classified as a NARUC Class B utility.

(C) Class C Utility, as defined by §24.3(19) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.

(2) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

§24.73. Water and Sewer Utilities Annual Reports.

(a) Each utility, except a utility operated by an affected county, shall file a service, financial, and normalized earnings report by June 1 of each year.

(b) Contents of report. The annual report shall disclose the information required on the forms approved by the commission and may include any additional information required by the commission.

(c) A Class C utility's normalized earnings shall be equal to its actual earnings during the reporting period for the purposes of compliance with TWC §13.136.

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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.102, 24.109, 24.111, 24.114

These amendments are adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for

water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.102. Criteria for Considering and Granting Certificates or Amendments.

(a) In determining whether to grant or amend a certificate of public convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant has a TCEQ approved system that it is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant has a TCEQ approved system that it is capable of meeting the TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC.

(b) Where a new CCN is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC §15.001, the commission shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the commission and will include:

(1) all criteria from subsections (a) - (f) of this section;

(2) source water adequacy;

(3) infrastructure adequacy;

(4) technical knowledge of the applicant;

(5) ownership accountability;

(6) staffing and organization;

(7) revenue sufficiency;

(8) credit worthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN or for an amendment to an existing CCN. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

§24.109. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.

(a) On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the commission for good cause shown. The 120-day period begins on the last date of whichever of the following events occur:

(1) the date the applicant files an application under this section;

(2) if mailed notice is required, the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or

(3) if newspaper notice is required, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.

(b) A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.

(e) Prior to the expiration of the 120-day notification period, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to that person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;

(5) it is in the public interest to investigate the following factors:

(A) whether the seller has failed to comply with a commission order;

(B) the adequacy of service currently provided to the area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) the ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(f) Unless the commission requires that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed:

(1) at the end of the 120-day period;

(2) or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

(g) Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(h) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, merger, consolidation, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(i) A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the TWC §13.301 is void.

(j) The requirements of the TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under the TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(k) If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(l) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

§24.111. Purchase of Voting Stock in Another Utility.

(a) A utility may not purchase voting stock in and a person may not acquire a controlling interest in a utility doing business in this state unless the utility or person files a written application with the commission not later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.110 of this title (relating to Foreclosure and Bankruptcy) applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60 day period; or

(2) at any time after the commission notifies the person or utility that a hearing will not be requested.

(f) The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(g) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

§24.114. Requirement to Provide Continuous and Adequate Service.

(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

(b) After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in TWC §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in §24.93 and §24.94 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules as specified in §24.11 of this title (relating to Financial Assurance), or as specified by the commission. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service after TCEQ approves the interconnecting service pursuant to 30 TAC Chapter 290 (relating to Public Drinking Water) or 30 TAC 217 (relating to Design Criteria for Domestic Wastewater Systems);

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under §24.14 of this title (relating to Emergency Orders).

(c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Texas Health and Safety Code, §341.0355, or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:

(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance in an amount determined by the commission not to exceed the amount of the financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and

(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503387

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 13, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 936-7223

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SUBCHAPTER I. WHOLESALE WATER OR SEWER SERVICE

16 TAC §24.131

This amendment is adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.131. Commission's Review of Petition or Appeal Concerning Wholesale Rate.

(a) When a petition or appeal is filed, the commission shall determine within 30 days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements §24.130 of this title (relating to Petition or Appeal). If the commission determines that the petition or appeal does not meet the requirements of §24.130 of this title, the commission shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the commission determines that the petition or appeal does meet the requirements of §24.130 of this title, the commission shall forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.

(b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on public interest.

(c) For a petition or appeal to review a rate that is not charged pursuant to a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.

(d) If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. PROVISIONS REGARDING MUNICIPALITIES

16 TAC §24.150

This amendment is adopted under the TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, TWC §§13.246(c), 13.253, and 13.302(c), which permit the commission to require the provision of financial assurance; TWC §13.136(b), which requires the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.183, which directs the commission on how to fix the overall revenues for water and sewer utilities; TWC §13.185, which governs components of invested capital and net income; and HB 1600, SB 567, and SB 1148.

Cross Reference to Statutes: Statutes: TWC §§13.041; 13.136; 13.183; 13.185; 13.246; 13.253; 13.302; HB 1600 and SB 567; and SB 1148.

§24.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(b) The commission shall post on its website a list of municipalities that surrendered original jurisdiction to the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.305, 401.307, 401.308, 401.312, 401.315, 401.316, 401.320, 401.322

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.305 ("Lotto Texas" On-Line Game Rule), §401.307 ("Pick 3" On-Line Game Rule), §401.308 ("Cash Five" On-Line Game), §401.312 ("Texas Two Step" On-Line Game), §401.315 ("Mega Millions" On-Line Game Rule), §401.316 ("Daily 4" On-Line Game Rule), §401.320 ("All or Nothing" On-Line Game Rule), and §401.322 ("Texas Triple Chance" Lottery Game) without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3603). The purpose of the adopted amendments is to enhance and clarify the methods by which a lottery player may communicate numbers and play selections to a lottery retailer in order to purchase a Texas Lottery draw game ticket. The amendments will allow lottery retailers to accept from players two additional selection of play methods. Players may use previously-generated Texas Lottery draw game tickets (also called the Play It Again Feature). And, players may make play selections and generate a QR code through the official Texas Lottery mobile application (currently under development) that is offered and approved by the Texas Lottery. The primary reason for these adopted amendments is to improve the overall experience of lottery players and lottery retailers by increasing convenience, especially as the use of mobile technology increases within the lottery industry, and society as a whole. The Commission is authorized under Texas Government Code §466.015(c)(15)(B) to adopt rules regarding the operation of the lottery for "the convenience of players...".

A public comment hearing on this proposal was held on Thursday, June 30, 2015 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No individuals were present at that hearing. The Commission received written comments from one individual against the amendments as proposed during the public comment period.

COMMENT SUMMARY: The convenience of the proposed mobile application can be realized to its fullest potential only by allowing players to purchase tickets online. The mobile application is a wonderful idea, but it just does not go far enough.

AGENCY RESPONSE: The Commission does not intend to pursue Internet-based lottery ticket sales without clear, express authority from the Texas Legislature.

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and in particular §466.015(c)(15)(B); and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Texas Government Code, Chapter 466.

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 28, 2015.

TRD-201503458
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: September 17, 2015
Proposal publication date: June 12, 2015
For further information, please call: (512) 344-5012

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16 TAC §401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.317 (Powerball® On-Line Game Rule), with changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3607). The adopted version of the rule includes non-substantive changes to conform the Commission rule to changes made by the Multi-State Lottery Association ("MUSL") to MUSL's Powerball rule after the Commission's proposal was published. Specifically, subsection (k)(3) adds language to clarify that the ten (10X) Power Play multiplier will be available only when the initially advertised annuitized Grand Prize amount is one hundred fifty million dollars ($150,000,000) or less, subsection (k)(4)(A) clarifies the prize payout percentage variance and adds a reference to subsection (k)(4)(B), and a new column heading ("Chance of Occurrence") is added to the chart in Figure: 16 TAC §401.317(k)(4)(D). The primary purpose of the adopted amendments is to make changes to the game matrix, to offer a new multiplier level to the Power Play add-on feature, and to incorporate additional conforming language needed as a result of the Texas Lottery's membership in MUSL. The first drawing under these amendments is anticipated to occur on or around October 7, 2015 (subject to change by the Executive Director and/or MUSL).

A public comment hearing on this proposal was held on Thursday, June 30, 2015 at 11:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No individuals were present at that hearing. The Commission received written comments from one individual against the proposed amendments during the public comment period.

COMMENT SUMMARY: While adding more numbers will result in the jackpot rolling over and increasing more often, it disengages regular players who will win only a fraction of what they used to win for non-jackpot prizes. It becomes an "all or nothing" game. If you don't win the grand prize, you win very little.

AGENCY RESPONSE: The Commission disagrees with this comment. Although it is correct that the odds of winning the Powerball jackpot would increase under this proposal, the overall odds of winning any prize in the game would improve for the player. In addition, the only prize that is changing in the game is the third prize tier, match 4+1, and that prize tier is increasing under this proposal from $10,000 to $50,000. The Commission currently offers players eight different draw games, so players have a wide variety of games to choose from with varying odds and prize propositions.

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, §466.451, which authorizes the Commission to adopt rules relating to a multi-jurisdictional lottery game, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

§401.317. "Powerball®" On-Line Game Rule.

(a) Powerball. Powerball is a Multi-State Lottery Association (MUSL) on-line game offered by all Lotteries that have agreed to MUSL's Powerball Group Rules. "Powerball" is authorized to be conducted by the executive director under the conditions of the MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of Powerball to the requirements of the MUSL rules if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. If a conflict arises between this section and §401.304 of this chapter (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Powerball game is the generation of revenue for MUSL Party Lottery members and Mega Millions Party Lotteries participating under the Reciprocal Game Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. In addition to other applicable rules contained in Chapter 401, this section and definitions apply unless the context requires a different meaning or is otherwise inconsistent with the intention of the rules adopted by the MUSL or the MUSL Powerball Group. To be clear, the authority to participate in the MUSL Powerball game is provided to the Texas Lottery by MUSL. The conduct and play of Powerball must conform to the MUSL Powerball game.

(b) Definitions.

(1) "Agent" or "retailer" means a person or entity authorized by the Texas Lottery Commission (TLC) to sell lottery Plays.

(2) A "Drawing" refers collectively to the formal draw event for randomly selecting the winning numbers which determine the number of winners for each prize level of the Powerball game and the Power Play multiplier.

(3) "Game board", "board", "panel", or "playboard" means that area of the playslip which contains two sets of numbered squares to be marked by the player.

(4) "Game ticket" or "ticket" means an acceptable evidence of Play, which is a ticket produced in a manner that meets the specifications defined in the MUSL rules or the rules of each member or participating Selling Lottery (Ticket Validation), and is a physical representation of the Play or Plays sold to the player.

(5) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(6) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery.

(7) "MUSL Annuity Factor" shall mean the annuity factor as determined by the MUSL central office through a method approved

by the MUSL Finance & Audit Committee and which is used as described in this rule.

(8) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and is authorized to sell the Powerball game. "Selling Lottery" shall mean a lottery authorized by the Product Group to sell Powerball Plays, including Party Lotteries and Licensee Lotteries.

(9) "Play" means the six (6) numbers, the first five (5) from a field of sixty-nine (69) numbers and the last one (1) from a field of twenty-six (26) numbers, that appear on a ticket as a single lettered selection and are to be played by a player in the Powerball game.

(10) "Playslip" means an optically readable card issued by the Texas Lottery used by players of Powerball to select Plays and to elect all features. There shall be five playboards on each playslip. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(11) "Powerball Group" or "Product Group" means the MUSL member group of lotteries which have joined together to offer the Powerball product pursuant to the terms of the Multi-State Lottery Agreement and the Powerball Group's rules, including the MUSL Powerball Drawing Procedures. In this rule, wherever either term is used it is referring to the MUSL Powerball Group.

(12) "Prize" means an amount paid to a person or entity holding a winning ticket. "Grand Prize" shall refer to the top prize in the Powerball game. "Advertised Grand Prize" shall mean the estimated annuitized Grand Prize amount as determined by the MUSL Central Office by use of the MUSL Annuity Factor and communicated through the Selling Lotteries prior to the Grand Prize Drawing. The "Advertised Grand Prize" is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount.

(13) "Set Prize" or "low-tier prize" means all other prizes, except the Grand Prize, and, except in instances outlined in this section, will be equal to the prize amount established by the MUSL Board for the prize level.

(14) "Terminal" means a device authorized by a Selling Lottery to function in an on-line, interactive mode with the gaming computer system for the purpose of issuing lottery tickets and entering, receiving, and processing lottery transactions, including purchases, validating tickets, and transmitting reports.

(15) "Winning Numbers" means the numbers randomly selected during a Drawing event which shall be used to determine winning for the Powerball game contained on a game ticket.

(c) Game Description.

(1) Powerball is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six numbers (26) lottery game, drawn every Wednesday and Saturday, as part of the Powerball Drawing event, which pays the Grand Prize, at the election of the player made in accordance with this rule, or by a default election made in accordance with this rule, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a set cash basis. Powerball Winning Numbers applicable to determine Powerball prizes will be determined in the Powerball Drawing event. To play Powerball, a player shall select five (5) different numbers, from one (1) through sixty-nine (69), and one (1) additional number from one (1) through twenty-six (26), or request the retailer to generate a Quick Pick selection of numbers from the lottery terminal. The additional number may be the same as one of the first five numbers selected by the player. Plays can be purchased for two dollars (U.S. $2.00), including any specific statutorily-mandated tax of a Selling Lottery to be included in the price of a Play. Plays may be purchased from a Selling Lottery approved sales outlet in a manner as approved by the Selling Lottery and in accordance with MUSL Rules. The Drawing Procedures adopted by MUSL shall include procedures for randomly selecting the Powerball game Winning Numbers and the Power Play multiplier.

(2) Claims. A ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (g) of this section. The submission of a winning ticket to the issuing Selling Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. A Play may not be voided or canceled by returning the ticket to the selling agent or to the lottery, including tickets that are printed in error. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery. No Play that is eligible for a prize can be returned to the lottery for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal touch screen or by means of a playslip provided by the Texas Lottery and hand-marked by the player or by such other means approved by the Texas Lottery. Retailers shall not permit the use of facsimiles of playslips, copies of playslips, or other materials that are inserted into the terminal's playslip reader that are not printed or approved by the Texas Lottery. Retailers shall not permit any device to be connected to a lottery terminal to enter Plays, except as approved by the Texas Lottery. A ticket generated using a selection method that is not approved by the Texas Lottery is not valid. A selection of numbers for a Play may be made only if the request is made in person. Acceptable methods of Play selection include:

(A) using a self-service terminal;

(B) using a playslip;

(C) using a previously-generated "Powerball" ticket provided by the player;

(D) requesting a retailer to use a Quick Pick to select numbers;

(E) requesting a retailer to manually enter numbers; or

(F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the Texas Lottery.

(6) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Powerball Prize Pool.

(1) Powerball Prize Pool.

(A) The prize pool for all prize categories shall consist of fifty percent of each Drawing period's sales, inclusive of any specific statutorily-mandated tax of a Selling Lottery to be included in the price of a Play, after the prize pool accounts and prize reserve accounts

are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of this game shall be returned to all lotteries participating in the prize pool at the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or expended in a manner as directed by the Members of the Powerball Group in accordance with jurisdiction statute.

(B) Powerball Prize Pool Accounts and Prize Reserve Accounts. An amount up to five percent (5%) of a Party Lottery's sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a Play, shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in one or more Powerball prize pool accounts and prize reserve accounts held by the Product Group at any time that the prize pool accounts and Party Lottery's share of the prize reserve account(s) is below the amounts designated by the Product Group.

(i) Prize Reserve Accounts: The Product Group has established the following prize reserve accounts for the Powerball game: the Powerball Prize Reserve Account (PRA), which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason; and the Powerball Set Prize Reserve Account (SPRA), which is used to fund deficiencies in low-tier Powerball prize payments, subject to the limitations of the MUSL rules.

(ii) Prize Pool Accounts: The Product Group has established the following prize pool accounts for the Powerball game: the Grand Prize Pool, which is used to fund the immediate Grand Prize; the Powerball Set Prize Pool, which is used to fund the Powerball Set Prize payments; and the Powerball Set-Aside Account, which is used to guarantee payment of the minimum or starting Grand Prize. The Power Play Prize Pool and Power Play Pool Account are described in subsection (k) of this section. The Set Prize Pool holds the temporary balances that may result from having fewer than expected winners in the Powerball Set Prize (aka low-tier prize) categories and the source of the Set Prize Pool is the Party Lottery's weekly prize contributions less actual Powerball Set Prize liability. The source of the Set-Aside Account funding shall be the prize reserve deduction until such time as the Set-Aside Account is fully funded.

(iii) Once the Powerball prize pool accounts and the Party Lottery's share of the Powerball prize reserve accounts exceed the designated amounts, the excess shall become part of the Powerball Grand Prize Pool. The Product Group, with approval of the Finance & Audit Committee, may establish a maximum balance for the Powerball prize pool accounts and the prize reserve accounts. The Product Group may determine to expend all or a portion of the funds in the Powerball prize pool accounts (except the Powerball Grand Prize pool account) and the prize reserve accounts, (1) for the purpose of indemnifying the Selling Lotteries for the payment of prizes, subject to the approval of the Board; and (2) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion following review and comment of the Finance & Audit Committee. The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. A Party Lottery may contribute to its share of prize reserve accounts over time, but in the event of a draw down from the reserve account, a Party Lottery is responsible for its full percentage share of the account, whether or not it has been paid in full.

(iv) Any amount remaining in the Powerball prize pool accounts or prize reserve accounts when the Product Group declares the end of this game shall be returned to the lotteries participating in the accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Powerball Prize Payout Percentages. The Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment set cash prizes with the following expected prize payout percentages:
Figure: 16 TAC §401.317(d)(2)

(A) The prize money allocated to the Powerball Grand Prize category shall be divided equally by the number of Plays winning the Powerball Grand Prize.

(B) Powerball Set Prize Pool Carried Forward. For Party Lotteries, the Powerball Set Prize Pool (for single payment cash prizes of $1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Powerball Set Prizes awarded in the current draw.

(C) Pari-Mutuel Powerball Prize Determinations. Except as otherwise provided, if the total of the Powerball Set Prizes (as multiplied by the respective Power Play multiplier, if applicable) awarded in a Drawing exceeds the percentage of the prize pool allocated to the Powerball Set Prizes, then the amount needed to fund the Powerball Set Prizes, including Power Play prizes, awarded shall be drawn first from the amount allocated to the Powerball Set Prizes, and carried forward from previous draws, if any; second from the SPRA, if available, not to exceed forty million dollars ($40,000,000.00) per Drawing; and, third from other amounts as agreed to by the Product Group in their sole discretion.

(D) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, including Power Play Prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including Power Play prizes, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning Plays in proportion to their respective prize percentages. Powerball Set Prizes and Power Play prizes will be reduced by the same percentage.

(E) By agreement, the Licensee Lotteries shall independently calculate their Set Prize pari-mutuel prize amounts. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(e) Probability of Powerball Winning Plays. The following table sets forth the probability of winning Plays and the probable distribution of winning Plays in and among each prize category, based upon the total number of possible combinations in Powerball. The Set Prize Amount shall be the prizes set for all Selling Lotteries unless prohibited or limited by a jurisdiction's statute or judicial requirements.
Figure: 16 TAC §401.317(e)

(f) Powerball Prize Payment.

(1) Powerball Grand Prizes. The advertised Grand Prize in a Powerball game is not a guaranteed amount; it is an estimated amount, and all advertised prizes, even advertised Set Prizes, are estimated amounts. At the time of ticket purchase, a player must select a payment option of either a single cash value payment or annuitized payments of a share of the Grand Prize if the Play is a winning Play. If

no selection is made, payment option will be as described in the chart below:
Figure: 16 TAC §401.317(f)(1)

(A) A player's selection of the payment option at the time of purchase from the Texas Lottery is final and cannot be revoked, withdrawn, or otherwise changed.

(B) Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize Pool equally among all winning Plays of the Grand Prize. A player(s) who elects a cash value option payment shall be paid his/her share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts. The MUSL Annuity Factor will not be used for Texas Lottery players. Neither MUSL nor any Party Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL.

(C) In certain instances announced by the Powerball Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to paragraph (6) of this subsection.

(D) If individual shares of the cash held to fund an annuity is less than $250,000, the Powerball Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize Pool. All annuitized prizes shall be paid annually in thirty (30) payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.

(E) All annuitized prizes shall be paid annually in thirty (30) graduated payments, as provided by the MUSL rules, (increasing each year) at a rate as determined by the MUSL Product Group. Prize payments may be rounded down to the nearest one thousand dollars ($1,000).

(F) Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Selling Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the Drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the Selling lotteries. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the State of Texas. If the State of Texas purchases the securities, or holds the prize payment annuity for a Powerball prize won in this state, the prize winner will have no recourse on the MUSL or any other Party Lottery for payment of that prize.

(2) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(3) Powerball Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(4) Powerball Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(5) Powerball Prize Rollover. If the Grand Prize is not won in a Drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize Pool for the following Drawing.

(6) Funding of Guaranteed Powerball Prizes. The Powerball Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between Drawings or make other changes in the allocation of prize money where the Powerball Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between Drawings is offered by the Powerball Group, then the Grand Prize shares shall be determined as follows:

(A) If there are multiple Grand Prize winning Plays during a single Drawing, each selecting the annuitized option prize, then a winning Play's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winning Plays.

(B) If there are multiple Grand Prize winning Plays during a single Drawing and at least one of the Grand Prize ticket holders has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize.

(C) If there are multiple Grand Prize winning Plays during a single Drawing, and no claimant of the Grand Prize has elected the annuitized option prize, then the amount of cash in the Grand Prize Pool shall be an amount equal to the guaranteed annuitized amount divided by the MUSL Annuity Factor. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in the Powerball Group Rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in subsection (d)(2)(D) of this section becomes necessary.

(7) Limited to Highest Powerball Prize Won. The holder of a winning Play may win only one prize per Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(8) Powerball Prize Claim Period. Prizes must be claimed no later than 180 days after the draw date.

(g) Ticket Validation. To be a valid Play and eligible to receive a prize, a Play's ticket shall satisfy all the requirements established by the Texas Lottery for validation of winning tickets sold through its computer gaming system and any other validation requirements adopted by the Powerball Group, the MUSL Board, and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Selling Lotteries shall not be responsible for tickets which are altered in any manner.

(h) Ticket Responsibility.

(1) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the ticket in the place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation

requirements in subsection (g) of this section (Ticket Validation) and state or district law) to any prize attributable thereto.

(2) Multiple Claimants. The issue of multiple claimants shall be handled in accordance with Texas Government Code Chapter 466 and §401.304 of this chapter.

(3) Stolen Tickets. The Powerball Group, the MUSL and the Party Lotteries shall not be responsible for lost or stolen tickets.

(4) Prize Claims. Prize claim procedures shall be governed by the rules of the Commission as set out in §401.304 of this subchapter and any internal procedures used by the Texas Lottery. The MUSL and the Party Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the Selling lottery.

(i) Ineligible Players.

(1) A Play or share for a MUSL game issued by the MUSL or any of its Selling Lotteries shall not be purchased by, and a prize won by any such Play or share shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subparagraphs (A), (B), and (C) of this paragraph and residing in the same household.

(2) Those persons designated by a Selling Lottery's law as ineligible to play its games shall also be ineligible to Play the MUSL game in that Selling Lottery's jurisdiction.

(j) Applicable Law. In purchasing a Play, as evidenced by a ticket, the purchaser agrees to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Selling Lottery where the ticket was purchased.

(k) Powerball Special Game Rules: Powerball Power Play.

(1) Power Play Description. The Powerball Power Play is a limited extension of the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game except as may be amended herein. Power Play will begin at a time announced by the Selling Lottery and will continue until discontinued by the lottery. Power Play will offer to the owners of a qualifying Play a chance to increase the amount of any of the eight Low-Tier Set Prizes (the Low-Tier prizes normally paying $4 to $1,000,000) won in a Power Play Drawing. The Grand Prize is not a Set Prize and will not be increased.

(2) Qualifying Play. A qualifying Play is any single Powerball Play for which the player pays an extra dollar for the Power Play option Play and which is recorded at the Selling Lottery's computer gaming system as a qualifying Play.

(3) Prizes to be Increased. Except as provided in these rules, a qualifying Play which wins one of the seven lowest Set Prizes (excluding the Match 5 + 0) will be multiplied by the number drawn, either two (2), three (3), four (4), five (5), or sometimes ten (10), in a separate random Power Play Drawing announced during the official Powerball drawing show. The ten (10X) multiplier will be available for Drawings in which the initially advertised annuitized Grand Prize amount is one hundred fifty million dollars ($150,000,000.00) or less. The announced Match 5+0 prize, for players selecting the Power Play option, shall be paid two million dollars ($2,000,000.00) unless a higher limited promotional dollar amount is announced by the Powerball Group.
Figure: 16 TAC §401.317(k)(3)

(4) Prize Pool.

(A) Power Play Prize Pool. As per section (k)(4)(B) of this rule, in Drawings where the ten (10X) multiplier is available, the expected payout for all prize categories shall consist of up to forty-nine and nine hundred sixty-nine thousandths percent (49.969%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play. In drawings where the ten (10X) multiplier is not available, the expected payout for all prize categories shall consist of up to forty-five and nine hundred thirty-four thousandths percent (45.934%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket. The prize payout percentage per draw may vary. The Power Play Prize Pool shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Power Play prizes awarded in the current draw and held in the Power Play Pool Account.

(B) Power Play Pool Account. In Drawings where the ten (10X) multiplier is available, an additional thirty-one thousandths of a percent (0.31%) of sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play, may be collected and placed in trust in the Power Play Pool account, for the purpose of paying Power Play prizes. In drawings where the ten (10X) multiplier is not available, four and sixty-six hundredths percent (4.066%) of sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play, may be collected and placed in trust in the Power Play Pool account, for the purpose of paying Power Play prizes. Any amount remaining in the Power Play Pool account when the Powerball Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(C) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as single payment cash prizes. Instead of the Powerball Set Prize amounts, qualifying winning Plays of Power Play will pay the amounts shown in paragraph (3) of this subsection.
In certain rare instances, the Powerball Set Prize amount may be less than the amount shown in Figure: 16 TAC §401.317(d)(2). In such case, the eight lowest Power Play prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Powerball Set Prize amount of $50,000 becomes $25,000 under the rules of the Powerball game, and a 5X Power Play Multiplier is drawn, then a Power Play winning Play prize amount would win $125,000.

(D) Probability of Power Play Numbers Being Drawn. The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball Power Play Drawing. The Powerball Group may elect to run limited promotions that may modify the multiplier features. Power Play does not apply to the Powerball Grand Prize. Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 + 0 prize is set at two million dollars ($2,000,000.00), regardless of the multiplier selected.
Figure: 16 TAC §401.317(k)(4)(D)

(5) Limitations on Payment of Power Play Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Power Play Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.

(B) Pari-Mutuel Prizes--All Prize Amounts. If the total of the original Powerball Set Prizes and the Power Play Prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the Set Prizes, then the amount needed to fund the Set Prizes (including the Power Play prize amounts) awarded shall first come from the amount allocated to the Set Prizes and carried forward from previous draws, if any, second from the Powerball Group's Set Prizes Reserve Account, if available, not to exceed forty million dollars ($40,000,000.00) per drawing, and third from other amounts as agreed to by the Powerball Group in their sole discretion.

(C) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Power Play prize amounts), then the highest Set Prize (including the Power Play prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including the Power Play prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning Plays in proportion to their respective prize percentages. Powerball and Power Play prizes will be reduced by the same percentage. By agreement, the Licensee Lotteries shall independently calculate their set pari-mutuel prize amounts, including the Power Play prize amounts. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(6) Prize Payment.

(A) Prize Payments. All Power Play prizes shall be paid in a single payment through the Selling Lottery that sold the winning Play(s). A Selling Lottery may begin paying Power Play prizes after receiving authorization to pay from the MUSL central office.

(B) Prizes Rounded. Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Lottery Commission
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §89.1070

The Texas Education Agency (TEA) adopts an amendment to §89.1070, concerning special education services. The amendment is adopted without changes to the proposed text as published in the June 5, 2015 issue of the *Texas Register* (40 TexReg 3304) and will not be republished. The section addresses graduation requirements for students receiving special education services. The adopted amendment is based on changes made to the state's assessment graduation requirements by Senate Bill (SB) 149, 84th Texas Legislature, Regular Session, 2015.

REASONED JUSTIFICATION. SB 149 revised the state's assessment graduation requirements for students in general education by allowing alternative methods for graduation for students classified in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school years who have taken each end-of-course (EOC) assessment but have failed to achieve the EOC assessment performance requirements in no more than two courses. Since SB 149 allows certain students in general education to graduate under any available graduation program without achieving satisfactory performance on each of the EOC assessments, the rule applicable to students receiving special education services requires amendment to maintain alignment.

The adopted amendment to 19 TAC Chapter 89, Subchapter AA, Division 2, §89.1070, Graduation Requirements, reflects the changes to the graduation requirements for students receiving special education services by amending language in §89.1070 to specify that a student receiving special education services who has failed to achieve the EOC assessment graduation requirements for no more than two courses may graduate under the Recommended or Distinguished Achievement High School Program or may graduate under the Foundation High School Program with endorsements if all other requirements are met. These provisions in new §89.1070(d), (f), and (g)(2) are effective only with the 2014-2015, 2015-2016, and 2016-2017 school years. Corresponding technical edits are made throughout the rule.

The adopted amendment incorporates procedural and reporting requirements contained in the Individuals with Disabilities Education Act that school districts must follow and does not impose any new or additional reporting requirements. The adopted amendment may increase locally maintained paperwork for school districts and charter schools. Locally maintained paperwork may increase for areas concerning convening of additional ARD committee meetings and communications with parents.

SUMMARY OF COMMENT AND AGENCY RESPONSE. The public comment period on the proposal began June 5, 2015, and ended July 6, 2015, and included public hearings that were held on Monday, June 15, 2015, and Wednesday, June 17, 2015. Following is a summary of public comments received, including those received at the public hearing, and corresponding agency responses.

Comment: Disability Rights Texas (DRTx) and The Arc of Texas (The Arc) commented that SB 149, which was passed by the 84th Texas Legislature, changed how all students may graduate from high school even if they have not passed all EOC assessments and asked that the agency consider whether the proposed rule should address the role of the admission, review, and dismissal (ARD) committee in deciding whether a student with a disability who has failed to pass no more than two EOC assessments may graduate from high school.

Agency Response: The agency disagrees and provides the following clarification. As the agency explained when the proposed rule was published, the intent of SB 149 is to provide alternative methods for graduation for students in general education who are in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school years and have taken all EOC assessments but have failed to perform satisfactorily on no more than two of the assessments. The bill's author has stated that the bill is aimed at thousands of seniors from the Class of 2015 who are in danger of not graduating because they have not passed one or more of the EOC assessments. The author has further stated that the bill is modeled after the "grade placement committees" implemented under the Student Success Initiative. In contrast to students in general education, students in special education programs have had an alternative route to graduate by virtue of TEC, §39.025(a-4), which provides that a student's ARD committee shall determine whether the student is required to achieve satisfactory performance on the EOC assessments to graduate. Under this authority, an ARD committee may determine that a student is not required to pass any or all of the EOC assessments. In addition, TEC, §28.025(c), has long provided that a student in a special education program may graduate by completing the requirements of his or her individualized education program, which may stipulate that the student complete courses with modified content. Because the graduation requirements for students receiving special education services are aligned to the maximum extent possible with the graduation requirements for students in general education, the current rule requires revision to maintain that alignment and to ensure that students receiving special education services are not required to meet a higher standard than their peers in general education. Therefore, the graduation options that require a student to achieve satisfactory performance on all of the required EOC assessments have been revised to clarify that a student who is classified in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school year may also graduate if he or she has taken all of the EOC assessments, failed no more than two, and met all other applicable requirements.

Comment: DRTx and The Arc commented that SB 149 establishes individual graduation committees (IGCs) to decide whether a student is excused from passing the EOC assessments and asked that clarification about a student's ARD committee be added to the proposed rule. Specifically, the commenters suggested that the rule be clear that an IGC for a student with a disability must meet simultaneously with the student's ARD committee or that it state that appropriate members of the ARD committee and other necessary school personnel may function as the IGC while the full ARD committee is holding a meeting for the student.

Agency Response: The agency disagrees. As explained previously, SB 149 provides alternative methods for graduation for certain students in general education who did not have a means to graduate if they did not pass all five EOC assessments. Students receiving special education services already had alternative routes to graduate under TEC, §28.025(c) and §39.025(a-4). SB 149 does not include any specific discussion of students in special education programs, and there is nothing in the legislative history reflecting an intent that students with disabilities be subject to the IGC review process instead of the ARD committee process or that the two committees collaborate. In fact, SB 149 includes various requirements that are not easily harmonized with the requirements for a student receiving special education services. For these reasons, the agency presumes that the Texas Legislature intended to maintain the existing graduation options for students receiving special education services as well as the role of the ARD committee in making decisions for these students. The current rule merely requires revision to maintain alignment with the standards applicable to students in general education and to ensure that students receiving special education services are not required to meet a higher standard than their peers in general education.

Comment: DRTx and The Arc commented that whatever costs might be incurred by school districts and charter schools to facilitate ARD committee meetings and to communicate the changes to the graduation requirements are necessary to ensure parental participation and the opportunity for students with disabilities to graduate from high school.

Agency Response: The agency clarifies as follows. When the proposed rule was published, the agency stated that the proposed rule would have a fiscal impact on school districts and charter schools in terms of convening ARD committee meetings and communicating the changes to parents. The agency further stated that it could not estimate these costs as they would vary from district to district depending on the district's ARD committee procedures and the number of students affected by the changes.

Comment: The Arc commented that SB 149 is only a solution for the next two years and recommended that the proposed rule have a more permanent solution for students with disabilities. The Arc and the Texas Council of Administrators of Special Education asked that the agency consider incorporating the endorsement requirements outlined in House Bill 3417, which was not passed during the 84th Texas Legislative Session. Specifically, the commenters recommended that the proposed rule be modified to allow an ARD committee to determine whether a student is required to achieve satisfactory performance on EOC assessments to earn an endorsement and whether a student who takes courses with modified content may earn an endorsement.

Agency Response: The agency disagrees. The proposed rule aligns the endorsement requirements for students in special education programs with the requirements applicable to students in general education. The agency does not believe that it has the authority to modify the endorsement requirements as recommended by the commenters.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §28.025, which establishes the requirements for a high school diploma. Generally, a student may only receive a diploma by successfully completing the state curriculum requirements and performing satisfactorily on all required state assessments. The statute provides an alternative for a student who receives special education services by allowing the student to receive a diploma by successfully completing his or her individualized education plan (IEP); the TEC, §28.0258, added by SB 149, which establishes another alternative means for certain students to earn a diploma. The new section authorizes a student classified in Grade 11 or 12 during the 2014-2015, 2015-2016, or 2016-2017 school years who has failed to meet

the end-of course (EOC) assessment performance requirements for not more than two courses to receive a high school diploma by meeting additional requirements. TEC, §28.0258(k), authorizes the commissioner to adopt rules as necessary to implement the section; the TEC, §39.025, which requires the commissioner to adopt rules requiring students to be administered each EOC assessment and provides that a student may not receive a diploma until the student has performed satisfactorily on the EOC assessments. However, with regard to a student in a special education program, the statute provides that the student's admission, review, and dismissal (ARD) committee determines whether the student is required to achieve satisfactory performance on EOC assessments to receive a diploma. TEC, §39.025(a-2), added by SB 149, provides that a student who has failed to perform satisfactorily on EOC assessments may receive a diploma if the student has qualified for graduation under TEC, §28.0258; the TEC, §29.001, which requires the agency to develop a statewide plan for the delivery of services to children with disabilities and prescribes certain parameters of the plan; and the TEC, §29.005, which requires a school district to establish an ARD committee consistent with the Individuals with Disabilities Education Act to develop an IEP for a student participating in a special education program. The section also establishes certain requirements in the development of the IEP.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §§28.025, 28.0258, and 39.025, as amended and added by SB 149, 84th Texas Legislature, Regular Session, 2015, and §29.001 and §29.005.

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 27, 2015.

TRD-201503447
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 16, 2015
Proposal publication date: June 5, 2015
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1058

The Texas Education Agency (TEA) adopts the repeal of §102.1058, concerning the Technology-Based Supplemental Instruction Pilot Program. The repeal is adopted without changes to the proposed text as published in the June 19, 2015 issue of the *Texas Register* (40 TexReg 3741) and will not be republished. The section establishes a pilot program to provide technology-based supplemental instruction to students in certain school districts. The adopted repeal is necessary because of the expiration of the rule's authorizing statute, the Texas Education Code (TEC), §29.919.

REASONED JUSTIFICATION. The TEC, §29.919, authorized the commissioner of education to adopt rules to implement the technology-based supplemental instruction pilot program to provide grant funding for rural school districts. The commissioner exercised rulemaking authority to adopt 19 TAC §102.1058, Technology-Based Supplemental Instruction Pilot Program, effective May 5, 2010. The TEC, §29.919, specified an expiration date of September 1, 2011, for the authorization of the pilot program.

The repeal of 19 TAC §102.1058 eliminates a section for which statutory authority has expired.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The public comment period on the proposal began June 19, 2015, and ended July 20, 2015. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §29.919, which required the commissioner to adopt rules necessary to implement the Technology-Based Supplemental Instruction Pilot Program. The statute expired effective September 1, 2011.

CROSS REFERENCE TO STATUTE. The repeal implements the TEC, §29.919.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.9

The Texas State Board of Pharmacy adopts amendments to §283.9 concerning Fee Requirements for Licensure by Examination, Score Transfer, and Reciprocity. The amendments are adopted without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4171).

The amendments increase the examination fee from $52 to $103.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 25, 2015.

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Gay Dodson
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: June 26, 2015
For further information, please call: (512) 305-8037

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6 concerning Pharmacy License Fees. The amendments are adopted with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4173).

The amendments add a fee up to $21 to fund the Prescription Drug Monitoring Program as passed by Senate Bill 195 of the 84th Texas Legislature and increase the fee to obtain an amended pharmacy license from $20 to $100. The board changed the fee for the Prescription Drug Monitoring Program to be up to $21.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) Prior to October 1, 2015, the fee for an initial license shall be $500 for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006. Effective October 1, 2015, the fee for an initial license shall be $401 for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) $15 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) prior to October 1, 2015, $15 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and effective October 1, 2015, $12 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code;

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code; and

(D) up to a $21 surcharge to fund the Prescription Drug Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee.

(1) Prior to October 1, 2015, the fee for biennial renewal of a pharmacy license shall be $500 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006. Effective October 1, 2015, the fee for biennial renewal of a pharmacy license shall be $401 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) $15 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) prior to October 1, 2015, $15 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and effective October 1, 2015, $12 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code;

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code; and

(D) up to a $21 surcharge to fund the Prescription Drug Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(d) Duplicate or Amended Certificates. The fee for issuance of a duplicate pharmacy license renewal certificate shall be $20. The fee for issuance of an amended pharmacy license renewal certificate shall be $100.

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 25, 2015.

TRD-201503407
Gay Dodson
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: June 26, 2015
For further information, please call: (512) 305-8037

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §§291.51 - 291.54

The Texas State Board of Pharmacy adopts amendments to §291.51 concerning Purpose, §291.52 concerning Definitions, §291.53 concerning Personnel, and §291.54 concerning Operational Standards. The amendments are adopted without

changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4174).

The amendments to §291.51 clarify the purpose of the subchapter. The amendments to §291.52, if adopted, update the definitions and remove definitions that are no longer necessary. The amendments to §291.53, if adopted, clarify the requirements for pharmacy personnel compounding sterile radiopharmaceuticals. The amendments to §291.54, if adopted, clarify and update the procedures for nuclear pharmacies; require nuclear pharmacies to be inspected prior to renewal; and remove requirements that are referenced in other sections of the rules.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gay Dodson
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For further information, please call: (512) 305-8037

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy adopts amendments to §291.133 concerning Pharmacies Compounding Sterile Preparations. The amendments are adopted with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4183).

The amendments clarify the requirements for nuclear pharmacies compounding sterile radiopharmaceuticals. The board corrected a portion of the rule regarding venting that was previously deleted from the rule but was not updated.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.133. Pharmacies Compounding Sterile Preparations.

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A-S, Class B, Class C-S, and Class E-S pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in Class A-S, Class B, Class C-S, and Class E-S pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A-S pharmacy for a Class C-S pharmacy; and

(4) compounding of sterile preparations by a Class C-S pharmacy and the distribution of the compounded preparations to other Class C or Class C-S pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the preparation and administration of compounded sterile preparations.

(4) Ante-area--An ISO Class 8 or better area where personnel may perform hand hygiene and garbing procedures, staging of components, order entry, labeling, and other high-particulate generating activities. It is also a transition area that:

(A) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(B) reduces the need for the heating, ventilating and air conditioning (HVAC) control system to respond to large disturbances.

(5) Aseptic Processing--A mode of processing pharmaceutical and medical preparations that involves the separate sterilization of the preparation and of the package (containers-closures or packaging material for medical devices) and the transfer of the preparation into the container and its closure under at least ISO Class 5 conditions.

(6) Automated compounding device--An automated device that compounds, measures, and/or packages a specified quantity of individual components in a predetermined sequence for a designated sterile preparation.

(7) Batch--A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits, and is produced during a single preparation cycle.

(8) Batch preparation compounding--Compounding of multiple sterile preparation units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile preparation units pursuant to patient specific medication orders.

(9) Beyond-use date--The date or time after which the compounded sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time the preparation is compounded.

(10) Biological Safety Cabinet, Class II--A ventilated cabinet for personnel, product or preparation, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.

(11) Buffer Area--An ISO Class 7 or, if a Class B pharmacy, ISO Class 8 or better, area where the primary engineering control area is physically located. Activities that occur in this area include the preparation and staging of components and supplies used when compounding sterile preparations.

(12) Clean room--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(13) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(14) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(15) Compounding Aseptic Isolator--A form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment shall not occur unless it has first passed through a microbial retentive filter (HEPA minimum).

(16) Compounding Aseptic Containment Isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(17) Compounding Personnel--A pharmacist, pharmacy technician, or pharmacy technician trainee who performs the actual compounding; a pharmacist who supervises pharmacy technicians or pharmacy technician trainees compounding sterile preparations, and a pharmacist who performs an intermediate or final verification of a compounded sterile preparation.

(18) Critical Area--An ISO Class 5 environment.

(19) Critical Sites--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

(20) Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) Disinfectant--An agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial and fungal spores. It refers to substances applied to inanimate objects.

(23) First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) Hazardous Drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs. For the purposes of this chapter, radiopharmaceuticals are not considered hazardous drugs.

(25) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(26) HVAC--Heating, ventilation, and air conditioning.

(27) Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e., outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(28) IPA--Isopropyl alcohol (2-propanol).

(29) Labeling--All labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

(30) Media-Fill Test--A test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without micro-

bial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug preparation to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(31) Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(32) Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(33) Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(34) Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(35) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(36) Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber. The components of the preparation may or may not be sterile products.

(37) Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, compounding aseptic isolators, and compounding aseptic containment isolators.

(38) Product--A commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(39) Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(40) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(41) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(42) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(43) Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(44) Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(45) SOPs--Standard operating procedures.

(46) Sterilizing Grade Membranes--Membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micrometer or 0.2-micrometer nominal pore size, depending on the manufacturer's practice.

(47) Sterilization by Filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(48) Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10-6 or a probability of less than one in one million of a non-sterile unit.

(49) Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(50) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning the compounding of sterile preparations:

(i) developing a system to ensure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile preparations within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all personnel involved in compounding sterile preparations obtain continuing education appropriate for the type of compounding done by the personnel;

(iii) supervising a system to ensure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of sterile preparations, and drug delivery devices;

(iv) ensuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance, and quality control of sterile preparations; and

(viii) if applicable, ensuring that the pharmacy has a system to dispose of hazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists.

(A) General.

(i) A pharmacist is responsible for ensuring that compounded sterile preparations are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

(ii) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(iii) A pharmacist shall review all compounding records for accuracy and conduct periodic in-process checks as defined in the pharmacy's policy and procedures.

(iv) A pharmacist shall review all compounding records for accuracy and conduct a final check.

(v) A pharmacist is responsible for ensuring the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(vi) A pharmacist shall be accessible at all times, 24 hours a day, to respond to patients' and other health professionals' questions and needs.

(B) Prior to September 1, 2015 - initial training and continuing education.

(i) All pharmacists who compound sterile preparations for administration to patients or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider which provides 20 hours of instruction and experience;

(II) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in this paragraph or paragraph (3) of this subsection.

(iii) All pharmacists engaged in compounding sterile preparations shall obtain continuing education appropriate for the type of compounding done by the pharmacist.

(C) Effective September 1, 2015 - initial training and continuing education.

(i) All pharmacists who compound sterile preparations or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall comply with the following:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider;

(II) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding and

is qualified and has completed training as specified in this paragraph or paragraph (3) of this subsection.

(iii) In order to renew a license to practice pharmacy, during the previous licensure period, a pharmacist engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding high risk sterile preparations.

(3) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Prior to September 1, 2015 - initial training and continuing education. In addition to specific qualifications for registration, all pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(i) have initial training obtained either through completion of:

(I) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(II) a training program which is accredited by the American Society of Health-System Pharmacists. Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:

(-a-) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and

(-c-) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and

(-d-) supervising pharmacist conducts a final check.

(ii) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in paragraph (2) of this subsection or this paragraph.

(C) Effective September 1, 2015 - initial training and continuing education.

(i) Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees are supervised by a pharmacist who has completed the training specified in paragraph (2) of this subsection, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.

(ii) All pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(I) have initial training obtained either through completion of:

(-a-) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(-b-) a training program which is accredited by the American Society of Health-System Pharmacists.

(II) and

(-a-) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(-b-) possess knowledge about:

(-1-) aseptic processing;

(-2-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-3-) chemical, pharmaceutical, and clinical properties of drugs;

(-4-) container, equipment, and closure system selection; and

(-5-) sterilization techniques.

(iii) Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:

(I) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and

(III) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and

(IV) supervising pharmacist conducts a final check.

(iv) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding, is qualified and has completed training as specified in paragraph (2) of this subsection or this paragraph.

(v) In order to renew a registration as a pharmacy technician, during the previous registration period, a pharmacy technician engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if pharmacy technician is engaged in compounding high risk sterile preparations.

(4) Evaluation and testing requirements.

(A) All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written and media-fill testing of aseptic manipulative skills initially followed by:

(i) every 12 months for low- and medium-risk level compounding; and

(ii) every six months for high-risk level compounding.

(C) Pharmacy personnel who fail written tests or whose media-fill test vials result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) structure and engineering controls related to facilities;

(v) equipment and supplies;

(vi) sterile preparation calculations and terminology;

(vii) sterile preparation compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable;

(xi) cleaning procedures; and

(xii) general conduct in the clean room.

(E) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated by expert personnel as satisfactory through written and practical tests, and media-fill challenge testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill challenge testing.

(F) Media-fill tests must be conducted at each pharmacy where an individual compounds sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) Media-fill tests procedures for assessing the preparation of specific types of sterile preparations shall be representative of the most challenging or stressful conditions encountered by the pharmacy personnel being evaluated and, if applicable, for sterilizing high-risk level compounded sterile preparations.

(H) Media-fill challenge tests simulating high-risk level compounding shall be used to verify the capability of the compounding environment and process to produce a sterile preparation.

(I) Commercially available sterile fluid culture media, such as Soybean-Casein Digest Medium shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel and environment. Media-filled vials are generally incubated at 20 to 25 degrees Celsius or at 30 to 35 degrees Celsius for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(J) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(K) The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of compounding personnel are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media fill is performed.

(i) Sampling of compounding personnel glove fingertips shall be performed for all risk level compounding.

(ii) All compounding personnel shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).

(iii) Sterile contact agar plates shall be used to sample the gloved fingertips of compounding personnel after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).

(iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel shall successfully complete an initial competency evaluation and gloved fingertip/thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the compounding personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of the compounding personnel onto agar plates or media test paddles by having the individual lightly touching each fingertip onto the agar. The test plates or test paddles will be incubated for the appropriate incubation period and at the appropriate temperature. Results of the initial gloved fingertip evaluations shall indicate zero colony-forming units (0 CFU) growth on the agar plates or media test paddles, or the test shall be considered a failure. In the event of a failed gloved fingertip test, the evaluation shall be repeated until the individual can successfully don sterile gloves and pass the gloved fingertip evaluation, defined as zero CFUs growth. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip evaluation indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily supervise pharmacy technicians compounding sterile preparations while waiting for the results of the evaluation for no more than three days.

(vi) Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations. Results of gloved fingertip tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 CFUs growth, or the test shall be considered a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 CFUs growth).

(L) The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(5) Documentation of Training. The pharmacy shall maintain a record of the training and continuing education on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and available for inspection by the board and contain the following information:

(A) name of the person receiving the training or completing the testing or media-fill tests;

(B) date(s) of the training, testing, or media-fill challenge testing;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or media-fill challenge testing; and

(E) signature or initials of the person receiving the training or completing the testing or media-fill challenge testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill challenge testing of personnel.

(d) Operational Standards.

(1) General Requirements.

(A) Sterile preparations may be compounded:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (6)(G) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (6)(G) of this subsection;

(IV) quantity or amount in the container;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(VI) device-specific instructions, where appropriate.

(C) Commercially available products may be compounded for dispensing to individual patients or for office use provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet individual patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the individual patient needs the particular strength or dosage form of the preparation or why the preparation for office use is needed in the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate preparation due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide sterile prescription compounding services, which may include specific drug preparations and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) Compounded sterile preparations, including hazardous drugs and radiopharmaceuticals, shall be prepared only under conditions that protect the pharmacy personnel in the preparation and storage areas.

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed in this paragraph.

(A) Low-risk level compounded sterile preparations.

(i) Low-Risk conditions. Low-risk level compounded sterile preparations are those compounded under all of the following conditions.

(I) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.

(II) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag, vial) of sterile product or administration container/device to prepare the compounded sterile preparation.

(III) Manipulations are limited to aseptically opening ampuls, penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and containers for storage and dispensing.

(IV) For a low-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits, the storage periods may not exceed the following periods: before administration the compounded sterile preparation is stored properly and are exposed for not more than 48 hours at controlled room temperature, for not more than 14 days if stored at a cold temperature, and for 45 days if stored in a frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius. For delayed activation device systems, the storage period begins when the device is activated.

(ii) Examples of Low-Risk Compounding. Examples of low-risk compounding include the following.

(I) Single volume transfers of sterile dosage forms from ampuls, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. The solution content of ampules shall be passed through a sterile filter to remove any particles.

(II) Simple aseptic measuring and transferring with not more than three packages of manufactured sterile products, including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (7)(C) or (D) of this subsection (relating to Primary Engineering Control Device) or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within the buffer area.

(ii) The primary engineering control device shall be certified and maintain ISO Class 5 for exposure of critical sites and shall be located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. However, the administration of sterile radiopharmaceuticals, with documented testing of chemical stability, may be administered beyond 12 hours of preparation.

(C) Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists.

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile

preparation that will be administered either to multiple patients or to one patient on multiple occasions.

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products).

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device).

(V) For a medium-risk preparation, in the absence of direct sterility testing results the beyond use dates may not exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following.

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(II) Filling of reservoirs of injection and infusion devices with more than three sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(IV) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(D) High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions.

(I) Non-sterile ingredients, including manufactured products not intended for sterile routes of administration (e.g., oral) are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour:

(-a-) sterile contents of commercially manufactured products;

(-b-) CSPs that lack effective antimicrobial preservatives; and

(-c-) sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.

(III) Compounding personnel are improperly garbed and gloved.

(IV) Non-sterile water-containing preparations are exposed no more than 6 hours before being sterilized.

(V) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

(VI) For a sterilized high-risk level preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(VII) All non-sterile measuring, mixing, and purifying devices are rinsed thoroughly with sterile, pyrogen-free water, and then thoroughly drained or dried immediately before use for high-risk compounding. All high-risk compounded sterile solutions subjected to terminal sterilization are prefiltered by passing through a filter with a nominal pore size not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed with a sterile 0.2 micrometer or 0.22 micrometer nominal pore size filter entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized.

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5 for more than one hour.

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) Immediate Use Compounded Sterile Preparations. For the purpose of emergency or immediate patient care, such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the compounded sterile preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Compounded sterile preparations are exempted from the requirements described in this paragraph for low-risk level compounded sterile preparations when all of the following criteria are met.

(A) Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile non-hazardous commercial drug and diagnostic radiopharmaceutical drug products, including an infusion or diluent solution, from the manufacturers' original containers and not more than two entries into any one container or package of sterile infusion solution or administration container/device.

(B) Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed 1 hour.

(C) During preparation, aseptic technique is followed and, if not immediately administered, the finished compounded sterile preparation is under continuous supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter of biological fluids, mix-ups with other compounded sterile preparations, and direct contact of outside surfaces.

(D) Administration begins not later than one hour following the completion of preparing the compounded sterile preparation.

(E) When the compounded sterile preparations is not administered by the person who prepared it, or its administration is not witnessed by the person who prepared it, the compounded sterile preparation shall bear a label listing patient identification information such as name and identification number(s), the names and amounts of all ingredients, the name or initials of the person who prepared the compounded sterile preparation, and the exact 1-hour beyond-use time and date.

(F) If administration has not begun within one hour following the completion of preparing the compounded sterile preparation, the compounded sterile preparation is promptly and safely discarded. Immediate use compounded sterile preparations shall not be stored for later use.

(G) Hazardous drugs shall not be prepared as immediate use compounded sterile preparations.

(4) Single-dose and multiple dose containers.

(A) Opened or needle punctured single-dose containers, such as bags bottles, syringes, and vials of sterile products shall be used within one hour if opened in worse than ISO Class 5 air quality. Any remaining contents must be discarded.

(B) Single-dose containers, including single-dose large volume parenteral solutions and single-dose vials, exposed to ISO Class 5 or cleaner air may be used up to six hours after initial needle puncture.

(C) Opened single-dose fusion sealed containers shall not be stored for any time period.

(D) Multiple-dose containers may be used up to 28 days after initial needle puncture unless otherwise specified by the manufacturer.

(5) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs; and

(C) the United States Pharmacopeia/National Formulary containing USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding--Nonsterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding; and

(D) any additional USP/NF chapters applicable to the practice of the pharmacy (e.g., USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses).

(6) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Low and Medium Risk Preparations. A pharmacy that prepares low- and medium-risk preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) be clean, well lit, and of sufficient size to support sterile compounding activities;

(ii) be maintained at a comfortable temperature (e.g., 20 degrees Celsius or cooler) allowing compounding personnel to perform flawlessly when attired in the required aseptic compounding garb;

(iii) be used only for the compounding of sterile preparations;

(iv) be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer area;

(v) have non-porous and washable floors or floor covering to enable regular disinfection;

(vi) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(vii) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), non-shedding and resistant to damage by disinfectant agents;

(viii) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(ix) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(x) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room. A Class B pharmacy may use low-linting absorbent materials in the primary engineering control device;

(xi) contain an ante-area that contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination. A Class B pharmacy may have a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing immediately outside the ante-area if antiseptic hand cleansing is performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations once inside the ante-area; and

(xii) contain a buffer area. The following is applicable for the buffer area.

(I) There shall be some demarcation designation that delineates the ante-area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(II) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(III) A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(IV) The buffer area shall not contain sources of water (i.e., sinks) or floor drains other than distilled or sterile water introduced for facilitating the use of heat block wells for radiopharmaceuticals.

(B) High-risk Preparations.

(i) In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer area that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(ii) Presterilization procedures for high-risk level compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment.

(C) Automated compounding device.

(i) General. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(ii) Loading bulk drugs into automated compounding devices.

(I) Automated compounding device may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk drugs into an automated compounding device shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) manufacturer's expiration date;

(-e-) quantity added to the automated compounding device;

(-f-) date of loading;

(-g-) name, initials, or electronic signature of the person loading the automated compounding device; and

(-h-) name, initials, or electronic signature of the responsible pharmacist.

(IV) The automated compounding device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(D) Hazardous drugs. If the preparation is hazardous, the following is also applicable.

(i) Hazardous drugs shall be prepared only under conditions that protect personnel during preparation and storage.

(ii) Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure.

(iii) All personnel involved in the compounding of hazardous drugs shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving at all times when handling hazardous drugs, including receiving, distribution, stocking, inventorying, preparation, for administration and disposal.

(iv) Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(v) Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements.

(vi) Prepared doses of hazardous drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with hazardous agents.

(E) Blood-labeling procedures. When compounding activities require the manipulation of a patient's blood-derived material (e.g., radiolabeling a patient's or donor's white blood cells), the manipulations shall be clearly separated from routine material-handling procedures and equipment used in preparation activities to avoid any cross-contamination. The preparations shall not require sterilization.

(F) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer areas, ante-areas, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted at the beginning of each work shift, before each batch preparation is started, when there are spills, and when surface contamination is known or suspected resulting from procedural breaches, and every 30 minutes during continuous compounding of individual compounded sterile preparations, unless a particular compounding procedure requires more than 30 minutes to complete, in which case, the direct compounding area is to be cleaned immediately after the compounding activity is completed.

(iii) Before compounding is performed, all items shall be removed from the direct and contiguous compounding areas and all surfaces are cleaned by removing loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), which is allowed to dry before compounding begins. In a Class B pharmacy, objects used in preparing sterile radiopharmaceuticals (e.g., dose calibrator) which cannot be reasonably removed from the compounding area shall be sterilized with an application of a residue-free disinfection agent.

(iv) Work surfaces in the buffer areas and ante-areas, as well as segregated compounding areas, shall be cleaned and disinfected at least daily. Dust and debris shall be removed when necessary from storage sites for compounding ingredients and supplies using a method that does not degrade the ISO Class 7 or 8 air quality.

(v) Floors in the buffer area, ante-area, and segregated compounding area are cleaned by mopping with a cleaning and disinfecting agent at least once daily when no aseptic operations are in progress. Mopping shall be performed by trained personnel using approved agents and procedures described in the written SOPs. It is incumbent on compounding personnel to ensure that such cleaning is performed properly.

(vi) In the buffer area, ante-area, and segregated compounding area, walls, ceilings, and shelving shall be cleaned and disinfected monthly. Cleaning and disinfecting agents shall be used with careful consideration of compatibilities, effectiveness, and inappropriate or toxic residues.

(vii) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer area, ante-area, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer area and ante-area, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(viii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other external cartons may be taken into the buffer area or segregated compounding area.

(ix) Storage shelving emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(x) Cleaning must be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning must be maintained and shall contain the following:

(I) date and time of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(G) Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(H) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy.

(IV) The sterility and storage and stability beyond-use date for attached and activated container pairs of drug products for intravascular administration shall be applied as indicated by the manufacturer.

(7) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micrometer particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified by a qualified independent contractor according to the appropriate Controlled Environment Testing Association (CETA) standard (CAG-003-2006) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column. A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC or CACI that is located in a non-negative pressure room).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3;

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions:

(I) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(III) The CAI must be validated according to CETA CAG-002-2006 standards.

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of low- and medium-risk, non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of high-risk non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders weighed in at least ISO-8 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator as its PEC for the preparation of low- and medium-risk hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(II) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area, unless the CACI meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The CACI must be validated according to CETA CAG-002-2006 standards.

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a comfortable temperature (e.g., 20 degrees Celsius or cooler) allowing compounding personnel to perform flawlessly when attired in the required aseptic compounding garb;

(III) be used only for the compounding of hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of high-risk hazardous preparations, the CACI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders, weighed in at least ISO-8 air quality conditions, are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(8) Additional Equipment and Supplies. Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile preparations are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) a temperature-sensing mechanism suitably placed in the controlled temperature storage space to reflect accurately the true temperature;

(D) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(E) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(F) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(G) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(H) infusion devices, if applicable; and

(I) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) sterile 70% isopropyl alcohol;

(iv) sterile gloves, both for hazardous and non-hazardous drug compounding;

(v) sterile alcohol-based or water-less alcohol based surgical scrub;

(vi) hand washing agents with bactericidal action;

(vii) disposable, lint free towels or wipes;

(viii) appropriate filters and filtration equipment;

(ix) hazardous spill kits, if applicable; and

(x) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(9) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders other than sterile radiopharmaceuticals, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement);

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (7)(G) of this subsection;

(B) Batch. If the sterile preparation is compounded in a batch, the following shall also be included on the batch label:

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(10) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug. This paragraph does not apply to the preparation of radiopharmaceuticals.

(11) Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met. This paragraph does not apply to the preparation of radiopharmaceuticals.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider;

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions; and

(iii) reports of adverse events with a compounded sterile preparation are reviewed promptly and thoroughly to correct and prevent future occurrences.

(12) Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) stored in properly labeled containers in a clean, dry area, under proper temperatures.

(E) Drug preparation containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(13) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from working in ISO Class 5, ISO Class 7, and ISO Class 8 compounding areas until the condition is remedied.

(ii) Before entering the buffer area, compounding personnel must remove the following:

(I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) all cosmetics, because they shed flakes and particles; and

(III) all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves).

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents or when preparing hazardous drugs.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the ante-area. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels, an electronic hands-free hand dryer, or a HEPA filtered hand dryer.

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(IV) Once inside the buffer area or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(V) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove or shall use single gloves ensuring that the gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) When compounding personnel shall temporarily exit the buffer area during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves shall be replaced with new ones before re-entering the buffer area along with performing proper hand hygiene.

(vi) During high-risk compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA-based or another suitable sterile alcohol-based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer area.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(14) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile Soybean-Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean-Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for

10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of non-sterile commercially available Soybean-Casein Digest Medium in 100 milliliters of non-bacteriostatic water to make a 3% non-sterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius for a minimum of 14 days. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(III) Filter Integrity Testing. Filters need to undergo testing to evaluate the integrity of filters used to sterilize high-risk preparations, such as Bubble Point Testing or comparable filter integrity testing. Such testing is not a replacement for sterility testing and shall not be interpreted as such. Such test shall be performed after a sterilization procedure on all filters used to sterilize each high-risk preparation or batch preparation and the results documented. The results should be compared with the filter manufacturer's specification for the specific filter used. If a filter fails the integrity test, the preparation or batch must be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampuls, bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius and longer than six hours at warmer than 8 degrees Celsius before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF before being dispensed or administered.

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation, in accordance with pharmacy's policies and procedures, and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental Testing.

(i) Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) as part of the commissioning and certification of new facilities and equipment;

(II) following any servicing of facilities and equipment;

(III) as part of the re-certification of facilities and equipment;

(IV) in response to identified problems with end products or staff technique; or

(V) in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer area or ante-area has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments comply with the proper air cleanliness, room pressures, and air changes per hour. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) ISO Class 5 - not more than 3520 particles 0.5 micrometer and larger size per cubic meter of air;

(II) ISO Class 7 - not more than 352,000 particles of 0.5 micrometer and larger size per cubic meter of air for any buffer area; and

(III) ISO Class 8 - not more than 3,520,000 particles of 0.5 micrometer and larger size per cubic meter of air for any ante-area.

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounding risk levels. For low-, medium-, and high-risk level compounding, air sampling shall be performed at locations that are prone to contamination during compounding activities and during other activities such as staging, labeling, gowning, and cleaning. Locations shall include zones of air backwash turbulence within the laminar airflow workbench and other areas where air backwash turbulence may enter the compounding area. For low-risk level compounded sterile preparations within 12-hour or less beyond-use-date prepared in a primary engineering control that maintains an ISO Class 5, air sampling shall be performed at locations inside the ISO Class 5 environment and other areas that are in close proximity to the ISO Class 5 environment during the certification of the primary engineering control.

(vi) Air sampling frequency and process. Air sampling shall be performed at least every 6 months as a part of the re-certification of facilities and equipment. A sufficient volume of air shall be sampled and the manufacturer's guidelines for use of the electronic air sampling equipment followed. At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated at a temperature and for a time period conducive to multiplication of microorganisms. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment. If an activity consistently shows elevated levels of microbial growth, competent microbiology personnel shall be consulted.

(vii) Compounding accuracy checks. Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(15) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses, USP Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identity, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately. Any compounded sterile preparation that fails sterility testing following sterilization by one method (e.g., filtration) is to be discarded and not subjected to a second method of sterilization.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during storage and use and shall require testing to determine the correct amount to weigh for accurate content of active chemical moieties in compounded sterile preparations.

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) Maintenance of records. Every record required under this section must be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders. Compounding records for all compounded preparations shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:

(i) the date of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and

name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each;

(iii) signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the quantity in units of finished preparation or amount of raw materials;

(vi) the container used and the number of units prepared; and

(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation; and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Sterile Compounded Preparations

(1) General.

(A) A pharmacy may compound, dispense, deliver, and distribute a compounded sterile preparation as specified in Subchapter D, Texas Pharmacy Act Chapter 562.

(B) A Class A-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C or Class C-S pharmacy.

(C) A Class C-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C-S pharmacy has compounded for other Class C or Class C-S pharmacies under common ownership.

(D) To compound and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(E) This subsection does not apply to Class B pharmacies compounding sterile radiopharmaceuticals that are furnished for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license.

(2) Written Agreement. A pharmacy that provides sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded drugs may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except to a veterinarian as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient;

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of sterile compounded preparations to a practitioner for office use or to an institutional pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of preparations dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all sterile compounded preparations ordered by a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the institutional pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or institutional pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a pharmacy licensed to compound sterile preparations for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period:

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the institutional pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number.

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded sterile preparation provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) the board is notified of the recall, in writing, not later than 24 hours after the recall is issued;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

(5) A pharmacy that compounds sterile preparations shall notify the board immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gay Dodson
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8037

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CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5 concerning Pharmacist License or Renewal Fees. The amendments are adopted with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4189).

The amendments add a fee up to $21 to fund the Prescription Drug Monitoring Program as passed by Senate Bill 195 of the 84th Texas Legislature. The board changed the fee for the Prescription Drug Monitoring Program to be up to $21.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) Prior to October 1, 2015, the fee for the initial license shall be $281 for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006. Effective October 1, 2015, the fee for an initial license shall be $235 for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) $13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) $5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code;

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, and Occupations Code; and

(D) up to a $21 surcharge to fund the Prescription Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(3) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee.

(1) Prior to October 1, 2015, the fee for biennial renewal of a pharmacist license shall be $281 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006. Effective October 1, 2015, the fee for biennial renewal of a pharmacist license shall be $235 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) $13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) $5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code;

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code; and

(D) up to a $21 surcharge to fund the Prescription Drug Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this

subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (b) of this section.

(e) Duplicate or Amended Certificates.

(1) The fee for issuance of an amended pharmacist's license renewal certificate shall be $20.

(2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be $35.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gay Dodson
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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.8

The Texas State Board of Pharmacy adopts amendments to §297.8 concerning Continuing Education Requirements. The amendments are adopted without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4190).

The amendments decrease the number of in-service hours allowed for continuing education from 10 to 5 hours; clarify the requirements for continuing education hours; and clarify the types of programs pharmacy technicians may count for continuing education.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.5

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 20, 2015 adopted an amendment to §53.5, concerning Recreational Hunting License, Stamps, and Tags, with changes to the proposed text as published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4530).

As proposed, the amendment would have implemented a fee of $2.50 per transaction to recover the department's costs of issuing the Federal Migratory Bird Hunting and Conservation Stamp, commonly referred to as the "federal duck stamp." The change reduces the fee to $2.00.

Under federal law, no person 16 years of age or older may hunt waterfowl in the United States without having acquired a federal duck stamp. For many years the federal duck stamp had to be physically purchased at certain federal offices and department law enforcement offices. In 2008, the U.S. Fish and Wildlife Service (Service) made it possible for individual states to enter into agreements with the federal government to sell the federal duck stamp electronically (Electronic Duck Stamp Act of 2005, P.L. 109-266). To provide the convenience of one-stop shopping for waterfowl hunters in Texas, the Texas Parks and Wildlife Department (the department) entered into an agreement with the federal government to sell the federal duck stamp through the department's license deputies and website beginning with the 2007-2008 license year at a cost of $17, which represented the $15 federal stamp fee, a $1 federal fulfillment fee for the cost of mailing a physical stamp to the customer, and a $1 fee to cover the department's transaction costs and commissions to license deputies.

With the passage of the Federal Duck Stamp Act of 2014 (P.L. 113-264), the United States Congress amended the Migratory Bird Hunting and Conservation Stamp Act to increase the price of the duck stamp to $25. The Service has also increased the federal fulfillment fee to $1.50. These fees are imposed by the federal government and are not subject to change by the state. The current $1 fee charged by the department to offset transaction costs and license deputy commissions has been insufficient to recover the department's costs for providing those services. The department's third-party license vendor charges a per-transaction fee of $0.67 and the department pays license agents a com-

mission of 5% of the purchase value per transaction. Using Fiscal Year (FY) 2014 sales data, the department estimates a loss of approximately $153,497 in FY2016 unless the transaction/commission fee is increased. Therefore, the amendment replaces the current federal duck stamp fee of $17 with "all applicable federal fees, plus $2.00" to reflect the federal stamp fee increase (to $25), the federal fulfillment fee increase (to $1.50), and a department transaction/commission fee increase (to $2.00). Therefore, the total cost of acquiring a federal duck stamp in Texas would be $28.50.

The department received two comments opposing adoption of the proposed rule. One commenter opposed adoption and stated that the increase would prevent people from hunting. The department disagrees with the comment and responds that if the comment refers to the increase in the federal fee for a federal duck stamp, that increase is a result of federal action and cannot be altered by the state. If the comment refers the state-prescribed fulfillment and administrative fee, the department does not believe that an increase of $1.00 is onerous, since it recovers the state's cost to issue the permit. The department also notes that since the federal duck stamp is also sold at many post offices, it can be purchased without payment of a fulfillment/administrative fee for a price of $25. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal duck stamp is already too expensive. The department disagrees with the comment and responds that the fee increase for the federal duck stamp itself is a result of federal action and cannot be altered by the state. No changes were made as a result of the comment.

The department received four comments supporting adoption of the proposed rule.

No groups or associations commented on the adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §12.701, which authorizes the issuance of a license, stamp, permit, or tag by a license deputy; §12.702(a), which authorizes the department to contract with a county clerk or another person to issue and collect money for a license, stamp, permit, tag, or other similar item as a license deputy; §12.702(b), which authorizes the commission to by rule set collection and issuance fees for a license, stamp, tag, permit, or other similar item issued under any chapter of the Parks and Wildlife Code; §12.703(a), which authorizes the department to issue a license, stamp, tag, permit, or another similar item authorized by the parks and Wildlife Code or federal law through the use of automated equipment and a point-of-sale system; and §12.703(c), which authorizes the commission to establish by rule the amount of compensation for a point-of-sale entity, including an amount to be retained by the entity from the fee collected for each item issued by the entity.

§53.5. Recreational Hunting Licenses, Stamps, and Tags.

(a) Hunting Licenses:

(1) resident hunting--$25;

(2) senior resident hunting--$7. Valid for residents who are 65 years of age or older on the date of license purchase;

(3) youth hunting--$7. Valid for any person under 17 years of age on the date of license purchase;

(4) general nonresident hunting--$315;

(5) nonresident special hunting--$132;

(6) nonresident five-day special hunting--$48;

(7) nonresident spring turkey hunting--$126;

(8) nonresident banded bird hunting--$27; and

(9) Texas resident active duty military hunting package--$0. Package consists of a resident hunting license, an upland game bird stamp, a migratory game bird stamp, an archery stamp.

(b) Replacement licenses. Except as otherwise provided in this subsection, the fee for replacement of any hunting license is $10.

(1) senior resident hunting replacement--$6;

(2) youth hunting replacement--$6; and

(3) Texas resident active duty military hunting package replacement--$0.

(c) Hunting stamps and tags:

(1) upland game bird--$7;

(2) migratory game bird--$7;

(3) archery hunting--$7; and

(4) Federal Migratory Bird Hunting and Conservation Stamp--all applicable federal fees, plus $2.00.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ann Bright
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Texas Parks and Wildlife Department
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

The Comptroller of Public Accounts adopts amendments to §9.804, concerning arbitration of appraisal review board determinations, with changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4437). The amendment is adopted with slight modifications to a document which is to be adopted by reference. Specifically, minor non-substantive changes have been made to the Request for Binding Arbitration form.

The comptroller amends subsections (b)(1), (2), and (6), and (e)(6) to reflect a statutory change which provides that properties which are eligible for binding arbitration include properties whose appraised or market value is $3 million or less. This amount is increased from the $1 million limit under prior law. The comptroller also amends subsections (b)(3) and (c)(1) to reflect a change in law relating to the graduated fee structure based on the value of the property subject to arbitration. Under prior law, a flat $500 fee for each mediation was established. Subsection (b)(3) is amended to include Appendix 1 which sets forth the schedule of deposits which reflect the statutory change in the application fee structure based on the type and value of the property. Subsection (c)(1) is amended to include Appendix 2 which sets forth changes to the amount of the arbitrator's fee based on the type and value of the property subject to the arbitration.

Subsection (g)(3), (4), (5), and (6) is amended to reflect a change in the law which limits the comptroller's ability to retain $50 per arbitration to cover administrative costs.

Updated versions of the Request for Binding Arbitration form and the Arbitration Determination and Award form are adopted by reference in subsection (i). These amendments are made to reflect changes to the binding arbitration program made by S.B. 849, 84th Legislature, 2015 which changed the way in which fees for binding arbitrations are to be assessed.

The comptroller also makes two additional amendments necessary to improve the arbitration program which are unrelated to the recent legislative changes make in S.B. 849. First, a sentence is added to the end of subsection (d)(6) to emphasize that while conducting an arbitration, an arbitrator should conduct himself or herself in a professional manner. Second, subsection (e)(1) is amended to provide that the arbitrator should cooperate with the appraisal district and the owner or agent in scheduling an arbitration hearing. Both of these amendments are proposed under the comptroller's general authority in Tax Code, §41A.13, to adopt rules to administer the arbitration program.

No comments were received regarding adoption of the amendment.

This section is adopted pursuant to Tax Code, §41A.13 which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A.

The amendments to subsections (b)(1), (2), (3), (6), (c)(1), (e)(6), (g)(3), (4), (5), and (6) implement changes made to the statutes by S.B. 849, 84th Legislature, 2015.

§9.804. Arbitration of Appraisal Review Board Determinations.

(a) Definitions and instructions. The following words and terms, when used in this subchapter, shall have the following meanings and are subject to the stated instructions and provisions.

(1) Owner--A person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.

(2) Agent--An individual for whom written authorization has been granted in accordance with the terms of this subsection and includes the following: an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; an appraisal district employee registered under Occupations Code, Chapter 1151, or an appraisal district contractor; a property tax consultant registered under Occupations Code, Chapter 1152; or a certified public accountant certified under Occupations Code, Chapter 901. An agent, other than an attorney, may not take any action relating to binding arbitration on behalf of an owner without a completed authorization form prescribed by the comptroller. The authorization form must be signed by the owner and specify the actions that the agent is authorized to take on behalf of the owner with respect to binding arbitration. Authorized actions that must be identified on the form include whether or not the agent has the authority to sign the request for binding arbitration, whether or not the agent has the authority to receive deposit refunds, and whether or not the agent has the authority to represent the owner in the arbitration proceeding. The authorization must identify as an agent a specific individual and identify the agent's license or certificate number and applicable licensing board pertaining to the license or certificate under which the agent is qualified to represent the owner pursuant to Tax Code, §41A.08. An authorization identifying a business entity is not valid; identification of an individual meeting the qualifications of Tax Code, §41A.08 is required. If an owner authorizes an agent to receive deposit refunds, the authorization must include the agent's social security number, federal tax identification number, or Texas state tax identification number. If the owner has no agent, all correspondence from the comptroller regarding the arbitration will be sent to the owner. If the owner has authorized an agent to receive deposit refunds as provided in this section, all correspondence from the comptroller regarding the arbitration will be sent to the authorized agent. In order for an agent to represent an appraisal district, other than an attorney or an employee of the appraisal district, a written statement signed by the chief appraiser authorizing the agent to represent the district in the arbitration proceedings shall be submitted in writing to the property owner and the arbitrator at or before the time of the arbitration proceeding.

(3) Binding arbitration--A forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(4) Appraised value--Has the meaning included in Tax Code, §1.04(8).

(5) Market value--Has the meaning included in Tax Code, §1.04(7).

(6) Appraisal district--Has the meaning included in Tax Code, §6.01.

(7) Comptroller--The Comptroller of Public Accounts of the State of Texas.

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by the comptroller with the notice of issuance and the order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is $3 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is $3 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13. A motion for correction of an appraisal roll, a protest concerning the qualification of property for exemption or special appraisal, or any other issue not specified in Tax Code, §41.41(a)(1) or (2) cannot be appealed through binding arbitration.

(3) A request for binding arbitration must be made on the form prescribed by the comptroller and signed by an owner or agent. If an agent files a request for binding arbitration, a written authorization signed by the owner as described in this section that specifically authorizes the agent to file the request must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit in the amount provided by Tax Code, §41A.03 in the form of a money order or a check issued and guaranteed by a banking institution, such as a cashier's or teller's check, payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted. The schedule of deposits is found in Appendix 1. The request for binding arbitration with the required deposit and, if applicable, the agent authorization form must be timely submitted to the appraisal district by hand delivery, by certified first-class mail, or as provided by Tax Code, §1.08 or Tax Code, §1.085.
Figure: 34 TAC §9.804(b)(3)

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested in writing by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to each request in accordance with the procedures and forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed by the comptroller; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller with each request a copy of the order determining protest or, in the case of an appeal relating to contiguous properties pursuant to Tax Code, §41A.03, a copy of each order determining protest. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to timely file the request for arbitration and the required deposit with the appraisal district shall result in the denial of the request by the comptroller. Failure by the owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the denial of the request for arbitration by the comptroller. If the property owner or agent did not file a protest pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the appraisal review board to be valued at $3 million or less or property that qualifies as the owner's residence homestead under Tax Code, §11.13, the comptroller shall deny the request for binding arbitration. If the property owner or agent filed an appeal in district court concerning the property subject to a request for binding arbitration, the comptroller shall deny the request. Failure by the owner to provide all information required by the comptroller's prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller providing all requested information and documentation and affirming that the applicant meets the qualifications set forth in Tax Code, §41A.06. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has all of the qualifications required under Tax Code, §41A.06, agrees to conduct an arbitration for a fee as set out in Appendix 2, and agrees to promptly notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, to be included in the registry. For an arbitrator to continue to be included in the registry, a new application must be submitted on or before the earlier of each renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, or the second anniversary of the date the arbitrator was initially added to or subsequently renewed on the registry.
Figure: 34 TAC §9.804(c)(1)

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, Chapter 41A, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee, contractor, or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's expe-

rience and qualifications, the geographic areas in which the arbitrator agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8) The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d) Appointment of Arbitrators.

(1) The appraisal district shall notify the comptroller not later than the 20th calendar day after the date the parties receive a copy of the registry or the notice of the comptroller's Internet address of the registry website, whichever is later, that an arbitrator was selected by the parties by agreement or that an agreement could not be reached.

(2) The comptroller shall promptly appoint an arbitrator selected by agreement of the owner or agent and the appraisal district. The notification of the appointment must be transmitted by regular first-class mail to the arbitrator. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(3) If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and inform the arbitrator by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(4) If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator timely, the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law. The arbitrator shall be notified of the appointment by the comptroller by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(5) The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection.

(6) An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin upon a showing, supported by competent evidence, that the assigned arbitrator has an interest in the outcome of the arbitration or that the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. While conducting an arbitration, an arbitrator should at all times conduct himself or herself in a professional manner while interacting with the parties. The arbitrator should not engage in conduct that creates a conflict of interest.

(7) The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail. If the comptroller does not receive from the arbitrator written notification of acceptance or refusal of the appointment within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt, or the determination pursuant to this subsection, of the arbitrator's refusal. The process of appointment of arbitrators pursuant to this subsection shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e) Provision of Arbitration Services.

(1) The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration services, including but not limited to the time, place, and manner of conducting and concluding the arbitration. Unless the property owner and the appraisal district both agree to arbitration by submission of written documents, the arbitration will be conducted in person or by teleconference. An arbitrator may require that the arbitration be conducted in person. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a

proceeding for reasonable cause. The arbitrator should cooperate with the appraisal district and the owner or agent in scheduling a hearing. The arbitrator must, by written procedures delivered in advance to the parties, require that the parties produce and exchange evidence prior to the hearing.

(2) The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal and shall deliver written procedures to be used at the hearing. The parties shall be allowed to record the proceedings by audiotape, but may record them by videotape only with the consent of the arbitrator.

(3) The parties to an arbitration proceeding may represent themselves or may be represented by an agent as provided by Tax Code, §41A.08 with timely, written authorization as provided in this section. If an agent was not identified in the request for binding arbitration for purposes of representing an owner in the arbitration proceeding, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding. Such written authorization must be made on the comptroller-prescribed agent authorization form, must be signed by the owner, and may provide only for the agent to represent the owner at the arbitration proceeding. Any deposit refund will be processed in accordance with the original request for binding arbitration. No written authorization is required for an attorney to represent a party at an arbitration proceeding.

(4) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(5) The arbitrator shall not communicate with the owner, the appraisal district, or their agents, nor shall the owner, the appraisal district, or their agents communicate with the arbitrator, prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(6) The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent; that the appraisal review board order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at $3 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property at issue in the pending arbitration. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each appraisal review board order appealed must be a determination of a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property determined by the order at $3 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; however, the combined total value of all orders appealed may exceed $3 million, whether or not the appeal involves a property that qualifies as owner's residence homestead. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), the arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on any property subject to the appeal are delinquent; that any of the appraisal review board orders appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at $3 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of any property at issue in the pending arbitration.

(7) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration.

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters B, C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by the comptroller and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comptroller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) Payment of arbitrators' fees and arbitration deposit refunds will be processed in accordance with the provisions of Tax Code, §41A.09. An award that determines an appraised or market value at an amount exactly one-half of the difference in value between the property owner's opinion of value as stated in the request for binding arbitration and the value determined by the appraisal review board is deemed to be

nearer the appraisal review board's determination of value. The comptroller will retain $50 of each deposit for administrative costs.

(4) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the $50 retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(5) An owner or agent may withdraw a request for arbitration only by written notice delivered to the appraisal district, the comptroller, and the arbitrator, if one has been appointed. If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the $50 retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall pay the fee, if any, charged by the arbitrator. The fee will be paid from the owner's deposit and mailed to the address shown on the arbitrator's registry application. If the arbitrator's fee is less than the maximum allowable fee under Appendix 2, the comptroller shall refund to the owner or agent any remaining deposit, less $50 retained by the comptroller for administrative costs. If the arbitrator's fee is the maximum allowable fee under Appendix 2, the comptroller shall retain $50 of the deposit for administrative costs and no refund will be paid.

(6) If the comptroller denies a request for arbitration as provided by subsection (b)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the $50 retained by the comptroller for administrative costs.

(7) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller's form for request for binding arbitration will require identification of the social security number or tax identification number of the individual authorized to receive deposit refunds. For an owner, the owner is required to provide the owner's social security number, federal tax identification number, or Texas state tax identification number. If an agent has been authorized by the owner to receive deposit refunds, the agent is required to provide the agent's social security number, federal tax identification number, or Texas state tax identification number. Deposit refunds will not be processed without the required identification. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) Pending Arbitrations. No party to an arbitration including, but not limited to, a property owner, a property owner's agent, an appraisal district, or an arbitrator, may seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A. An arbitration is pending from the date a request for arbitration is filed and continues until delivery of the arbitrator's final award pursuant to Tax Code, §41A.09. The prohibition in this subsection shall not apply to administrative matters assigned to the comptroller, such as processing of arbitration requests and deposits.

(i) Forms Adopted by Reference. The Comptroller of Public Accounts adopts by reference the Request for Binding Arbitration form and the Arbitration Determination and Award form. Copies of these forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(j) Other Forms. All other comptroller forms applicable to this section may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules in Chapter 380, Subchapters D and E, without changes to the proposed text as published in the March 27, 2015, issue of the *Texas Register* (40 TexReg 1813): §380.9301 (Basic Youth Rights), §380.9311 (Access to Attorneys and Courts), §380.9353 (Appeals to the Executive Director), §380.9517 (Redirect Program), §380.9520 (Cooling-Off Period for Youth Out of Control), §380.9550 (Definitions-Due Process Hearings, §380.9553 (Level I Hearing by Telephone), and §380.9571 (Procedure for Mental-Health-Status Review Hearing). These rules will not be republished.

TJJD also adopts amendments to the following rules in Chapter 380, Subchapters D and E, with changes to the proposed text as published in the March 27, 2015, issue of the *Texas Register* (40 TexReg 1813): §380.9312 (Visitation), §380.9313 (Use of Telephone), §380.9315 (Youth Mail), §380.9501 (Behavior Management System Overview), §380.9502 (Positive Reinforcement and Privilege System), §380.9503 (Rules and Consequences for Residential Facilities), §380.9504 (Rules and Consequences for Youth on Parole), §380.9535 (Phoenix Program), §380.9551 (Level I Hearing Procedure), §380.9555 (Level II Hearing Procedure), §380.9557 (Level III Hearing Procedure), and §380.9559 (Detention for Youth with Pending Charges).

The changes to §380.9312 consist of deleting a reference to another TJJD rule.

The changes to §380.9313 consist of typographical corrections.

The changes to §380.9315 consist of: 1) clarifying that youth mail is not distributed on days when state agencies are closed or when skeleton crews are required; and 2) clarifying that all unauthorized written material (not just mail) that is possessed by youth in an area other than the youth's living unit may be read to determine if it is contraband.

The changes to §380.9501 consist of typographical corrections.

The changes to §380.9502 consist of clarifying that youth interests are considered when developing the privilege system and that not all privileges are gender-specific.

The changes to §380.9503 consist of grammatical corrections.

The changes to §380.9504 consist of: 1) making minor typographical and grammatical corrections; 2) adding a non-substantive wording clarification; and 3) clarifying that the youth's conditions of parole are provided to the youth before he/she is released from a facility and then reviewed with the youth when he/she initially meets with the assigned parole officer.

The changes to §380.9535 consist of grammatical and typographical corrections.

The changes to §380.9551 consist of: 1) correcting typographical errors; 2) clarifying that the minimum length of stay assigned to a youth whose parole is revoked is based on the most serious offense found at the revocation hearing; and 3) including a reference to §380.8525, which allows for reductions in the minimum length of stay.

The changes to §380.9555 consist of correcting typographical errors and adding a non-substantive wording clarification.

The changes to §380.9557 and §380.9559 consist of correcting typographical errors.

JUSTIFICATION FOR CHANGES

The justification for these amended rules is to clarify the practical application of youth rights while maintaining facility safety and security, to promote youth rehabilitation by enhancing the program of positive behavioral interventions and supports, and to increase opportunities for targeted interventions for youth with a need for enhanced behavioral supports. Additionally, these amended rules are intended to promote public safety and accountability for youth through an organized system of hearings and to protect youth and parent rights consistent with current statutes.

SUMMARY OF CHANGES

Throughout Subchapters D and E, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes made throughout the subchapters are listed in the following paragraphs.

The amendment to §380.9301 adds sexual orientation and gender identity to the list of factors upon which a youth may not be discriminated against. The amendment also clarifies that the right to free expression includes speaking languages other than English, with a few exceptions for programming effectiveness and facility safety. The rule also clarifies that a youth has the right to participate in religious activities, but those activities may not necessarily be *of the youth's choice*. As set forth in other TJJD rules and in Texas law, parents have the right to establish the religious preference for their minor children. Additionally, the amended rule no longer contains information about mail and telephone access, which is addressed in §380.9313 and §380.9315.

The amendment to §380.9311 deletes information about collect calls from youth to attorneys or courts. The rule establishes that these types of calls are made using TJJD staff telephones and are not charged to the youth.

The amendment to §380.9312 adds a provision that allows the TJJD executive director to make exceptions to visitation rules in emergency situations.

The amendment to §380.9313 expands the scope of the rule to include phone calls to the TJJD Office of Inspector General (OIG) and Office of Independent Ombudsman (OIO). The amended rule requires TJJD to grant each youth a specific number of pre-paid phone minutes each month. The rule also clarifies that phone calls to the OIG or OIO or calls related to family emergencies are not charged against a youth's pre-paid minutes. The rule requires TJJD to allow phone access for calls to the OIG and OIO whenever possible, limited only by consideration for facility order and safety. The amendment also states that calls to the OIG toll-free number are recorded and prohibits TJJD from recording any other calls by youth. Additionally, the amendment clarifies that the list of people youth may call includes *immediate* family members, as defined in §380.9312 of this title. The amended rule also deletes the provision that allowed TJJD to restrict a youth's use of the phone when an investigation finds that the youth has abused phone privileges.

The amendment to §380.9315 clarifies that employees of the OIG and investigators in other TJJD departments are included in the list of special correspondents for purposes of youth mail. The amended rule also clarifies that mail addressed to or from a minor outside of TJJD will not be delivered if the parent/guardian of the minor objects to his/her child corresponding with a TJJD youth. The rule also clarifies that, for youth who have already been discharged, letters and packages will be forwarded to the youth's address on file.

The amendment to §380.9353 makes conforming changes to be consistent with other TJJD rules. Specifically, the amended rule clarifies that appeals of detention review hearings for TJJD youth being held in the community will always go to the TJJD executive director. However, appeals of detention review hearings for youth being held in TJJD security units will go to the executive director only when the appeal arises from the second or subsequent detention review hearing.

The amendment to §380.9501 clarifies that a dorm activity restriction (which is used when deteriorating dorm culture threatens youth and staff safety) is not considered group discipline, but rather it is a safety and security measure. The amended rule also includes provisions that prohibit denying a youth access to mental health services, educational services, or religious services as a disciplinary consequence. The reference to TJJD's use of force policy has been removed as this is not considered a behavior management intervention.

The amendment to §380.9502 removes the requirement for a youth to receive a daily behavior rating and the requirement for those ratings to be averaged for an overall weekly rating. Youth will receive daily feedback, but not a numerical rating. The amended rule no longer requires a youth's privilege status to be determined by a weekly review conducted by the youth's multi-disciplinary team.

The amendment to §380.9503 removes the provision that allowed youth to accrue daily privileges for later use while the youth is serving a privilege suspension. The rule also expands the use of the "Loss of Transition Eligibility" sanction to be a disciplinary option for *any* major rule violation. Previously, this sanction was available only for assault with bodily injury and serious sexual misconduct. Youth who receive this sanction must wait an additional month before becoming eligible to move to a medium-restriction facility. The amended rule also removes the requirement for the facility administrator to review all minor consequences issued by a youth's multi-disciplinary team. The rule requires the facility administrator to review any minor con-

sequence that will last at least 14 days (instead of 24 hours, as in the previous rule). This review must take place within three workdays (instead of 24 hours, as in the previous rule) after the consequence was issued. The rule also clarifies that the youth grievance system is the mechanism for youth to challenge minor disciplinary consequences.

The amendment to §380.9504 adds the option to place a youth at a medium-restriction facility upon revocation of the youth's parole. The amended rule also contains a modification to the rule violation called "Repeated Non-Compliance with a Written Reasonable Request of Staff." The rule violation now involves a youth's failure to comply with a monthly expectation two times in a 60-day period, rather than a 90-day period. Additionally, the rule no longer contains the consequence called "Intensive Surveillance Supervision," as this consequence simply restated elements of other consequences.

The amendment to §380.9517 allows a youth to be placed in the Redirect Program when the youth commits *any* major rule violation (rather than just the seven listed violations), but only if the executive director or his/her designee determines the totality of the circumstances justifies the youth's placement in the program. Clarification has also been added to show that when a youth is already in the Redirect Program and is then placed in the Security Program, the youth may not necessarily move to a different location. The amended rule also clarifies that mental health services provided to youth in the Redirect Program are provided by a mental health specialist, not a psychologist.

The amendment to §380.9520 includes only minor, non-substantive wording changes.

The amendment to §380.9535 adds a requirement for the division director over residential facilities or his/her designee to make the final decision on whether a youth is admitted to the Phoenix Program. The amended rule also clarifies that mental health services provided to youth in the Phoenix Program are provided by a mental health specialist, not a psychologist.

The amendment to §380.9550 adds a definition for the term *due process* and deletes the definitions for the various types of due process hearings conducted by TJJD. The individual rules in this subchapter explain what each type of hearing involves. Additionally, the amended rule replaces the term *administrative law judge* with *hearing examiner* in the definition for the staff member who presides in a parole revocation hearing.

The amendment to §380.9551 adds a paragraph explaining what each party is responsible for establishing during the disposition phase of a parole revocation hearing. The rule also clarifies that when a youth pleads guilty/true to an offense in court and does not receive deferred adjudication *or deferred prosecution,* the court judgment is sufficient to prove in a TJJD parole revocation hearing that the youth committed the offense. Additionally, the amended rule no longer refers to *tape* recordings, to allow for recordings made on electronic media.

The amendment to §380.9553 removes the requirement for the youth's attorney to be physically present in the same location with the youth during a parole revocation hearing conducted by telephone. The attorney may now participate by telephone. The rule also reduces the amount of notice TJJD requires before it will authorize a hearing to be conducted by telephone. The youth's attorney will now have to notify TJJD at least one working day (instead of two working days) before the scheduled hearing that the youth wishes to plead "true" regarding the allegation(s). Additionally, the amended rule adds a statement allowing the hearing examiner to adjourn the hearing and require an on-site hearing for any reason to ensure the youth's due process rights are protected.

The amendment to §380.9555 makes the following changes: 1) allows a Level II hearing to be held by conference call if the hearing manager determines that doing so will not deprive the youth of his/her due process rights; 2) changes the deadline to five working days (instead of five calendar days) for conducting a Level II hearing in cases where the youth is being held in a security unit due to his/her potential interference with the investigation or hearing; 3) adds a requirement for staff representatives in Level II hearings to be trained to function in that role; 4) clarifies that the youth's advocate may not be a person who was a witness to the alleged rule violation; 5) explains when TJJD staff and youth are considered to be "readily available" for purposes of being called to testify; 6) explains when evidence is considered to be "readily available" for purposes of being introduced at the hearing; 7) requires a supervisory staff member to review the hearing manager's report to ensure consistency in the application of policy; 8) specifies that a Level II hearing is the appropriate level of due process to transfer a youth in a conditional placement to a higher-restriction facility; 9) allows a youth in a conditional placement to waive the Level II hearing before he/she is transferred to a higher-restriction facility; 10) clarifies that Level II hearings held to transfer a youth from a conditional placement will include only the fact-finding phase of the hearing and not the disposition phase; and 11) clarifies that a hearing manager's decision to demote a youth's stage in the TJJD rehabilitation program is subject to final approval from the facility's administration.

The amendment to §380.9557 requires the hearing administrator to indicate which specific admission criterion was proven before a youth may be admitted or extended in the Security Program. The amended rule also clarifies that the appeal authority must (rather than may) determine some form of equitable relief for a youth who has already completed a disciplinary measure or has otherwise been adversely affected when the appeal determines the youth did not commit the violation, there were extenuating circumstances to the youth's violation, or the discipline for a confirmed violation was inappropriate. Additionally, the rule clarifies that when the appeal authority determines a youth did commit the violation but the discipline was inappropriate, the violation will remain on the youth's behavioral record.

The amendment to §380.9559 clarifies that TJJD considers charges to be pending if there is reliable information that the prosecuting attorney (rather than the district attorney) intends to request an indictment or file a petition. The rule also clarifies that the burden of proof is on the staff member requesting detention of the youth.

The amendment to §380.9571 includes only minor, non-substantive wording changes.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed amendments.

RULE REVIEW

In the Proposed Rules section of the March 27, 2015, issue of the *Texas Register* (40 TexReg 1813), TJJD published a notice of intent to review Chapter 380, Subchapters D and E, as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting the following rules continue to exist: §§380.9301, 380.9311, 380.9312, 380.9313, 380.9315, 380.9353, 380.9501, 380.9502, 380.9503, 380.9504, 380.9517, 380.9520, 380.9535, 380.9550, 380.9551, 380.9553, 380.9555, 380.9557, 380.9559, and 380.9571 Accordingly, these rules are readopted with amendments as described in this notice.

TJJD has also determined that the reasons for adopting following rules continue to exist: §§380.9317, 380.9331, 380.9333, 380.9337, and 380.9561. Accordingly, these rules are readopted without amendments.

SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

37 TAC §§380.9301, 380.9311 - 380.9313, 380.9315, 380.9353

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

§380.9312. Visitation.

(a) Purpose. The purpose of this rule is to promote and foster communication and contact between Texas Juvenile Justice Department (TJJD) youth and their parents/guardians, immediate family members, and other positive individuals in their lives.

(b) Applicability.

(1) This rule applies to all residential facilities operated by TJJD.

(2) This rule does not apply to visits from:

(A) attorneys or their staff (see §380.9311 of this title);

(B) personal clergy (see §380.9317 of this title); or

(C) registered volunteers who are visiting a youth as part of their specific volunteer assignment (see §385.8145 and §385.8181 of this title).

(c) Definitions. As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise.

(1) Immediate Family Member--parent, step-parent, legal guardian, sibling, step-sibling, child, spouse, aunt, uncle, or grandparent of a youth in TJJD custody.

(2) Non-Eligible Visitor--includes only the following individuals:

(A) a former or current TJJD youth, except if a former TJJD youth is an immediate family member;

(B) a parent whose parental rights have been terminated by a court, but only if the youth the parent is seeking to visit is under age 18;

(C) any person who is restricted from contact with a TJJD youth by a valid court order;

(D) any former or current TJJD employee, unless the former or current TJJD employee is an immediate family member of the youth, is otherwise authorized to visit the youth, or is approved by the chief local administrator (CLA);

(E) any person who is not an immediate family member and who is under age 18, unless approved by the CLA;

(F) any person with an outstanding warrant for a felony or misdemeanor offense; and

(G) any person who is not an immediate family member and who is required to register as a sex offender, unless authorization for the visitation is obtained from the executive director or his/her designee.

(d) General Provisions.

(1) All TJJD youth, regardless of program placement, are allowed to receive visitors.

(2) Except for parents and guardians who wish to visit a youth during the youth's initial placement at the orientation and assessment facility, only persons whose names are on a youth's approved visitor list are permitted to visit that youth.

(3) A person wishing to be placed on a youth's approved visitor list must submit a completed visitor application and obtain prior approval to visit with the youth.

(4) TJJD conducts background and criminal history checks prior to placing a person on the youth's approved visitor list.

(A) TJJD does not release or disclose confidential criminal history record information except on court order or with the consent of the person who is the subject of the criminal history record information.

(B) Criminal records obtained under this rule are destroyed after completion of the visitation approval decision. However, if visitation is denied or limited based in part on a review of criminal history, TJJD retains the criminal history record information of the person for whom access is denied or limited until the youth the person is seeking to visit is released from TJJD.

(5) An approved visitor under the age of 18 must be accompanied by:

(A) his/her parent or guardian; or

(B) if the visitor is the child of a TJJD youth, an approved visitor who is age 18 or older.

(e) Denial of Visitation.

(1) TJJD may deny placing a person's name on a youth's approved visitor list only if:

(A) the person is a non-eligible visitor; or

(B) TJJD has denied visitation for any of the reasons listed in paragraph (2) of this subsection.

(2) TJJD may deny visitation if:

(A) evidence exists that the person has:

(i) passed contraband to a youth or staff member that constitutes a violation of law or creates a safety or security risk;

(ii) aided a youth in an escape or attempted escape;

(iii) provided false information or failed to provide accurate information to staff with regard to visitation;

(iv) engaged in disruption of visitation similar to examples listed in subsection (h) of this section. The severity of the incident is a factor in determining the length of time visitation may be denied;

(B) the person was victimized by the youth and the manager of clinical services has determined that visitation would be harmful to the person;

(C) there is reasonable cause to believe the person would pose a risk to the safety or security of the facility or interfere with a youth's treatment, rehabilitation, or successful reestablishment in the community;

(D) the person is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; or

(E) the person has the following criminal history:

(i) a conviction, deferred adjudication, or juvenile adjudication for a felony within the past ten years;

(ii) current probation or parole; or

(iii) a conviction, deferred adjudication, or juvenile adjudication for a jailable misdemeanor within the past five years.

(3) To determine whether to approve or deny visitation based on criminal history, TJJD takes into consideration the nature and extent of the criminal record and the time elapsed since the criminal activity.

(4) TJJD may not deny visitation for an immediate family member based solely on a review of criminal history record information.

(5) Only the division director over residential services or his/her designee may deny visitation.

(6) If TJJD denies placing a person's name on a youth's approved visitor list, TJJD must provide written notice to the person and the youth. The notice must include the reason for the denial and an explanation of the right to file a grievance to appeal the decision.

(f) Visitation Scheduling.

(1) Visitation Days. Visitation days are, at a minimum, each Saturday and Sunday and major holidays.

(2) Visitation Hours. The facility must provide two eight-hour visitation days per week. The facility may provide extended visitation hours, as designated by the CLA or designee.

(3) Length of Visitation.

(A) Youth Not Assigned to the Security Unit. Visitation for youth not assigned to the security unit is at least two hours per each visitation, if behavior permits.

(B) Youth Assigned to the Security Unit. Visitation for youth assigned to the security unit is at least one hour per each visitation, if behavior permits.

(4) Number of Visitors. There is no limit to the number of visitors per visitation. However, a youth is allowed only two face-to-face contact visitors at any one time during each visitation, unless the CLA or designee grants an increase in the number of face-to-face contact visitors for the visitation period.

(g) Conditions of Visitation.

(1) Location.

(A) Adequate space is provided for visitation. Outdoor visitation may be allowed if safety and weather permit.

(B) Visitation for youth housed in a security unit occurs in the security unit. For visitation in a security unit, the CLA or designee may limit approved visitors to parents/guardians and grandparents.

(2) Private Parental Visitation. Parents have the right to private, in-person communication with their child for reasonable periods of time. The time, place, and conditions of the private, in-person communication may be regulated only to prevent disruption of scheduled activities and to maintain the safety and security of the facility.

(A) Private, in-person communication means communication between a parent and his/her child in a location where conversation cannot be overheard by staff.

(B) Parents desiring to have private, in-person communication with their child are expected to make the request at least 24 hours before the visitation. Requests not made within 24 hours are accommodated if possible.

(3) Special Visitation. Special visitation is provided at times that may vary from the regular visitation schedule to accommodate visitors with special circumstances including, but not limited to:

(A) long-distance travel requirements;

(B) parent work schedules that preclude visiting during normal hours; or

(C) bereavement.

(4) Contact Visitation. Visitors are allowed to hug the youth at the beginning and end of the visit.

(5) Dress Code. Visitors must abide by the following dress code:

(A) no shorts (an exception is made for visitors under age 13);

(B) no open-toed shoes;

(C) no miniskirts, see-through or sleeveless clothing, tops that expose the midriff, or any other clothing for visitors age 13 or older that is determined by staff to be too revealing, too short, or otherwise inappropriate;

(D) suggestive, offensive, or derogatory body art must be covered (to the extent practical); and

(E) no clothing depicting drugs, sex, gang culture, obscene language, or disrespect to other persons or ethnicities.

(h) Removal From Visitation.

(1) TJJD will require the visitor to leave the facility and TJJD may notify local law enforcement if:

(A) the visitor appears to be under the influence of drugs or alcohol;

(B) the visitor refuses to cooperate;

(C) the visitor creates a disturbance;

(D) the visitor is hostile to the point of disruption; or

(E) evidence exists that the visitor has passed contraband to a youth or staff member or aided a youth in an escape or attempted escape.

(2) If local law enforcement is notified, any further action will be at the discretion of the local law enforcement.

(i) Denial of Visitation for TJJD Youth. Youth may be denied a scheduled visit if there is a compelling risk to the safety of other youth or visitors or the security of the facility, including circumstances in which the youth is:

(1) out of control and it is unsafe to allow visitation;

(2) assaultive or threatens to engage in assaultive conduct during visitation; or

(3) engaging in misconduct during visitation.

(j) Denial of Visitation for TJJD Facility or Housing Unit.

(1) If a dorm is on a temporary schedule restriction, youth are allowed visitation unless youth individually meet criteria for denial of visitation.

(2) Denial of visitation for an entire housing unit or facility due to unrest or any other extraordinary situation must be approved by the division director over residential facilities or his/her designee.

(k) Refusal of Visitation. Youth may refuse to receive visitors.

(l) Staff Availability During Visitation. Staff members must be available to answer visitors' questions and address concerns during visitation hours.

(m) Publication of Visitation Rules. The facility must post the visitation rules in English and Spanish on a central bulletin board and assist other non-English speaking individuals to understand posted rules, as needed. The visitation rules must:

(1) address all pertinent issues including, but not limited to, visitation days and hours, required identification, visitor dress code, prohibited contraband, items authorized in visitation area, and expected demeanor of visitors; and

(2) be sent with the admission letter to each youth's parents or legal guardian.

(n) Grievance and Complaint Process.

(1) Visitation Grievances. Grievances by immediate family members or youth with regard to visitation are filed under §380.9331 of this title.

(2) Public Complaints. Complaints by members of the public with regard to visitation are filed under §385.8111 of this title.

(o) Check-In Process.

(1) Registration. All visitors must register upon entry to a facility.

(2) Identification.

(A) Adult visitors must produce valid picture identification for themselves and accompanying visitors age 13 or older. Acceptable picture identification includes:

(i) valid state driver's license;

(ii) state-issued identification card;

(iii) current military identification;

(iv) school-issued identification card;

(v) other official picture identification; or

(vi) a TJJD volunteer identification badge.

(B) Visitors age 13 or older are issued a temporary identification badge.

(3) Prohibited Items. Items brought onto agency property may be limited and regulated by TJJD. Visitors are allowed to bring in only the items listed in this paragraph unless the control center posts a list of additional items allowed. The additional items must be approved by the CLA. Visitors are allowed to bring:

(A) identification;

(B) a bottle and diaper-changing items (for visitors with infants); and

(C) up to ten dollars in coins, if vending machines are available. TJJD youth are not permitted to handle the money.

(4) Searches.

(A) All individuals, vehicles, and items entering the facility are subject to search. For more information regarding entry searches, see §380.9710 of this title.

(B) Parking lots are subject to inspection by TJJD's canine (K-9) teams. Law enforcement may be notified when necessary. See §380.9713 of this title for more information regarding inspections of parking lots.

(C) In facilities equipped with metal detectors, visitors must declare at the control center all metal items on their person and must successfully pass through the metal detector. Visitors refusing or failing to pass successfully through a metal detector are denied access.

(D) Visitors' refusal to submit to a search of their person or personal property may be considered legitimate grounds for denying access to the facility.

(p) Individual Exceptions. The executive director may make exceptions to the provisions of this rule on a case-by-case basis or in emergency situations.

§380.9313. Use of Telephone.

(a) Purpose. This rule provides Texas Juvenile Justice Department (TJJD) youth with reasonable access and equal opportunity within a facility to use the telephone for purposes of contacting:

(1) their families;

(2) the Incident Reporting Center maintained by the TJJD Office of Inspector General for purposes of reporting information concerning abuse, neglect, and exploitation; and

(3) the Office of the Independent Ombudsman for TJJD.

(b) Applicability. This rule does not apply to calls to attorneys. For additional information on telephone calls to attorneys and courts, see §380.9311 of this title.

(c) General Provisions. Use of the phone is a basic right of youth in the TJJD system. For additional information on basic rights of youth in the TJJD system, see §380.9301 of this title.

(d) Non-Emergency Calls. TJJD provides a specific number of prepaid minutes for youth to make a reasonable number of calls each month. Calls are restricted to the youth's parents, guardian, immediate family members as defined in §380.9312 of this title, and approved volunteers. Times are scheduled throughout each week and weekend to provide youth with access to telephones for this purpose.

(e) Emergency Calls.

(1) Family Emergencies. TJJD is responsible for calls by or on behalf of the youth in cases of family emergencies as approved by the case manager. Family emergency calls are not made using prepaid minutes. All family emergency calls are to be placed on a TJJD staff member's telephone.

(2) Calls to the Incident Reporting Center or the Office of the Independent Ombudsman.

(A) Calls placed to the Incident Reporting Center or the Office of the Independent Ombudsman do not count against a youth's prepaid minutes.

(B) For calls to the Incident Reporting Center or the Office of the Independent Ombudsman, TJJD allows access to the telephone whenever possible, limited only by consideration for facility order and the safety of youth and staff. TJJD staff may require youth to wait until the end of the currently scheduled activity before placing a telephone call.

(f) Recorded Phone Calls. Calls placed by youth to the Incident Reporting Center are recorded. During the initial orientation to TJJD and during all subsequent placement orientations, youth are informed that calls to the Incident Reporting Center are recorded. No other calls made by the youth are recorded by TJJD.

§380.9315. Youth Mail.

(a) Purpose. The purpose of this policy is to establish rules for promoting open mail communication for youth in residential facilities and to establish limitations on youth mail only as necessary for safety and security and for the protection of youth from improper influences.

(b) Applicability. This rule applies only to youth in residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise.

(1) Contraband--has the meaning assigned by §380.9107 of this title.

(2) Family Member--father, mother, sibling, step-relationship to any of the preceding, grandparent, or spouse. Family member may also include other relatives as approved by the chief local administrator on a case-by-case basis.

(3) Mail--all written correspondence to or from a youth that is deposited for delivery in a regular postal service and any other item contained in the envelope or package.

(4) Special Correspondent--includes only the following persons:

(A) TJJD board members, TJJD administrators, employees of the TJJD Office of Inspector General, or other TJJD investigators;

(B) employees of the Office of the Independent Ombudsman for TJJD;

(C) government officials, including elected officials, court officials, and law enforcement officials;

(D) an attorney for the youth;

(E) a member of an advocacy or support group, as defined in §385.8183 of this title;

(F) a member of the editorial or reporting staff of any newspaper, magazine, or radio or television station listed in a major media directory.

(d) General Provisions.

(1) Youth have the right to communicate or correspond through the mail with persons or organizations subject only to the limitations necessary to maintain facility order and security and to protect youth from improper influences.

(2) Money sent by mail to a youth is handled in accordance with §380.9931 of this title.

(3) No incoming or outgoing youth mail will be read or censored, but mail may be inspected for the purposes provided in subsection (e) of this section.

(4) Unless a youth requests it, a youth's mail will not be read for any purpose as long as the mail remains in the youth's possession in his/her assigned living unit.

(5) Mail or other written material that is abandoned following a youth's unauthorized departure may be read to aid in the youth's apprehension.

(6) Unauthorized written material, which may include mail, that is found in a youth's possession in an area other than his/her living unit may be read only to the extent needed to determine whether the item constitutes contraband.

(e) Contraband in Incoming and Outgoing Mail.

(1) All incoming mail may be opened and inspected for contraband in the youth's presence.

(2) All outgoing mail may be inspected for contraband prior to sealing, except for outgoing mail to special correspondents.

(3) Youth may receive magazines or other publications that are not otherwise considered contraband.

(4) All contraband that is discovered will be seized and disposed of in accordance with §380.9711 of this title.

(f) Stopped Delivery of Incoming and Outgoing Mail.

(1) Incoming mail will not be delivered and outgoing mail will not be deposited for delivery if:

(A) it contains contraband; or

(B) it is addressed to or from:

(i) a person who objects to receiving mail from the youth;

(ii) a minor whose parent or guardian has objected to his/her child receiving mail from the youth;

(iii) a person, other than a special correspondent or family member, who has been identified by the youth's parent or guardian as someone who should not correspond with the youth (this provision applies only to TJJD youth under age 18);

(iv) an inmate of a jail or prison, other than a family member;

(v) a youth under TJJD jurisdiction, other than a family member; or

(vi) a youth under TJJD jurisdiction who is a family member when it is found that either youth has at any time used the mail to facilitate, plan, or engage in the violation of a law or rule of conduct.

(2) The executive director or his/her designee may make exceptions on a case-by-case basis regarding individuals permitted to correspond with youth, based on whether it is in the youth's best interest to correspond with the individual.

(3) Incoming mail that is not delivered will be returned to the sender if a return address is noted on the parcel. If no return address is noted, the mail will be returned to the post office as undeliverable.

(4) Mail from a youth will not be deposited for delivery without a return address printed on the envelope.

(5) The executive director or his/her designee may issue a notice of stopped mail when a person who is otherwise eligible to correspond with a youth attempts to send contraband to a youth that would be a violation of law or that creates a safety or security risk. When such a notice has been issued, all future mail from the sender will be returned, regardless of content. The notice of stopped mail

will include a time period up to six months after which the person may submit a request to resume correspondence with the youth.

(g) Notice of Returned Mail and Opportunity for Review.

(1) Youth will receive notice of incoming mail that is returned to the sender and outgoing mail that is not deposited for delivery. The notice to youth will describe the mail and the reasons for its return in sufficient detail to permit effective use of the youth grievance process.

(2) Senders of incoming mail that is returned may request the reasons for the mail's return. TJJD stamps the returned mail envelope with the reason for its return or the telephone number to contact for this information.

(h) Returned and Stopped Mail Review Procedure. A youth or a person corresponding with a youth who has had his/her mail returned or received notice of stopped mail may request a review of the action by filing a grievance under §380.9331 of this title.

(i) Postage and Time of Delivery.

(1) There is no limit on the number or length of incoming or outgoing letters. Postage and stationery is furnished to all youth for at least three one-ounce domestic letters per week. Additional postage and stationery are provided for letters to attorneys or courts, as needed.

(2) Excluding weekends, national and state holidays, and other days on which agencies are closed or skeleton crews are required:

(A) incoming letters are distributed to the youth within 24 hours and packages are distributed within 48 hours; and

(B) outgoing letters are deposited for delivery within 24 hours after a staff member receives the letter from the youth.

(3) First-class letters and packages are forwarded to:

(A) a youth's assigned placement following transfer or release; or

(B) a youth's address on file following discharge.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE
DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9501 - 380.9504, 380.9517, 380.9520, 380.9535

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

§380.9501. Behavior Management System Overview.

(a) Purpose. This rule establishes the basic principles on which the Texas Juvenile Justice Department (TJJD) operates its behavior management system.

(b) General Provisions. TJJD's behavior management system addresses incentives for adhering to rules and consequences for breaking them. The system fosters accountability for behavior and compliance with rules and expectations. The system is designed to:

(1) maintain order and security;

(2) promote safety, respect for self and others, fairness, and protection of rights;

(3) provide constructive discipline and a system of incentives and consequences to encourage youth to meet expectations for behavior;

(4) provide opportunities for positive reinforcement and recognition for accomplishments and positive behaviors;

(5) promote pro-social means for youth to meet their needs;

(6) promote constructive dialogue and peaceful conflict resolution;

(7) minimize separation of youth from the general population; and

(8) limit the need to use force when responding to youth behavior.

(c) Rules and Privileges.

(1) Purposeful rules are less likely to be broken; therefore, behavioral expectations and rules of conduct are developed in a manner that allows youth and staff to clearly understand each expectation or rule and its intended purpose.

(2) Youth conduct is evaluated daily on a set of basic expectations. Youth may earn or lose privileges based on following the basic expectations. See §380.9502 of this title for more information on the youth privilege system.

(3) Youth who violate specific rules of conduct are subject to disciplinary consequences. See §380.9503 and §380.9504 of this title for more information on rules and consequences.

(d) Intervention Strategies.

(1) Staff members are trained to address misconduct by progressively applying the most appropriate behavioral intervention strategies. Behavioral interventions are designed to address the youth's misconduct, encourage the youth to recognize negative thoughts and feelings, and promote thinking skills that reduce risk of misconduct and contribute to positive decisions.

(2) Staff members determine which interventions are employed based on their knowledge of the current situation and the youth involved. Behavioral interventions include, but are not limited to, the following:

(A) verbal prompts;

(B) discussion away from the group;

(C) check-in with peer group;

(D) time-out;

(E) cooling-off period, in accordance with §380.9520 of this title;

(F) completion of an assignment designed to assist youth in processing behaviors and promote prosocial means for youth to meet their needs;

(G) movement to a designated area within the educational setting to refocus behavior and discuss strategies for success in the classroom;

(H) unscheduled or scheduled behavior group;

(I) security referral, in accordance with §380.9740 of this title; and

(J) Redirect program, in accordance with §380.9517 of this title.

(3) In cases where a youth is displaying an ongoing behavioral problem, an individualized plan with alternative interventions may be created by the youth's multi-disciplinary team.

(e) Disciplinary Consequences.

(1) Discipline is administered with the goal of imposing only the least restrictive consequences that are effective in correcting the misbehavior and ensuring safety and order. Where feasible and appropriate, the consequences are directly related to the nature and seriousness of the violation. Extenuating circumstances of the violation are considered. See §380.9503 and §380.9504 of this title for procedures relating to issuing disciplinary consequences.

(2) Youth are made aware of rules and disciplinary consequences through verbal instruction and written documents.

(3) No disciplinary consequences may be imposed except in accordance with the provisions of this subchapter.

(4) The following are prohibited as consequences for rule violations:

(A) corporal or unusual punishment;

(B) subjecting youth to humiliation, harassment, or physical or mental abuse;

(C) personal injury;

(D) subjecting youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping; and

(F) purposeless or degrading work, including group exercise as a consequence.

(5) Youth are not permitted to impose disciplinary consequences against other youth. Youth or groups of youth are not given control or authority over other youth.

(6) Consequences are applied on an individual basis and only for a youth's own actions or failure to act when responsible for doing so. Group discipline is prohibited. Actions taken for the purpose of maintaining safety and security (e.g., temporary lockdown to locate a missing tool, dorm activity restriction to address deteriorating dorm culture) are not considered group discipline.

(7) Disciplinary consequences must not deny youth the following:

(A) regular meals (from the established menu) or snacks;

(B) sufficient sleep;

(C) physical exercise;

(D) mail;

(E) contact through visitation or telephone with parents, attorneys, or personal clergy;

(F) legal assistance;

(G) medical attention;

(H) mental health services;

(I) educational services; or

(J) religious services.

(8) More than one disciplinary consequence may be imposed for the same rule violation if:

(A) the criteria and conditions for the imposition of each disciplinary consequence are met; and

(B) the appropriate level of due process is provided based on the most severe of the disciplinary consequences imposed.

§380.9502. Positive Reinforcement and Privilege System.

(a) Purpose. This rule establishes a system of rewards, incentives, and positive reinforcement designed to strengthen and expand positive behavior.

(b) Applicability. This rule applies to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Privilege--an activity or possession that a youth earns by complying with behavioral expectations and progressing in the rehabilitation program.

(2) Stage--has the meaning assigned under §380.8501 of this title.

(3) Multi-disciplinary team--has the meaning assigned under §380.8501 of this title.

(d) General Provisions.

(1) Each facility must establish a system for assigning privileges based on the youth's stage. In addition to the stage-based privileges, the system must allow youth to earn additional privileges based on positive behavior.

(2) The specific privileges offered may vary between facilities due to local opportunities or limitations. The positive reinforcement and privilege system must be developed in a manner that considers youth interests and includes age-appropriate, gender-responsive, and gender-neutral options.

(3) Youth are provided daily feedback using a system that rates youth performance in following the five basic performance expectations:

(A) show respect for others;

(B) follow directions;

(C) participate in activities;

(D) be in the right place at the right time; and

(E) accept consequences.

(4) The daily feedback is recorded on the appropriate activity log.

(5) Youth with a performance rating below expectations or who engage in specific rule violations are subject to a loss of privileges, as described in §380.9503 of this title.

(6) Provisions in this rule may be restated or otherwise adapted to accommodate a particular program. All adapted or restated provisions must remain consistent with the general provisions in this rule.

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, must be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department.

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(2) Multi-Disciplinary Team--has the meaning assigned by §380.8501 of this title.

(3) Residential Facility--includes high and medium restriction residential facilities.

(4) Attempting to Commit--engaging in conduct that amounts to more than mere planning, but failing to commit the intended rule violation.

(5) Serious Bodily Injury--bodily injury that involves:

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(d) General Provisions.

(1) Rules in this policy may be restated or otherwise adapted to accommodate a particular program to help clarify expected behavior in that program. All adapted or restated rules must remain consistent with the general rules of conduct.

(2) The rules of conduct must be posted in a visible area that is accessible to youth in each facility and program.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(4) Youth may be issued more than one disciplinary consequence for a rule violation proven in a Level II or Level III due process hearing held in accordance with §380.9555 or §380.9557 of this title, respectively.

(5) Major rule violations require the completion of a formal incident report.

(6) A youth's disciplinary record consists only of rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this title, respectively.

(7) An appropriate investigation must be started within 24 hours after a report of a major rule violation or a minor rule violation resulting in a referral to the security unit. Based on available evidence, the facility administrator or designee must determine whether to hold a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record.

(8) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II due process hearing is required to seize the money. Seized money must be placed in the student benefit fund in accordance with §380.9555 of this title.

(9) Except as noted in paragraph (10) of this subsection, minor rule violations must be documented on the appropriate activity log. A formal incident report is not required.

(10) A minor rule violation that escalates to the point that the current program/activity cannot continue due to the disruption or that poses a substantial risk to personal safety or facility security must be documented on a formal incident report. In high restriction facilities, this type of minor rule violation also includes a referral to the security unit.

(11) Any time a formal incident report is prepared for an alleged rule violation, a copy of the incident report must be given to the youth within 24 hours after the alleged violation.

(12) Although certain rule violations may not result in immediate disciplinary consequences, a rule violation proven through a Level II due process hearing may be considered upon expiration of the youth's minimum length of stay in determining whether a youth is in need of additional rehabilitation.

(13) For youth who receive privilege suspensions, the multi-disciplinary team may:

(A) lessen the duration of the suspension; or

(B) extend (one time only) or modify an on-site privilege suspension issued by direct care staff if warranted by the youth's behavior.

(e) Consequences for High Restriction Facilities.

(1) Major Disciplinary Consequences.

(A) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth may be placed in the Phoenix program when it is found that the youth engaged in certain aggressive behavior.

(B) Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for minor rule violations resulting in a referral to the security unit or major rule violations, and only if the rule violation is proven through a Level II due process hearing in accordance with §380.9555 of this title.

(C) Loss of Transition Eligibility--a youth who has not completed the minimum length of stay serves an additional month in high restriction facilities before becoming eligible for transition to a medium restriction facility under §380.8545 of this title. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.

(D) Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.

(2) Minor Disciplinary Consequences.

(A) Suspension of Privileges by Multi-Disciplinary Team--a youth has one or more privileges removed for up to 14

calendar days from the date of the multi-disciplinary team meeting. This consequence may be issued for major or minor rule violations. In order to issue this consequence, the multi-disciplinary team must:

(i) meet with the youth to discuss the youth's behavior and potential consequences;

(ii) consider any on-site suspension of privileges already imposed for the behavior; and

(iii) document the discussion of the youth's conduct and consequence imposed.

(B) On-Site Suspension of Privileges--a youth has one specific privilege removed for up to seven calendar days from the date of the violation or all privileges removed for up to three calendar days. This consequence may be issued by a staff member with direct supervisory responsibility for the youth after witnessing a major or minor rule violation. This consequence should be issued only after non-disciplinary interventions have been attempted. The staff member must document the conduct and consequence and discuss the consequence and the reasons for it with the youth.

(f) Consequences for Medium Restriction Facilities.

(1) Major Consequences.

(A) Disciplinary Transfer--a youth assigned to a medium restriction facility is transferred to a high restriction facility. Disciplinary transfer may be issued only for major rule violations that are proven through a Level II due process hearing in accordance with §380.9555 of this title. This consequence does not apply to youth who are on parole status in a medium restriction facility.

(B) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth on institutional status may be transferred to a high restriction facility and placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(C) Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for major rule violations that are proven through a Level II due process hearing.

(D) Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.

(2) Minor Consequences. Minor disciplinary consequences include but are not limited to consequences described in this paragraph. Minor consequences may be imposed only after a Level III due process hearing held in accordance with §380.9557 of this title.

(A) Privilege Suspension--a suspension of one or more privileges for no more than 14 calendar days.

(B) Community Service Hours--disciplinary assignment of up to 40 hours in an approved community service assignment.

(C) Trust Fund Restriction--youth is restricted from accessing his/her accrued personal funds for up to seven calendar days.

(D) Facility Restriction--youth is restricted for up to 48 hours from participating in any activity outside the assigned placement other than approved constructive activities.

(g) Review and Appeal of Consequences.

(1) All minor disciplinary consequences issued by staff other than the youth's multi-disciplinary team must be reviewed for policy compliance by the youth's assigned case manager, dorm supervisor, facility administrator, or other designee within one workday after issuance.

(2) The facility administrator or designee:

(A) must review any minor consequence issued for longer than 14 days within three workdays after issuance of the consequence; and

(B) may overturn or modify any privilege suspension determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal major disciplinary consequences by filing an appeal in accordance with §380.9555 of this title. Youth may grieve minor disciplinary consequences by filing a grievance in accordance with §380.9331 of this title.

(h) Placement Disposition Options. In accordance with §380.9517 of this title, youth in high restriction facilities may be placed in the Redirect program when the youth is found to have engaged in certain major rule violations. Placement in the Redirect program is not a disciplinary consequence.

(i) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, or help someone else commit any of the following:

(1) Assault - Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth that does not result in bodily injury, such as, but not limited to, pushing, poking, and grabbing.

(2) Assault - Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer that does not result in bodily injury, such as, but not limited to, pushing, poking, and grabbing.

(3) Assault Causing Bodily Injury to Another Youth--intentionally and knowingly or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally and knowingly or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act that amounts to more than mere planning but that fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high or medium restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(11) Fighting that Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(12) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(13) Two or More Failures to Comply with Written, Reasonable Request (for Youth in Medium Restriction Residential Placement)--failing on two or more occasions to comply with a written, reasonable request of staff. If the expectation is daily or weekly, the two failures to comply must be within a 30-day period. If the expectation is monthly, the two failures to comply must be within a 90-day period.

(14) Misuse of Medication--using medication provided to the juvenile by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) Participating in a Major Disruption of Facility Operations--intentionally participating with two (2) or more persons in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this title for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(17) Possession of a Weapon--possessing a weapon or item(s) that has been made or adapted for use as a weapon.

(18) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants (including alcohol and tobacco), medications not prescribed for the juvenile by authorized medical or dental staff, tobacco products, similar intoxicants, or related paraphernalia such as that used to deliver or make any prohibited substance.

(19) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth must be given water to drink and two hours to provide the sample.)

(20) Refusing a Search--refusing to submit to an authorized search of person or area.

(21) Sexual Misconduct--intentionally and knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(22) Stealing--intentionally taking property with an estimated value of $100 or more from another without permission.

(23) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(24) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(25) Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(26) Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(27) Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(j) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, or help someone else commit any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under $100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Undesignated Area--being in any area without the appropriate permission to be in that area.

(16) Vandalism--intentionally causing less than $100 in damage to state or personal property.

§380.9504. Rules and Consequences for Youth on Parole.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this title.

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with the youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Parole Rule Violations. It is a violation to knowingly violate, attempt to violate, or help someone else violate any of the following:

(1) Abscond--leaving a home placement or failing to return from an authorized leave without permission of the youth's parole officer and the youth's whereabouts are unknown to his/her parole officer.

(2) Escape--leaving a high- or medium-restriction residential placement without permission or failing to return from an authorized leave.

(3) Failure to Comply with Sex Offender Conditions of Parole--intentionally and knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) Possession of a Weapon--possessing a weapon or item(s) that has been made or adapted for use as a weapon.

(5) Use of Unauthorized Substances--using an unauthorized substance or intoxicant including controlled substances or intoxicants (including alcohol and tobacco if the youth is underage), medications not prescribed for the youth by authorized medical or dental staff, or similar intoxicants.

(6) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(7) Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the expectation is daily or weekly, the two failures to comply must be within a 30-day period. If the expectation is monthly, the two failures to comply must be within a 60-day period.

(8) Tampering with Monitoring Equipment--a youth intentionally and knowingly tampers with monitoring equipment assigned to any youth.

(9) Violation of Any Law--violating a federal or state law or municipal ordinance.

(e) Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this title, respectively. Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand drawing attention to the misbehavior and serving as a warning that continued misbehavior could result in more severe

consequences. A verbal reprimand may not be considered as a less severe disciplinary consequence for the purpose of parole revocation.

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this title.

§380.9535. Phoenix Program.

(a) Purpose. The Phoenix program is designed to protect staff and youth in Texas Juvenile Justice Department (TJJD) state-operated facilities from highly aggressive youth while providing these youth a highly structured environment to reduce their aggression and to progress in treatment. This rule sets forth eligibility criteria, standards of treatment, and services to be provided to youth in the program.

(b) Applicability. This rule does not apply to:

(1) youth on parole status, unless parole status is revoked in conjunction with the criteria for admission;

(2) youth with determinate sentences who have been approved by the final TJJD authority for a court hearing to transfer the youth to the Institutions Division of the Texas Department of Criminal Justice;

(3) youth currently diagnosed with a major emotional disturbance and/or psychiatric disorder that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility; or

(4) youth with a current diagnosis of intellectual disability that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility.

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special-education-eligible youth.

(2) Assault Causing Moderate or Serious Bodily Injury to Another Youth--intentionally and knowingly engaging in conduct that causes another youth to suffer moderate or serious injury as determined by medical staff.

(3) Assault Causing Substantial Bodily Injury to Staff--intentionally and knowingly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury that involves more than passing discomfort or fleeting pain.

(4) Chunking Bodily Fluids at Staff--intentionally and knowingly causing a person to contact the blood, seminal fluid, vaginal fluid, urine, and/or feces of another.

(5) Fighting Causing Moderate or Serious Bodily Injury to Another Youth--intentionally and knowingly engaging in a mutually instigated physical altercation that causes another youth to suffer moderate or serious injury as determined by medical staff.

(6) Isolation--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed and do not apply to placement of a youth in the Security Program.

(7) Multi-Disciplinary Team (MDT)--a group of staff who are responsible for partnering with the youth and his/her parent/guardian to facilitate his/her progress in the rehabilitation program.

(d) General Provisions.

(1) The Phoenix program is administered in a location designated for such purpose. The location is self-contained and the youth do not leave the location except for healthcare appointments or by approval of the facility administrator for a specific programmatic purpose.

(2) Security Program referral/admission and room isolation are used as necessary in accordance with §380.9739 and §380.9740 of this title. The Security Program location for youth in the Phoenix program is in the Phoenix program unit, using individual youth rooms.

(3) Youth are demoted to the lowest stage in the agency's rehabilitation program upon admission to the Phoenix program.

(e) Authorized Facilities. The Phoenix program may be administered only at TJJD-operated high restriction facilities designated by the executive director.

(f) Program Eligibility. The following youth are eligible for placement in the Phoenix program:

(1) a youth who engages in one or more of the following rule violations as defined in subsection (c) of this section:

(A) assault causing moderate or serious bodily injury to another youth;

(B) assault causing substantial bodily injury to staff;

(C) fighting causing moderate or serious bodily injury to another youth; or

(D) chunking bodily fluids at staff; or

(2) a youth who engages in any other major rule violation when the totality of circumstances justifies the placement in the program and the placement is directed by the executive director or designee; or

(3) a youth who, on three separate occasions within a 90-day period, committed an assault causing bodily injury as defined in §380.9503 of this title and the second and third assaults were committed after a Level II due process hearing finding of true with no extenuating circumstances had been made for the previous assault.

(g) Additional Considerations for Youth Receiving Special-Education Services. When a youth who is receiving special-education services is recommended for placement in the Phoenix program due to a

rule violation that occurred during school-related activities, the youth's ARD committee must conduct a manifestation determination review.

(1) If the ARD committee determines that the youth's conduct was a direct result of a failure to implement the youth's individualized education program (IEP) or that the conduct was caused by or had a direct and substantial relationship to the youth's disability:

(A) the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan or, if a behavior intervention plan already exists, modify the existing plan to address the youth's conduct; and

(B) the youth may be removed from his/her regular educational setting and placed in the Phoenix program only if the youth's parent or surrogate parent (as defined by 34 CFR §300.519) agrees to a change in the educational setting as part of the youth's behavior intervention plan.

(2) If the ARD committee determines that the youth's conduct was not a result of a failure to implement the youth's IEP and was not caused by and did not have a direct and substantial relationship to the youth's disability, the youth may be removed from his/her regular educational setting and placed in the Phoenix program. The ARD committee determines the youth's IEP while the youth is in the Phoenix program.

(3) Regardless of the results of a manifestation determination review, a youth may be admitted to the Phoenix program and may receive educational services in the Phoenix housing area for up to 45 days if the rule violation includes possession of a weapon or the infliction of serious bodily injury upon another person.

(A) For purposes of paragraph (3) of this subsection only, weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, not including a pocket knife with a blade of less than 2 1/2 inches in length.

(B) For purposes of paragraph (3) of this subsection only, serious bodily injury means bodily injury that involves:

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) Educational services in the Phoenix program must be provided so as to meet the youth's IEP goals set by the youth's ARD committee.

(h) Admission Decision Process.

(1) A Level II due process hearing must be held in accordance with §380.9555 of this title. Unless there are considerations concerning special education services that would make the youth ineligible for placement in the Phoenix program as described in subsection (g) of this section, the youth may be referred to the Phoenix program if there is a finding of true with no extenuating circumstances that the youth committed a rule violation listed in subsection (f) of this section.

(2) A committee composed of, at a minimum, the dorm supervisor, mental health specialist, and case manager assigned to the Phoenix program reviews each youth referred to the program.

(3) The committee may not recommend approval of a youth's admission to the program unless:

(A) a current mental health assessment indicates there is no therapeutic contraindication to placement in the Phoenix program; and

(B) the committee determines that the Phoenix program represents the most appropriate intervention under the circumstances.

(4) The division director over residential facilities or his/her designee makes the final decision on whether the youth will be admitted to the Phoenix program.

(5) If the number of referrals exceeds the number of available beds, priority for admission is given to:

(A) youth with the most dangerous behavior;

(B) youth with chronic aggressive behavior;

(C) youth with greater frequency of weapon use; or

(D) a directive from the executive director or designee.

(i) Placement in the Redirect Program Pending Admission to the Phoenix Program. If, after a Level II hearing, there is a disposition for referral to the Phoenix program, the youth may be placed in the Redirect program pursuant to §380.9517 of this title at the youth's current placement pending admission and transfer of the youth to the Phoenix program. The facility may cancel the referral at any time.

(j) Program Components. The program's structure is designed to maximize the safety and security of youth and staff.

(1) Physical Structure and Safety Precautions.

(A) Youth are assigned to single housing units in accordance with §380.8524 of this title.

(B) Mechanical restraints may be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this title.

(C) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(2) Case Planning.

(A) An individual plan must be developed for each youth. The plan must be written in a language clearly understood by the youth. The plan must:

(i) be based on a comprehensive assessment conducted by the MDT;

(ii) address the specific target behavior or cluster of behaviors that led to admission to the Phoenix program, taking into consideration the mental health specialist's recommendations to address the motivation for the behavior;

(iii) involve strategies for intervention and prevention of the target behavior through skills development;

(iv) include a component that addresses transition to the general campus population following graduation from the Phoenix program; and

(v) provide clearly written objectives for promotion through levels of the Phoenix program and graduation from the Phoenix program.

(B) Staff must explain the individual plan to the youth. Youth must be provided an opportunity to sign the plan in acknowledgment.

(C) The individual plan and youth's progress with regard to target behaviors and skills development must be reviewed and evaluated at least once every seven days by the MDT.

(3) Academics.

(A) All youth are expected to participate in an educational program. The educational program must provide for at least six hours of required secondary curriculum on each school day.

(B) All special-education services must be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special-education services, an ARD meeting is held within ten days after admission to the Phoenix program to review the IEP. Subsequent ARD meetings and evaluations are completed in compliance with state and federal regulations.

(C) Youth with limited English Proficiency must be provided with appropriate adaptations to the Educational Program as recommended by the Language Proficiency Assessment Committee (LPAC).

(4) Individual Counseling.

Youth are provided daily contact and weekly counseling with the assigned case manager or designee. The case manager or designee must immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(5) Skills Development Groups.

(A) In accordance with the daily schedule, the case manager assigned to the Phoenix program conducts groups on topics such as:

(i) aggression control;

(ii) emotional and behavior regulation;

(iii) skills development and demonstration;

(iv) identifying and modifying cognitive distortions;

(v) risk and protective factors; and

(vi) transition issues.

(B) Scheduled behavior groups are provided to all youth and are conducted daily by the assigned juvenile correctional officer.

(6) Medical and Mental Health Services.

(A) Youth receive weekly mental health status exams by the designated mental health specialist while assigned to the Phoenix program. Youth also receive weekly psychological counseling if deemed necessary by a mental health specialist.

(B) Youth are seen by medical and/or psychiatric staff, as needed, and treatment is provided as ordered. The Phoenix program mental health specialist continually assesses the youth's mental status, provides individual counseling, and provides consultation with the MDT.

(7) Behavior Management.

(A) Youth are expected to follow a prescribed schedule and commit no rule violations as defined in §380.9503 of this title.

(B) Youth earn privileges in the Phoenix program based on progress through the Phoenix program levels in accordance with §380.9502 of this title.

(8) Physical Exercise. Youth must be provided with at least one hour of large-muscle exercise seven days per week in an exercise yard if safety and weather permit.

(9) Family Involvement.

(A) Youths' families are encouraged to be involved in the youths' treatment while considerations are made for the safety and security of the program.

(B) Youth in the Phoenix program are allowed phone calls to approved family members and visitation with immediate family members according to program visitation procedures.

(10) Youth Rights. Basic rights are recognized for each youth in TJJD pursuant to §380.9301 of this title.

(k) Progress in the Phoenix Program. The Phoenix program includes three levels. The MDT reviews each youth's progress weekly.

(1) Level I.

(A) This level is completed when the MDT determines that the youth has:

(i) demonstrated basic knowledge of the level objectives as defined in the youth's individual case plan (ICP); and

(ii) participated with the MDT in targeting specific skills for development.

(B) The youth:

(i) attends foundational skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(2) Level II.

(A) This level is completed when the MDT determines that the youth has:

(i) identified patterns in his/her thoughts, feelings, attitudes, values, and beliefs that relate to ongoing behaviors;

(ii) demonstrated sufficient competency in the targeted skills to address those behaviors; and

(iii) completed the level objectives as defined in the youth's ICP.

(B) The youth:

(i) attends intermediate skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(3) Level III.

(A) This level is completed when the MDT determines that the youth demonstrates and practices skills learned in skills development groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors and provide leadership in the program. Additional skills are learned as assigned and the plan for reintegration to general campus programming is completed.

(B) The youth:

(i) attends advanced skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(l) Progress Reviews.

(1) Multi-Disciplinary Team Reviews.

(A) The MDT reviews the youth's ICP, evaluates progress through program requirements, and reviews the effectiveness of treatment strategies on a weekly basis. The MDT may not promote youth in the stages of the agency's rehabilitation program while the youth is in the Phoenix program.

(B) The MDT makes decisions regarding promotion within Phoenix program levels based on achievement of established criteria.

(i) Level Promotion. Youth meeting the established criteria must be promoted to the next level.

(ii) Level Demotion. The MDT may assign the youth to a lower level when the youth's behavior demonstrates low use of pro-social skills. The MDT may demote one or two levels depending upon the severity of the behavior and/or lack of consistency in the use of pro-social skills.

(2) Individual Case Plan Review. Case plan reviews and updates are conducted in accordance with §380.8701 of this title.

(3) Mental Health Review.

(A) Youth must be evaluated on a regular basis by the Phoenix program mental health specialist for the presence of a mental health disorder that contraindicates continued placement in the Phoenix program.

(B) Youth must be released from the Phoenix program at any time for mental health reasons based on the recommendation of the mental health specialist or psychiatrist and the approval of the TJJD director of treatment.

(C) Youth with neurological and/or mental health disorders may be temporarily admitted to a TJJD-operated crisis stabilization unit pursuant to §380.8767 of this title for diagnostic purposes to determine the most appropriate placement.

(m) Graduation from the Phoenix Program.

(1) Youth graduate from the Phoenix program upon completion of Level III as described in subsection (k) of this section.

(2) Youth released from the Phoenix program are assigned to the Redirect program at the receiving facility and are provided support to reintegrate into the general campus population at the receiving facility.

(n) Program Monitoring and Youth Rights.

(1) To ensure the Phoenix program is being implemented according to provisions of this rule, staff from facility administration must visit the program daily and staff from psychology administration must visit the program weekly.

(2) Youth rights staff or a designee must visit the Phoenix program daily to ensure that the youth have access to the youth grievance system.

(o) Appeal of Level Assessment in the Phoenix Program. A youth in the Phoenix program may appeal the results of a level assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this title. The person assigned to respond to the youth's grievance must not be a member of the youth's MDT or a staff member who has been involved in the youth's current assessment.

(p) Independent Review Team Oversight.

(1) A managerial staff member designated by the facility administrator who is not assigned to the Phoenix program monitors the Phoenix MDT monthly.

(2) The director of facility operations reviews compliance with Phoenix program policy and procedure requirements as part of routine facility assessment processes.

(3) A cross-divisional team based in the TJJD Austin Office reviews youth who remain on Level I or Level II after 120 days in the program until the youth progresses to the next level. The team conducts quarterly reviews thereafter until the youth graduates from the program.

(4) The TJJD division responsible for monitoring and inspections conducts random reviews of Phoenix program files and coordinates with other departments as appropriate for reviews of certain components of Phoenix program files such as mental health assessments, ICPs, and education service delivery.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. DUE PROCESS HEARINGS

37 TAC §§380.9550, 380.9551, 380.9553, 380.9555, 380.9557, 380.9559, 380.9571

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 380.9551 is also adopted under Texas Human Resources Code §245.051, which authorizes TJJD to resume the care and custody of any child released under supervision at any time before the final discharge of the child.

Section 380.9555 is also adopted under Texas Human Resources Code §242.063, which requires TJJD to deposit contraband money, as defined by TJJD rule, in the student benefit fund.

§380.9551. Level I Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a due process procedure to be followed when seeking to revoke the parole status of a youth as a disciplinary consequence for behavior that presents an unacceptable risk to the safety of persons and property.

(b) Definitions. Definitions pertaining to this rule are under §380.9550 of this title.

(c) General Provisions.

(1) A Level I hearing is required to revoke a youth's parole status. Parole status may be revoked if it is found that a youth has committed a law violation or a parole rule violation as established in §380.9504 of this title and:

(A) revocation is determined to be in the best interest of the youth or community; and/or

(B) the youth is found to be in need of further rehabilitation at a residential facility operated by the Texas Juvenile Justice Department (TJJD) or under contract with TJJD.

(2) The hearing examiner must consider the following information to determine if parole revocation is appropriate:

(A) the severity of the offense(s) found true at the hearing;

(B) any behavioral or adjustment issues while on parole and the steps taken by the staff representative to address those issues;

(C) whether or not the youth's conduct while on parole presents a threat to persons or property;

(D) reasons the youth is in need of services offered at a TJJD or contract facility;

(E) whether appropriate community-based alternatives have been exhausted;

(F) any impact statement(s) written by the victim(s);

(G) any participation in constructive activity; and

(H) any extenuating circumstances.

(3) The youth must be assisted by an attorney at the hearing. The agency will appoint an attorney for indigent youth from the list of defense attorneys who contract with TJJD for this purpose.

(4) A Level I hearing on any allegation(s) must be scheduled as soon as possible but no later than seven days after the date of the alleged offense, excluding weekends and holidays, except when:

(A) TJJD staff documents that it was impossible, impractical, or inappropriate to have scheduled the hearing sooner; or

(B) local authorities make a written request that TJJD defer an allegation to their jurisdiction for prosecution; or

(C) TJJD staff elects to defer a Level I hearing on all allegations of misconduct due to criminal allegation(s) pending or filed as adult charges, except that if the pending charge is a first degree felony or capital offense, there must be a written request as described in subparagraph (B) of this paragraph to defer the allegation.

(5) TJJD may re-issue a directive to apprehend and request a Level I hearing concerning new or previously deferred allegation(s) if later circumstances make such action appropriate.

(6) If a youth is on parole from another state and is being supervised by TJJD under agreement with the other state, a parole revocation hearing may be held by TJJD and the youth may be returned to the sending state. Such a hearing is coordinated by the Texas Interstate Compact for Juveniles (ICJ) Office and the TJJD Office of General Counsel.

(7) If a TJJD parolee commits an offense in another state, the return of the youth is coordinated by the Texas ICJ Office and the TJJD Office of General Counsel. A parole revocation hearing is coordinated by and held at the request of the assigned TJJD staff representative.

(d) Notice.

(1) The staff representative must provide the youth with written notice of the date and time of the hearing not less than three working days before the scheduled hearing date. This notice must include:

(A) the reason(s) for the hearing;

(B) the proposed action to be taken; and

(C) the youth's rights in connection with the hearing.

(2) If the youth is under 18 years of age, the staff representative must make reasonable efforts to inform the youth's parent(s) or guardian of the date, time, and location of the hearing and the reasons for the hearing not less than three working days before the scheduled hearing date. If the youth is 18 years of age or older, this notice may be provided only with the youth's written authorization.

(3) The staff representative must provide the youth's attorney with written notice of the date, time, and location of the hearing and the reasons for the hearing not less than three working days before the scheduled hearing date. The notice to the attorney must also include:

(A) the name, address, and telephone number of the staff representative and the hearing examiner;

(B) a list of all witnesses the staff representative intends to call;

(C) an indication of the expected testimony of each witness;

(D) copies of any statements made by the youth;

(E) copies of any statements, affidavits, reports, or other documentation relied upon as grounds for the proposed action; and

(F) copies of any reports or summaries that will be relied upon at disposition.

(4) The staff representative must provide the youth's attorney with reasonable access to all information held by TJJD concerning the youth. The youth's attorney must respect the confidential nature of this information and must comply with TJJD requests to withhold sensitive information from the youth or the youth's family.

(5) As soon as possible after receiving the hearing notice and no later than the commencement of the hearing, the youth's attorney must inform the staff representative of any witnesses he/she wishes to call on behalf of the youth. If necessary and possible, the staff representative must assist the youth's attorney in contacting those witnesses and securing their attendance at the hearing.

(6) The staff representative must ensure that all witnesses he/she intends to call are given written notice of the time, date, and location of the hearing not less than three days before the hearing.

(e) Evidence.

(1) All factual issues are determined by a preponderance of evidence.

(2) The Texas Rules of Evidence generally apply to the fact-finding portion of the hearing. Unless specifically precluded by statute, evidence that is not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Criminal exclusionary rules do not apply in TJJD hearings.

(3) The hearing examiner must determine the admissibility of evidence. Irrelevant, immaterial, or unduly repetitious evidence is excluded.

(4) A judgment from a court indicating a youth has pled guilty or true to an offense and has not received deferred adjudication or deferred prosecution is sufficient to prove the youth committed the offense.

(5) Copies of due process hearing documents need not be certified if these documents are part of the youth's record(s) or have been received through ICJ. These documents are considered reliable and admissible for all purposes.

(6) Accomplice testimony is sufficient to prove an allegation if it is corroborated by other evidence tending to connect the youth with the alleged violation. The corroboration is not sufficient if it merely shows the commission of the alleged violation. If two accomplices testify, the testimony of each may serve to corroborate the other.

(7) Legally recognized privileges of relationships are given effect.

(8) Evidence that is otherwise admissible may be received in written form if doing so will expedite the hearing and will not significantly prejudice the rights or interests of the youth. This includes but is not limited to use of affidavits admitted to show the following:

(A) ownership and lack of consent;

(B) identity of signature on instrument and lack of consent of complaining witness in a forgery case;

(C) lack of permission to leave designated placement;

(D) chain of custody;

(E) identity of substance found in urine sample;

(F) identity of controlled substance found in youth's possession.

(9) A youth's written statement concerning his/her possible involvement in an alleged violation is admissible if it is signed by the youth and accompanied by evidence indicating that the youth made the statement voluntarily after being advised of:

(A) the right to remain silent;

(B) the possible consequences of giving the statement;

(C) the right to consult with an attorney prior to giving the statement; and

(D) the right to have an attorney provided if the youth is indigent.

(10) A youth's non-recorded oral statement is admissible if it:

(A) relates facts that are found to be true and that tend to establish the youth's guilt; or

(B) was *res gestae* of the conduct that is the subject of the hearing or the arrest; or

(C) does not stem from law enforcement or TJJD staff questioning of youth, even if the statement does not meet criteria in subparagraph (A) or (B) of this paragraph; or

(D) is voluntary and bears on the youth's credibility as a witness, even if the statement stems from law enforcement or TJJD staff questioning of the youth.

(11) A youth's recorded oral statement (i.e., audio recorded or visually or otherwise electronically recorded) concerning his/her possible involvement in illegal activities is admissible if it is accompanied by evidence on the recording that it was given after the youth was advised of the rights in paragraph (9) of this subsection. All voices on the recording must be identified and the recording must be accurate and unaltered. A transcript of the recordings is not sufficient.

(12) A youth's admissible out-of-hearing/court statement admitting he/she committed an offense is sufficient to prove the offense only if it is corroborated by other evidence that the offense was committed.

(f) Hearing Process.

(1) The hearing must be conducted by an impartial hearing examiner appointed by the TJJD general counsel.

(2) The TJJD staff member requesting a hearing must appoint a staff representative to appear at the hearing and to present the reasons for the proposed action. The staff representative is also responsible for making relevant information available to all parties to the hearing.

(3) The hearing must be held in the community where the alleged rule violation occurred unless the hearing examiner directs that it be held in another location.

(4) All necessary parties must be present at the hearing site unless the hearing is conducted by telephone pursuant to §380.9553 of this title.

(5) At the request of the staff representative or defense attorney, the hearing examiner may sign and issue a subpoena to compel the attendance of a necessary witness at the hearing or the production of books, records, papers, or other objects. A person who testifies falsely, fails to appear when subpoenaed, or fails or refuses to produce material under the subpoena is subject to the same orders and penalties as a person who takes those actions before a court.

(6) Before the hearing, the hearing examiner may review copies of any documentation previously provided to the youth's attorney except for those documents that relate solely to dispositional criteria. The hearing examiner may review information relating solely to dispositional criteria only if the hearing proceeds to disposition.

(7) To protect the confidential nature of the hearing, persons other than the youth, the youth's attorney, the staff representative, and the youth's parent(s) or guardian may be excluded from the hearing room at the discretion of the hearing examiner; however:

(A) observers may be permitted with the consent of the youth and the youth's attorney; and

(B) any person except the youth's attorney or the staff representative may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the youth's exclusion must be stated on the record.

(8) A victim who appears as a witness must be provided a waiting area that eliminates or minimizes contact between the victim and the youth, the youth's family, and witnesses on behalf of the youth.

(9) The hearing is conducted in two parts: fact-finding and disposition.

(A) The purpose of the fact finding is to establish whether there is a preponderance of evidence to prove the youth engaged in the alleged misconduct.

(B) The purpose of the disposition is to determine whether revocation of parole status is appropriate under the circumstances.

(10) The hearing must be recorded. The hearing examiner must retain copies of all documents admitted into evidence. Physical evidence may be retained at the discretion of the hearing examiner;

however, if it is not retained, an adequate description of the item(s) must be entered in the record by oral stipulation.

(11) Factual issues not in dispute may be stipulated by the staff representative and the youth's attorney. Such stipulations must be made on the record of the hearing.

(12) The youth must be given the opportunity to respond "true" or "not true" to each allegation before any evidence concerning the allegation is heard.

(A) The youth has a right to respond "not true" to each allegation and to require that proof of the allegation be presented at the hearing.

(B) A response of "true" to any allegation is sufficient to establish each and every element necessary to prove that allegation without the presentation of any other evidence.

(13) The hearing examiner must administer an oath to all witnesses to testify truthfully.

(14) With the exception of the youth and the staff representative, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing his/her testimony with anyone until all the witnesses have been dismissed.

(15) The hearing examiner may question each witness at the hearing examiner's discretion. The youth's attorney and the staff representative must be given an opportunity to question each witness.

(16) The hearing examiner may allow a witness to testify outside the presence of the youth if doing so appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the youth's attorney must be present during the testimony and must have the opportunity to review the testimony with the youth before questioning the witness.

(17) The youth may not be called as a witness unless, after consulting with his/her attorney, the youth waives his/her right to remain silent on the record.

(A) The youth's decision not to testify does not create a presumption against him/her.

(B) A youth who waives his/her right to remain silent may be questioned only concerning those issues addressed by the youth's testimony.

(18) The hearing examiner must rule immediately on any motions or objections made in the course of the hearing. The motions, objections, and rulings must be included in the hearing examiner's written report.

(19) The hearing examiner may, upon his/her own motion or the good cause motion of any party, recess or continue the hearing when doing so is necessary to ensure an informed fact finding.

(20) After the presentation of all evidence pertaining to the factual issues raised at the hearing, the hearing examiner must announce his/her findings on those issues.

(A) The hearing examiner may find that the evidence suffices to prove conduct other than the conduct that was originally alleged if the original allegation gave sufficient notice of the conduct proved.

(B) Regardless of the evidence, the hearing examiner may not find a criminal offense more serious than the offense that was originally alleged unless the original allegation has been amended on the record and after notice to the youth's attorney.

(C) If the hearing examiner finds any allegation to be true, the hearing proceeds to disposition. If the hearing examiner does not find any allegation to be true, the hearing is adjourned with no change in the youth's status.

(21) In the disposition phase, the staff representative presents evidence to establish why he/she believes the youth's parole status should be revoked. The youth is given the opportunity to present evidence as to why his/her parole status should not be revoked, including evidence of extenuating circumstances.

(22) The evidence considered during disposition may be in the form of testimony from witnesses submitted during fact-finding or disposition, as well as written reports offered by youth, staff, professionals, counselors, or consultants. Relevant documents contained in the youth's record may be admitted and considered. All written documents to be offered must be provided to the parties no later than three days before the hearing unless otherwise waived. Hearsay evidence is admissible in disposition.

(23) Parole status may be revoked if the hearing examiner determines that revocation is:

(A) in the best interest of the youth; and/or

(B) in the best interest of the community; and/or

(C) the youth is in need of further rehabilitation at a residential facility operated by TJJD or under contract with TJJD.

(24) If parole is revoked, the youth is assigned a minimum length of stay in accordance with §380.8525 of this title, based on the most serious offense found true at the hearing. This minimum length of stay may be reduced in accordance with §380.8525 of this title.

(25) If the hearing examiner determines there are extenuating circumstances, the hearing examiner must take that into account when determining if the criteria for parole revocation exist. If, despite a finding of extenuating circumstances relevant to the proven offense, the hearing examiner finds revocation is appropriate under the circumstances, the youth's parole status will be revoked but the assigned minimum length of stay will be reduced, as determined by the hearing examiner.

(26) If the youth's parole status is not revoked, lesser disciplinary consequences may be imposed for any rule violation(s) proved at the hearing.

(27) After announcing the disposition decision, the hearing examiner must inform the youth of the right to appeal any or all findings and decisions made at the hearing.

(28) Immediately after the hearing is closed, the hearing examiner must give the youth a copy of the hearing report form.

(29) The hearing examiner's decision is effective and implemented when announced at the hearing, even if the youth appeals and a response is pending.

(30) As soon as possible after the hearing is closed, the hearing examiner must prepare a written report that includes:

(A) a summary of the evidence presented;

(B) findings of fact, including the reliability of the evidence and the credibility of the witnesses, and the reasons for those findings;

(C) conclusions of law;

(D) an explanation of the dispositional decision; and

(E) rulings made on motions and objections and the reasons for those rulings.

(31) Copies of the hearing examiner's report must be provided to the youth, the youth's attorney, and the staff representative.

§380.9555. Level II Hearing Procedure.

(a) Purpose. This rule establishes the procedure to be followed to ensure youth are afforded appropriate due process before certain actions are taken.

(b) Definitions. Definitions pertaining to this rule are under §380.9550 of this title.

(c) Applicability. A Level II hearing is required before taking any of the following actions:

(1) imposing a major disciplinary consequence in accordance with §380.9503 of this title;

(2) placing a youth in the Redirect program in accordance with §380.9517 of this title;

(3) transferring a parole-status youth from a home or home substitute to a medium-restriction facility for non-disciplinary reasons;

(4) transferring a youth who was initially assigned to a medium-restriction facility in accordance with §380.8521 of this title to a high-restriction facility for non-disciplinary reasons;

(5) transferring a conditionally placed youth to a higher-restriction facility pursuant to §380.8545 of this title;

(6) with a few exceptions in procedure as identified in §380.9571 of this title:

(A) admitting a youth to a Texas Juvenile Justice Department (TJJD)-operated crisis stabilization unit; and

(B) extending the time to treat a psychiatric disorder in connection with a crisis stabilization unit placement (as appropriate); or

(7) depositing into the student benefit fund money possessed by a youth in a residential program in violation of §380.9503 of this title.

(d) Criteria.

(1) To impose a major consequence, place a youth in the Redirect program, or place contraband money in the student benefit fund, the hearing manager must find:

(A) the youth committed an eligible rule violation; and

(B) there are no extenuating circumstances.

(2) To transfer a youth to a higher-restriction placement for non-disciplinary reasons, the hearing manager must find there are no less restrictive placements appropriate and available for the youth.

(3) To transfer a conditionally placed youth to a higher-restriction placement, the hearing manager must find one or more of the criteria required in §380.8545 of this title.

(4) For criteria for admission to or extension in a crisis stabilization unit, see §380.8767 of this title.

(e) Investigating Alleged Violations and Requesting the Hearing.

(1) When a youth in a residential facility is alleged to have committed a major rule violation or a minor rule violation requiring a security referral, an investigation into the alleged violation(s) must be started within 24 hours after the alleged offense(s) and completed within 24 hours after the time started. The investigation must be conducted by a staff member other than the one who reported the alleged violation.

(2) A decision on whether or not to pursue a Level II hearing must be made within 24 hours after the completion of the investigation. The appropriate staff person must request permission to schedule a hearing from the facility administrator, parole supervisor, contract case management supervisor, or their designees.

(3) For hearings involving rule violations or contraband money, the hearing must be conducted as soon as practical but not later than seven days, excluding weekends and holidays, after the alleged violation was committed or the money was found.

(4) For hearings involving a non-disciplinary transfer or transfer from a conditional placement, the youth may waive the hearing and agree to the transfer. The waiver must be in writing. If the youth does not waive the hearing, the hearing must be held before the transfer. However, if good cause compels a pre-hearing transfer, the hearing must be held no later than three calendar days after the transfer.

(5) If the youth is being held in a security unit due to potential interference with a pending Level II hearing, the hearing must be conducted as soon as possible but no later than five working days after the date of admission to the security unit.

(6) Failure to meet any timeline in this subsection must be justified with documentation of circumstances that made it impossible, impractical, or inappropriate to meet the deadline. Failure to document these justifications may result in a dismissal of the allegations or a reversal of the decision(s) of the hearing manager.

(f) Hearing Manager.

(1) The hearing manager must be a TJJD employee trained to function as a hearing manager. The hearing manager must be impartial and may not be a person who:

(A) witnessed any part of the alleged violation(s);

(B) made any prior decisions regarding the youth based on the alleged violation; or

(C) is directly responsible for supervising the youth.

(2) If the youth is currently assigned to a halfway house, the hearing manager may not be a member of the halfway house staff.

(3) If the youth is currently assigned to a contract program, the hearing manager may not be the TJJD case management specialist assigned to that youth.

(4) If the youth is currently assigned to his/her home, the hearing manager may not be the parole officer or parole supervisor assigned to the youth's case.

(g) Staff Representative.

(1) The staff representative must be a TJJD employee trained to function as a staff representative.

(2) The staff representative is responsible for assembling all evidence, giving all required notices, and presenting evidence at the hearing.

(h) Advocate.

(1) A TJJD employee, contract employee, or volunteer who has been trained to serve as an advocate must assist the youth.

(2) The youth is given the opportunity to choose an advocate from among those trained. The youth's choice must be honored unless there is a showing of unavailability of the requested advocate.

If the youth does not choose an advocate or the requested advocate is unavailable, an advocate will be appointed.

(3) The advocate may not be a person who was a witness to the alleged violation.

(4) If the youth is not proficient in the English language, the advocate must be proficient in English and in the youth's primary language or an interpreter must be used.

(i) Notice.

(1) Not later than 24 hours before the hearing, the youth and the youth's advocate must be given:

(A) written notice of the reasons for calling the hearing;

(B) the proposed action to be taken;

(C) the evidence to be relied upon; and

(D) written notice of the following rights of the youth:

(i) the right to remain silent;

(ii) the right to be assisted by an advocate in the hearing process;

(iii) the right to confront and cross-examine adverse witnesses who testify at the hearing;

(iv) the right to contest adverse evidence admitted at the hearing;

(v) the right to call readily available witnesses and present readily available evidence on his/her own behalf at the hearing; and

(vi) the right to appeal the results of the hearing. The right to appeal cannot be waived.

(2) Staff currently employed at and youth currently residing at the location of the hearing are considered to be "readily available" and must be called to testify at the youth's request. If there are unusual circumstances that would prevent the witness from attending in person or by phone or videoconference, the hearing may be postponed or continued to allow a witness's testimony. If the witness's testimony cannot be secured within a reasonable time, the hearing may proceed without the witness. The reasons for proceeding without requested witnesses must be documented and placed in the hearing record.

(3) Evidence is considered "readily available" if it is within the control of any TJJD staff member at the location of the hearing or is otherwise easily attainable. The reasons for excluding requested evidence must be documented and placed in the hearing record.

(4) All youth in TJJD facilities and secure contract placements must be given the hearing packet (all written materials relied upon and a list of witnesses) at least 24 hours before the hearing. The paperwork may be taken away from the youth if the youth is misusing the papers in any way.

(5) After receipt of the written notice and consultation with the advocate, the youth may waive the 24-hour-notice period by agreeing, in writing, to an earlier hearing time.

(6) If the youth is younger than 18 years of age, reasonable efforts must be made to inform the youth's parent(s) or guardian of the time and place of the hearing at least 24 hours before the hearing. If the youth is 18 years of age or older, such notice may be provided only with the youth's authorization to release the information.

(j) Location of Hearing, Youth's Presence at Hearing, and Official Record of Hearing.

(1) The hearing must be held where the youth resides unless the hearing manager determines another site is more appropriate.

(2) The hearing must be recorded. The recording is the official record of the hearing. The recording and the hearing packet must be preserved for six months after the hearing.

(3) The youth must be present during the hearing unless the youth waives his/her presence or his/her behavior prevents the hearing from proceeding in an orderly and expeditious fashion.

(A) A voluntary waiver of the youth's presence must be in writing and signed by the youth and his/her advocate. If the youth does not sign the waiver for any reason, his/her presence is not waived.

(B) If the youth waives his/her presence, the hearing may be conducted by teleconference.

(C) If a youth is excluded from the hearing for behavioral reasons or to secure the testimony of a witness, the reason(s) for the exclusion must be documented in the hearing record. The advocate must be present during the testimony and must have the opportunity to question the witness.

(D) A true plea cannot be entered on behalf of a youth who has waived his/her presence at the hearing.

(4) A victim who appears as a witness should be provided a waiting area where he/she is not likely to come in contact with the youth except during the hearing.

(5) To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, the staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearing manager; however, any person except the staff representative or the youth's advocate may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the exclusion(s) must be stated on the record.

(6) The hearing may be held by conference call if the hearing manager determines doing so will not deprive the youth of his/her due process rights. If the hearing is held by conference call, all required participants must be able to simultaneously hear one another.

(k) Hearing Process.

(1) Except as provided by paragraphs (2) and (3) of this subsection, hearings consist of two parts: fact finding and disposition. During the fact-finding portion of the hearing, only evidence concerning the alleged violation(s) may be considered. The youth's prior behavior may not be discussed or considered unless disposition is reached.

(2) The following types of hearings consist only of fact finding to determine if the criteria for transfer are met:

(A) non-disciplinary transfer hearings; and

(B) conditional placement transfer hearings requested because the conditional placement is no longer a viable option.

(3) A mental health status review hearing consists only of fact finding to determine if the criteria for admission or extension in a crisis stabilization unit are met.

(4) The youth must be given the opportunity to plead "true" or "not true" to each allegation. If the youth pleads "true," the hearing manager must ask questions of the youth to ensure he/she did so voluntarily and that he/she did commit the violation.

(5) If the youth pleads "not true," the staff representative has the burden of proving by a preponderance of evidence that the youth did commit the alleged violation(s).

(6) Witnesses must take an oath before testifying. Witnesses may testify by phone or videoconference if in-person testimony is impractical or unfeasible. If testimony is provided by phone, persons required to be present at the hearing must be able to simultaneously hear the testimony.

(7) The hearing manager, staff representative, and advocate may question each witness in turn.

(8) With the exception of the youth or staff representative, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing his/her testimony with anyone until all the witnesses have been dismissed.

(9) The hearing manager may permit a witness to testify outside the presence of the youth if doing so appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the advocate for the youth must be present during the testimony and must have the opportunity to review the testimony with the youth before questioning the witness.

(10) The youth may not be called as a witness unless, after consulting with the advocate, he/she waives on the record his/her right to remain silent. Neither the hearing manager nor the staff representative may question the youth unless he/she waives the right to remain silent.

(A) The youth's failure to testify must not create a presumption against him/her.

(B) A youth who waives the right to remain silent may only be questioned concerning those issues addressed by his/her testimony.

(11) All credible evidence may be considered, irrespective of its form.

(12) The standard of proof for all disputed issues is a preponderance of evidence.

(13) The hearing manager may recess or continue the hearing for such period(s) of time as may be necessary to ensure an informed and accurate fact finding or to secure evidence the hearing manager determines may be relevant.

(14) After all evidence has been presented, the staff representative and advocate may offer summation statements.

(15) The hearing manager must announce his/her findings of fact.

(16) If there is a finding of true, the hearing manager must proceed to disposition, unless the hearing consists only of fact finding as described in paragraphs (2) and (3) of this subsection. During disposition, the hearing manager must provide the youth an opportunity to present extenuating circumstances. If no extenuating circumstances are found, the hearing manager must order the disposition recommended by the staff representative.

(A) A hearing manager's decision to transfer a youth is final subject to approval by the appropriate administrator.

(B) A hearing manager's decision to demote a youth's stage in the agency's rehabilitation program is final subject to approval by the facility administrator or assistant facility administrator.

(C) If extenuating circumstances are found incident to the rule violation(s) proved at the hearing, the youth may not be assigned the requested disciplinary dispositions or any other major consequences. However, the true finding will remain in the youth's record and may be considered by the youth's treatment team or parole officer in determining appropriate actions to address the youth's behavior. If extenuating circumstances are found incident to a youth's possession of prohibited money, the hearing manager determines the appropriate way to dispose of the money.

(17) The hearing manager must prepare a report of his/her findings, which includes the grounds for the hearing, the evidence relied upon, and the decision.

(18) After the hearing manager announces his/her decision, he/she must inform the youth of the youth's right to appeal to the executive director or his/her designee. The hearing manager's decision is implemented even if the youth appeals and the response is pending.

(19) A copy of the hearing report must be given to the youth immediately after the hearing is closed.

(20) The hearing manager's report must be reviewed by the appropriate supervisor, institutional superintendent, halfway house superintendent, or parole supervisor, as are all disciplinary reports, to ensure consistency in the application of policy.

§380.9557. Level III Hearing Procedure.

(a) Purpose. This rule establishes a hearing procedure that provides the appropriate due process in certain situations.

(b) Applicability. The Level III hearing procedure is appropriate due process in the following instances:

(1) to determine admission or extension in the Security Program in accordance with §380.9740 of this title;

(2) to determine minor disciplinary consequences for youth in medium-restriction facilities in accordance with §380.9503 of this title; and

(3) to determine minor disciplinary consequences for youth on parole in accordance with §380.9504 of this title.

(c) Procedures.

(1) To initiate a Level III hearing, the youth must be notified orally of the time and date of the hearing, the alleged misconduct, and the recommended action(s) to be taken.

(2) The youth has the right and must be given the opportunity to speak on his/her behalf regarding the alleged misconduct or the appropriateness of the recommended action.

(3) If the Level III hearing involves a decision for an extension in the Security Program beyond the initial 24 hours, the youth must be appointed an advocate to assist the youth in presenting his/her position during the extension hearing.

(4) The hearing administrator may consider any reasonably reliable information in deciding whether the youth committed the alleged misconduct and whether the requested action is appropriate.

(5) If the hearing administrator finds a rule violation was committed, the youth will be given the opportunity to present evidence of extenuating circumstances.

(6) If the hearing administrator finds reasonable grounds to believe a youth on parole or in a medium-restriction facility has committed a violation and does not find that extenuating circumstance exist, the hearing administrator must indicate which violation was committed and the appropriate disciplinary consequence(s) may be imposed.

(7) If the hearing administrator finds reasonable grounds to believe the criteria in §380.9740 of this title are met to admit or extend a youth in the Security Program, the hearing administrator must indicate which rule violation was committed and which admission criterion was proven.

(8) If there is a finding of extenuating circumstances:

(A) no disciplinary consequence may be imposed; and

(B) the youth may be admitted to the Security Program if criteria in §380.9740 of this title are met.

(d) Appeals.

(1) The youth may appeal the decision to the facility administrator or parole supervisor or their designees, as appropriate, on grounds that:

(A) he/she did not commit the violation that was found true;

(B) the disciplinary measure imposed was inappropriate;

(C) the criteria for admission or extension in the Security Program was not proven; or

(D) there were extenuating circumstances to the commission of the violation.

(2) If it is determined the youth did not commit the violation found true at the hearing or there were extenuating circumstances, the youth's behavioral record must be updated to reflect that determination. The appeal authority must determine some form of equitable relief if the youth has completed a disciplinary measure or has otherwise been adversely affected by the finding.

(3) If it is determined that the youth did commit the violation found true at the hearing but the disciplinary decision is determined to be inappropriate, the violation will remain on the youth's behavioral record but the appeal authority must determine some form of equitable relief for a youth who has already completed a disciplinary measure and/or has been adversely affected.

§380.9559. Detention for Youth with Pending Charges.

(a) Purpose. This rule establishes criteria and procedures for detaining youth in a Texas Juvenile Justice Department (TJJD) security unit when criminal or delinquent charges are pending or filed or when the youth is awaiting a court hearing or trial.

(b) Definitions. Definitions pertaining to this rule are under §380.9550 of this title.

(c) Applicability.

(1) This rule applies only to TJJD youth on institutional status, regardless of assigned placement.

(2) This rule does not apply to TJJD youth on parole status, regardless of assigned placement.

(d) General Provisions.

(1) A youth may be held in institution detention if a court hearing or trial has been requested in writing or has been scheduled or criminal or delinquent conduct charges are pending or have been filed and:

(A) suitable alternative placement within the facility is unavailable due to ongoing behavior of the youth that creates disruption to the point that other youth are not able to benefit from programming; or

(B) the youth is likely to interfere with the judicial process, to include failing to appear; or

(C) the youth represents a danger to others; or

(D) the youth has escaped or attempted to escape, as defined in §380.9503 of this title, or is likely to attempt to escape.

(2) Charges are considered to be pending if there is reliable information that the prosecuting attorney intends to request an indictment or to file a petition or other charging instrument with the court.

(3) Charges are considered to be filed when an indictment has been issued or when a petition or other charging instrument has been filed with the court.

(4) If a youth with a determinate sentence is awaiting a court hearing for transfer to the Texas Department of Criminal Justice-Institutions Division, the court hearing is considered to be "requested in writing" when TJJD makes a written request to the court for a hearing date.

(5) Youth may not be placed in detention for the purpose of punishment.

(6) All standard requirements and services for the security unit as set forth in §380.9740 of this title, unless otherwise noted in this rule, must be observed while the youth is detained in the security unit.

(e) Procedure.

(1) Approval for Detention.

(A) The referring staff must obtain approval from the appropriate supervisor before placing a youth in institution detention.

(B) The youth must be immediately released from detention and returned to the appropriate placement if:

(i) approval for detention is not granted;

(ii) it is determined that charges will not be filed or will be dropped; or

(iii) it is determined that the court hearing or trial will be cancelled.

(C) If approval is granted to detain a youth who is not assigned to a high-restriction facility, the referring staff must obtain approval to place the youth in institution detention from the facility administrator or designee at the high-restriction facility.

(2) Admission to Institution Detention.

(A) The referring staff is responsible for ensuring the following documentation or information is present at the time of admission to institution detention:

(i) documentation that charges are pending or filed or that a court hearing or trial is scheduled or has been requested in writing;

(ii) a written statement including the purpose of admission with supporting documentation (i.e., any incident reports or arrest reports and expected length of stay); and

(iii) the medical file, if available, or copies of pertinent medical records, as well as any medication the youth is taking (applies to youth not assigned to the high-restriction facility where he/she is detained).

(B) The designated admitting staff must review the information presented to determine whether there are reasonable grounds to believe criteria for admission have been met as outlined in subsec-

tion (d)(1) of this section. As a result of this review, the youth may be admitted to institution detention for up to 72 hours.

(C) The security dorm supervisor or designee (who may not serve as the referring or admitting staff) must review all admission decisions within one workday to determine if admission criteria have been met. If criteria are not met or policy or procedures were not followed, the youth must be released from the security unit.

(3) Timing of Hearing.

(A) If a youth is admitted to detention, a Level IV hearing (detention review hearing) must be held:

(i) no later than 72 hours after admission to institution detention or the next workday if the 72nd hour falls on a weekend or holiday; and

(ii) within ten workdays of the previous Level IV hearing.

(B) If a Level IV hearing is not timely held or is not properly waived, the youth must be released to his/her assigned location.

(4) Decision Maker.

(A) The appropriate supervisor must appoint a decision maker.

(B) The decision maker must be impartial and may not be the person who referred or admitted the youth to institution detention or to community detention.

(C) The decision maker must be knowledgeable of the policies involved in the decision.

(5) Youth Representation and Waiver Rights.

(A) A TJJD employee, contract employee, or volunteer trained to serve as an advocate must assist the youth.

(B) The youth may waive the Level IV hearing after speaking with his/her advocate. The waiver must be in writing and be signed by the youth and the advocate.

(C) When a subsequent Level IV hearing is required by policy timelines, the youth must be given the opportunity to have that hearing or to waive it. If the youth chooses to waive the hearing after speaking to his/her advocate, a new waiver form must be completed.

(6) Hearing Process.

(A) The referring staff must show cause to detain the youth pending the hearing. The advocate may present evidence as to why the youth should not be detained.

(B) The standard of proof for all disputed issues is reasonable grounds to believe. The burden of proof is on the referring staff requesting detention.

(C) All credible evidence may be considered, irrespective of its form.

(D) The hearing must be recorded. The recording is the official record of the hearing. Recordings must be preserved for six months following the hearing.

(E) The decision maker must base his/her decision on criteria for detention. If criteria are not met, the youth must be released to his/her assigned location.

(7) Appeal.

(A) The youth is notified in writing of his/her right to appeal.

(i) The appeal of the first Level IV hearing is to the facility administrator.

(ii) The appeal of the second Level IV hearing is to the executive director pursuant to §380.9353 of this title.

(iii) An automatic appeal to the executive director must be filed by the referring staff on the third and any subsequent Level IV hearings, even if the youth waives the hearing(s).

(B) A decision to detain a youth will be implemented even if an appeal has been filed and a response is pending.

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 27, 2015.

TRD-201503450
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: October 1, 2015
Proposal publication date: March 27, 2015
For further information, please call: (512) 490-7278

TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Comptroller of Public Accounts

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill (SB) 633, relating to the transfer of the management of the Events Trust Funds from the Comptroller of Public Accounts to the Office of the Governor, Economic Development and Tourism Office.

In order to comply with SB 633, the Texas Register administratively transfers Texas Administrative Code, Title 34, Part 1, Chapter 2, §§2.100 - 2.104, 2.106, 2.107, and 2.200 - 2.206 to Title 10, Part 5, Chapter 184, §§184.100 - 184.106 and 184.200 - 184.206.

The transfer took effect on September 1, 2015.

Please refer to Figure: 34 TAC Chapter 2 to see the complete conversion chart.

TRD-201503517

Office of the Governor, Economic Development and Tourism Office

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill (SB) 633, relating to the transfer of the management of the Events Trust Funds from the Comptroller of Public Accounts to the Office of the Governor, Economic Development and Tourism Office.

In order to comply with SB 633, the Texas Register administratively transfers Texas Administrative Code, Title 34, Part 1, Chapter 2, §§2.100 - 2.104, 2.106, 2.107, and 2.200 - 2.206 to Title 10, Part 5, Chapter 184, §§184.100 - 184.106 and 184.200 - 184.206.

The transfer took effect on September 1, 2015.

Please refer to Figure: 34 TAC Chapter 2 to see the complete conversion chart.

TRD-201503518

Figure: 34 TAC Chapter 2

Current Rules from: Title 34, Part 1. Comptroller of Public Accounts Chapter 2. Sports and Events Trust Fund		**Transferred to: Title 10, Part 5. Office of the Governor, Economic Development and Tourism Office Chapter 184. Sports and Events Trust Fund**	
Subchapter A. Major Events Trust Fund		**Subchapter A. Major Events Trust Fund**	
§2.100	Definitions	§184.100	Definitions
§2.101	Eligibility	§184.101	Eligibility
§2.102	Request to Establish a Trust Fund	§184.102	Request to Establish a Trust Fund
§2.103	Reporting	§184.103	Reporting
§2.104	Disbursements for Event Costs	§184.104	Disbursements for Event Costs
§2.106	Event Support Contracts	§184.105	Event Support Contracts
§2.107	Allowed and Disallowed Costs	§184.106	Allowed and Disallowed Costs
Subchapter B. Events Trust Fund		**Subchapter B. Events Trust Fund**	
§2.200	Definitions	§184.200	Definitions
§2.201	Eligibility	§184.201	Eligibility
§2.202	Request to Establish a Trust Fund	§184.202	Request to Establish a Trust Fund
§2.203	Reporting	§184.203	Reporting
§2.204	Disbursements for Event Costs	§184.204	Disbursements for Event Costs
§2.205	Allowed and Disallowed Costs	§184.205	Allowed and Disallowed Costs
§2.206	Event Support Contracts	§184.206	Event Support Contracts

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. Subchapter B of Chapter 83 contains Division 1, concerning General Provisions; Division 2, concerning Authorized Activities; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Operational Requirements; and Division 6, concerning Consumer Disclosures and Notices.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this subchapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201503563
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 2, 2015

♦ ♦ ♦

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) files this notice of intent to review, and to consider for readoption, amendment, or repeal the Commission's rules at Title 16 Texas Administrative Code (TAC) Chapter 401, relating to Administration of State Lottery Act. The names and numbers of the rules contained in Chapter 401 are set forth below. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules):

Subchapter A - Procurement

§401.101 - Lottery Procurement Procedures

§401.102 - Protests of the Terms of a Formal Competitive Solicitation

§401.103 - Protests of Contract Award

§401.104 - Contract Monitoring Roles and Responsibilities

§401.105 - Major Procurement Approval Authority and Responsibilities

Subchapter B - Licensing of Sales Agents

§401.152 - Application for License

§401.153 - Qualifications for License

§401.155 - Expiration of License

§401.156 - Renewal of License

§401.157 - Provisional License

§401.158 - Suspension or Revocation of License

§401.159 - Summary Suspension of License

§401.160 - Standard Penalty Chart

Subchapter C - Practice and Procedure

§401.201 - Intent and Scope of Rules

§401.202 - Construction of Rules

§401.203 - Contested Cases

§401.205 - Initiation of a Hearing

§401.211 - Law Governing Contested Cases

§401.216 - Subpoenas, Depositions, and Orders to Allow Entry

§401.220 - Motion for Rehearing

§401.227 - Definitions

Subchapter D - Lottery Game Rules

§401.301 - General Definitions

§401.302 - Instant Game Rules

§401.303 - Grand Prize Drawing Rule

§401.304 - On-Line Game Rules (General)

§401.305 - "Lotto Texas" On-Line Game Rule

§401.306 - Video Lottery Games

§401.307 - "Pick 3" On-Line Game Rule

§401.308 - "Cash Five" On-Line Game

§401.309 - Assignability of Prizes

§401.310 - Payment of Prize Payments Upon Death of Prize Winner

§401.312 - "Texas Two Step" On-Line Game

§401.313 - Promotional Drawings

§401.314 - Retailer Bonus Programs

§401.315 - "Mega Millions" On-Line Game Rule

§401.316 - "Daily 4" On-Line Game Rule

§401.317 - "Powerball®" On-Line Game Rule

§401.318 - Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars

§401.319 - Withholding of Child-Support Payments from Periodic Installment Payments of Lottery Winnings

§401.320 - "All or Nothing" On-Line Game Rule

§401.321 - Instant Game Tickets Containing Non-English Words

§401.322 - "Texas Triple Chance" Lottery Game

§401.323 - "MONOPOLY MILLIONAIRES' CLUB™" Game Rule

Subchapter E - Retailer Rules

§401.351 - Proceeds from Ticket Sales

§401.352 - Settlement Procedures

§401.353 - Retailer Settlements, Financial Obligations, and Commissions

§401.355 - Restricted Sales

§401.357 - Texas Lottery as Retailer

§401.360 - Payment of Prizes

§401.361 - Required Purchases of Lottery Tickets

§401.362 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property

§401.363 - Retailer Record

§401.364 - Training

§401.366 - Compliance with All Applicable Laws

§401.368 - Instant Ticket Vending Machines

§401.370 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost

§401.371 - Collection of Delinquent Obligations for Lottery Retailer Related Accounts

§401.372 - Display of License

Subchapter F - ADA Requirements

§401.401 - Definitions

§401.402 - General Requirements

§401.403 - Readily Achievable Barrier Removal

§401.404 - Priority of ADA Compliance by Lottery Licensees

§401.405 - Alternatives to Barrier Removal

§401.406 - Future Alterations to a Lottery Licensed Facility

§401.407 - Complaints Relating to Non-accessibility

§401.408 - Requests for Hearings

Subchapter G - Lottery Security

§401.501 - Lottery Security

The Commission will make an assessment of whether the reasons for initially adopting each of these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations, and whether it reflects current procedures of the Commission.

Written comments pertaining to this rule review may be submitted by mail to Bob Biard, General Counsel, at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us*.

The deadline for comments is 60 days after publication of this notice in the *Texas Register*. Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rule Section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to final adoption or repeal by the Commission, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201503456
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 28, 2015

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The Texas Lottery Commission (Commission) files this notice of intent to review, and to consider for readoption, amendment, or repeal the Commission's rules at Title 16 Texas Administrative Code (TAC) Chapter 402, relating to Charitable Bingo Operations Division. The names and numbers of the rules contained in Chapter 402 are set forth below. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules):

Subchapter A - Administration

§402.100 - Definitions

§402.101 - Advisory Opinions

§402.102 - Bingo Advisory Committee

§402.103 - Training Program

§402.104 - Delinquent Obligations

Subchapter B - Conduct of Bingo

§402.200 - General Restrictions on the Conduct of Bingo

§402.201 - Prohibited Bingo Occasion

§402.202 - Transfer of Funds

§402.203 - Unit Accounting

§402.204 - Prohibited Price Fixing

§402.205 - Unit Agreements

§402.210 - House Rules

§402.211 - Other Games of Chance

§402.212 - Promotional Bingo

Subchapter C - Bingo Games and Equipment

§402.300 - Pull-Tab Bingo

§402.301 - Bingo Card/Paper

§402.303 - Pull-tab or Instant Bingo Dispensers

§402.321 - Card-Minding Systems--Definitions

§402.322 - Card-Minding Systems--Site System Standards

§402.323 - Card-Minding Systems--Device Standards

§402.324 - Card-Minding Systems--Approval of Card-Minding Systems

§402.325 - Card-Minding Systems--Licensed Authorized Organizations Requirements

§402.326 - Card-Minding Systems--Distributor Requirements

§402.327 - Card-Minding Systems--Security Standards

§402.328 - Card-Minding Systems--Inspections and Restrictions

Subchapter D - Licensing Requirements

§402.400 - General Licensing Provisions

§402.401 - Temporary License

§402.402 - Registry of Bingo Workers

§402.403 - Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises

§402.404 - License and Registry Fees

§402.405 - Temporary Authorization

§402.406 - Bingo Chairperson

§402.407 - Unit Manager

§402.408 - Designation of Members

§402.409 - Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment

§402.410 - Amendment of a License - General Provisions

§402.411 - License Renewal

§402.412 - Signature Requirements

§402.420 - Qualifications and Requirements for Conductor's License

§402.422 - Amendment to a Regular License to Conduct Charitable Bingo

§402.424 - Amendment of a License by Telephone or Facsimile

§402.442 - Amendment to a Commercial Lessor License

§402.450 - Request for Waiver

§402.451 - Operating Capital

§402.452 - Net Proceeds

§402.453 - Request for Operating Capital Increase

Subchapter E - Books and Records

§402.500 - General Records Requirements

§402.501 - Charitable Use of Net Proceeds

§402.502 - Charitable Use of Net Proceeds Recordkeeping

§402.503 - Bingo Gift Certificates

§402.504 - Debit Card Transactions

§402.505 - Permissible Expense

§402.506 - Disbursement Records Requirements

§402.511 - Required Inventory Records

§402.514 - Electronic Fund Transfers

Subchapter F - Payment of Taxes, Prize Fees and Bonds

§402.600 - Bingo Reports and Payments

§402.601 - Interest on Delinquent Tax

§402.602 - Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest

§402.603 - Bond or Other Security

§402.604 - Delinquent Purchaser

Subchapter G - Compliance and Enforcement

§402.700 - Denials; Suspensions; Revocations; Hearings

§402.701 - Investigation of Applicants for Licenses

§402.702 - Disqualifying Convictions

§402.703 - Audit Policy

§402.705 - Inspection of Premises

§402.706 - Standard Administrative Penalty Guideline

§402.707 - Expedited Administrative Penalty Guideline

§402.708 - Dispute Resolution

§402.709 - Corrective Action

The Commission will make an assessment of whether the reasons for initially adopting each of these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations, and whether it reflects current procedures of the Commission.

Written comments pertaining to this rule review may be submitted by mail to Bob Biard, General Counsel, at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.*

The deadline for comments is 60 days after publication of this notice in the *Texas Register.* Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rule Section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to final adoption or repeal by the Commission, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201503457
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 28, 2015

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Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 3, Public Information, Chapter 4, Employment Practices, Chapter 6, State Infrastructure Bank, Chapter 9, Contract and Grant Management, Chapter 12, Public Donation and Participation Program, Chapter 13, Materials Quality, Chapter 22, Use of State Property, Chapter 23, Travel Information, Chapter 25, Traffic Operations, and Chapter 29, Maintenance.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Rule Review." The deadline for receipt of comments is 5:00 p.m. on October 12, 2015.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-201503506
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 31, 2015

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Adopted Rule Reviews

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 Texas Administrative Code (TAC) Chapter 403, titled General Administration, in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 403. The Commission has determined that the reasons for adopting each of the rules in Chapter 403 continue to exist.

Section 403.101 (Open Records) sets forth agency procedures under which public information may be inspected and copied, as authorized by Government Code §552.230, relating to Rules of Procedure For Inspection and Copying of Public Information (from the Texas Public Information Act).

Section 403.102 (Items Mailed to the Commission) establishes a standard approach to determine when items are mailed to the Commission, consistent with the requirements of Government Code §2001.004(1), relating to state agency Rules of Practice.

Section 403.110 (Petition for Adoption of Rule Changes) complies with the requirement set forth in Government Code §2001.021(b) for a state agency to adopt rules prescribing the form for a Petition for Adoption of Rules.

Section 403.115 (Negotiated Rulemaking and Alternative Dispute Resolution) sets forth agency procedures and policy to comply with the requirements of Government Code §467.109, relating to Negotiated Rulemaking and Alternative Dispute Resolution Policy.

Sections 403.201 (Definitions), 403.202 (Prerequisites to Suit), 403.203 (Sovereign Immunity), 403.204 (Notice of Claim of Breach of Contract), 403.205 (Agency Counterclaim), 403.206 (Request for Voluntary Disclosure of Additional Information), 403.207 (Duty to Negotiate), 403.208 (Timetable), 403.209 (Conduct of Negotiation), 403.210 (Settlement Approval Procedures), 403.211 (Settlement Agreement), 403.212 (Costs of Negotiation), 403.213 (Request for Contested Case Hearing), 403.214 (Mediation Timetable), 403.215 (Conduct of Mediation), 403.216 (Qualifications and Immunity of the Mediator), 403.217 (Confidentiality of Mediation and Final Settlement Agreement), 403.218 (Costs of Mediation), 403.219 (Settlement Approval Procedures), 403.220 (Initial Settlement Agreement), 403.221 (Final Settlement Agreement), 403.222 (Referral to the State Office of Administrative Hearings), and 403.223 (Use of Assisted Negotiation Processes) comply with the requirement that a state agency develop rules to govern the negotiation and mediation of claims, set forth in Government Code §2260.052, relating to Negotiation of Contract Claims Against the State.

Section 403.301 (Historically Underutilized Businesses) complies with the requirement that a state agency adopt the Comptroller of Public Accounts' rules on Historically Underutilized Businesses, set forth in Government Code §2161.003, relating to Agency Rules.

Section 403.401 (Use of Commission Motor Vehicles) complies with the requirement that a state agency adopt rules relating to the assignment and use of agency vehicles, set forth in Government Code §2171.1045, relating to Restriction on Assignment of Vehicles.

Section 403.501 (Custody and Use of Criminal History Record Information) is necessary to implement provisions governing the Commission's access to criminal history record information obtained from the Texas Department of Public Safety, set forth in Government Code §411.108, relating to Access to Criminal History Record Information: Texas Lottery Commission.

Section 403.600 (Complaint Review Process) sets forth agency procedures to comply with Government Code §467.111, which requires the Commission to maintain a system to promptly and efficiently act on each complaint filed with the Commission; and, specifically, the requirement in §467.111(d) that the agency adopt rules governing the entire complaint process from submission to disposition.

As a result of the Commission's rule review, the Commission has concluded that none of the rules in Chapter 403 need to be amended or repealed at this time. The Commission notes that nine of the Chapter 403 rules were amended following the last rule review in 2011 to reflect current legal and policy considerations and current procedures of the Commission, and three additional Chapter 403 rules were first adopted in 2013. The nine rules that were amended include six of the rules relating to Negotiation of Contract Claims Against the State (§403.202, §403.205, §403.207, §403.208, §403.213, and §403.214), as well as the rules on Historically Underutilized Businesses (§403.301), Use of Commission Motor Vehicles (§403.401), and Custody and Use of Criminal History Record Information (§403.501). In addition, §403.115 and §403.600 were first adopted in 2013 to implement changes to Government Code Chapter 467 made pursuant to the Commission's Sunset review legislation, Tex. H.B. 2197, 83rd Leg., R.S. (2013). Finally, §403.102 also was initially adopted in 2013.

This review and readoption has been conducted in accordance with Texas Government Code §2001.039. The Commission received no comments on the proposed review, which was published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3669).

This action concludes the Commission's review of 16 TAC Chapter 403.

TRD-201503455

Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 28, 2015

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.317(d)(2)

Number of Matches Per Play	**Prize Payment**	**Prize Pool Percentage Allocated to Prize**
All five (5) of first set plus one (1) of second set.	Grand Prize	68.0131%
All five (5) of first set and none of second set.	$1,000,000	8.5558%
Any four (4) of first set plus one (1) of second set.	$50,000	5.4757%
Any four (4) of first set and none of second set.	$100	0.2738%
Any three (3) of first set plus one (1) of second set.	$100	0.6899%
Any three (3) of first set and none of second set.	$7	1.2074%
Any two (2) of first set plus one (1) of second set.	$7	0.9981%
Any one (1) of first set plus one (1) of second set.	$4	4.3489%
None of first set plus one (1) of second set.	$4	10.4373%

Figure: 16 TAC §401.317(e)

Number of Matches Per Ticket	Probability Distribution		Probable/Set Prize Amount
	Winners	Probability	
All five (5) of first set plus one (1) of second set	1	1:292,201,338.0000	Grand Prize
All five (5) of first set and none of second set	25	1:11,688,053.5200	$1,000,000
Any four (4) of first set plus one (1) of second set	320	1:913,129.1813	$50,000
Any four (4) of first set and none of second set	8,000	1:36,525.1673	$100
Any three (3) of first set plus one (1) of second set	20,160	1:14,494.1140	$100
Any three (3) of first set and none of second set	504,000	1:579.7646	$7
Any two (2) of the first set plus one (1) of second set	416,640	1:701.3281	$7
Any one (1) of the first set plus one (1) of the second set	3,176,880	1:91.9775	$4
None of the first set plus one (1) of second set	7,624,512	1:38.3239	$4
Overall	11,750,538	1:24.8671	

Figure: 16 TAC §401.317(f)(1)

Terminal Type	**Manual Entry**	**Playslip with No Payment Option Selected**
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT Mini (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."

Figure: 16 TAC §401.317(k)(3)

Prize Amount	Regardless of Power Play number selected:					
Match 5+0	$1,000,000.00	$2,000,000.00	$2,000,000.00	$2,000,000.00	$2,000,000.00	$2,000,000.00
	Prize Amount	10X	5X	4X	3X	2X
Match 4+1	$50,000.00	$500,000.00	$250,000.00	$200,000.00	$150,000.00	$100,000.00
Match 4+0	$100.00	$1,000.00	$500.00	$400 .00	$300.00	$200.00
Match 3+1	$100.00	$1,000.00	$500.00	$400.00	$300.00	$200.00
Match 3+0	$7.00	$70.00	$35.00	$28.00	$21.00	$14.00
Match 2+1	$7.00	$70.00	$35.00	$28.00	$21 .00	$14.00
Match 1+1	$4.00	$40.00	$20.00	$16.00	$12.00	$8.00
Match 0+1	$4.00	$40.00	$20.00	$16.00	$12.00	$8.00

Figure: 16 TAC §401.317(k)(4)(D)

When the 10x multiplier is available:

Power Play		Probability of Prize Increase	Chance of Occurrence
10X	Prize Won Times 10	1 in 43	2.3255%
5X	Prize Won Times 5	2 in 43	4.6512%
4X	Prize Won Times 4	3 in 43	6.9767%
3X	Prize Won Times 3	13 in 43	30.2326%
2X	Prize Won Times 2	24 in 43	55.8140%

When the 10x multiplier is not available:

Power Play		Probability of Prize Increase	Chance of Occurrence
10X	Prize Won Times 10	0 in 42	0.0000%
5X	Prize Won Times 5	2 in 42	4.7619%
4X	Prize Won Times 4	3 in 42	7.1429%
3X	Prize Won Times 3	13 in 42	30.9523%
2X	Prize Won Times 2	24 in 42	57.1429%

Power Play does not apply to the Grand Prize. Except as provided in subparagraph (C), a Power Play Match 5 prize is set at two million dollars ($2 million), regardless of the multiplier selected.

Figure: 19 TAC §101.4002(b)

Substitute Assessments Standards Chart

	STAAR Algebra I		*STAAR Biology*		*STAAR English I*		*STAAR English II*		*STAAR U.S. History*	
Substitute Assessment	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score
ACT^	Mathematics	22			Reading Combined English/Writing	21 18	Reading Combined English/Writing	21 18		
AP			Biology	3	English Language and Composition	3	English Language and Composition	3	U.S. History	3
IB*			Biology	4	Language A: Language and Literature	4	Language A: Language and Literature	4	History of the Americas	4
PLAN	Mathematics	19								
PSAT	Mathematics	47								
SAT	Mathematics	500			Critical Reading Writing	500 500	Critical Reading Writing	500 500		
TSI**	Mathematics	***			Reading Objective Writing/Sentence Skills Writing	*** 350 5	Reading Objective Writing/Sentence Skills Writing	*** 350 5		

^ To use the ACT as a substitute for the STAAR EOC English I or English II assessment, a student must take the optional ACT writing assessment and achieve a combined English/writing score of 18

* The set passing score for the IB substitute assessments applies to both Standard Level and Higher Level examinations.

** The TSI English language arts assessment may only be used to fulfill both the English I EOC and English II EOC requirements in those cases described by subsection (d)(1) of this section. In all other cases, an approved substitute assessment may be used in place of only one specific EOC assessment.

*** A student must meet the score indicating readiness to enroll in entry-level freshman coursework on the TSI assessment as specified in §4.57(a) of this title (relating to College Ready and Adult Basic Education (ABE) Standards).

Figure: 22 TAC §577.15

(a) APPLICATION FOR INITIAL LICENSE

Type of License Application	Total Fee
Veterinary Regular License	~~$555~~ 515
Veterinary Special License	~~$555~~ 575
Veterinary Provisional License	~~$605~~ 600
Veterinary Temporary License	~~$300~~ 200
Equine Dental Provider License	~~$200~~ 100
Veterinary Technician License	~~$70~~ 50

(b) LICENSE RENEWALS

(1) Current License Renewals

Type Of License	Board Fees	~~Professional Fees~~	~~Total Fee~~
Veterinary Regular License	~~$170~~ 159	~~$200~~	~~$370~~
Veterinary Special License	~~$165~~ 174	~~$200~~	~~$365~~
Veterinary Inactive License	~~$170~~ 105	~~$0~~	~~$170~~
Equine Dental Provider License	~~$205~~ 65	~~$0~~	~~$205~~
Equine Dental Provider Inactive License	~~$105~~ 55	~~$0~~	~~$105~~
Veterinary Technician Regular License	~~$51~~ 35	~~$0~~	~~$51~~
Veterinary Technician Inactive License	~~$28~~ 25	~~$0~~	~~$28~~

(2) Expired License Renewals – Less Than 90 Days Delinquent

Type Of License	Board Fees	~~Professional Fees~~	~~Total Fee~~
Veterinary Regular License	~~$250~~ 234	~~$200~~	~~$450~~
Veterinary Special License	~~$245~~ 259	~~$200~~	~~$445~~
Veterinary Inactive License	~~$250~~ 155	~~$0~~	~~$250~~
Equine Dental Provider License	~~$305~~ 95	~~$0~~	~~$305~~
Equine Dental Provider Inactive License	~~$155~~ 80	~~$0~~	~~$155~~
Veterinary Technician Regular License	~~$74~~ 50	~~$0~~	~~$74~~
Veterinary Technician Inactive License	~~$40~~ 35	~~$0~~	~~$40~~

(3) Expired License Renewals – Greater Than 90 Days and Less Than 1 Year Delinquent

Type Of License	Board Fees	~~Professional Fees~~	~~Total Fee~~
Veterinary Regular License	~~$331~~ 309	~~$200~~	~~$531~~
Veterinary Special License	~~$326~~ 344	~~$200~~	~~$526~~
Veterinary Inactive License	~~$331~~ 205	~~$0~~	~~$331~~
Equine Dental Provider License	~~$405~~ 125	~~$0~~	~~$405~~
Equine Dental Provider Inactive License	~~$205~~ 105	~~$0~~	~~$205~~
Veterinary Technician Regular License	~~$97~~ 65	~~$0~~	~~$97~~
Veterinary Technician Inactive License	~~$51~~ 45	~~$0~~	~~$51~~

(c) SPECIALIZED LICENSE CATEGORIES

Type Of License	Total Fee

Veterinary Reinstatement	~~$370~~ 250
Veterinary Re-Activation	~~$225~~ 150
Equine Dental Provider Re-Activation	$25
Veterinary Technician Re-Activation	$25

(d) OTHER FIXED FEES AND CHARGES

(1) Criminal History Evaluation Letter: $32
(2) Returned Check Fee: $25
(3) Duplication of License: $40
(4) Open Records Requests: Charges for all open records and other goods/services such as tapes and discs, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information)
(5) Application Processing for Board Approval of Equine Dental Provider Certifying Entities: $1500
(6) Letter of Good Standing: $25
(7) Continuing Education Approval Review Process: $25
(8) Continuing Education Approval Review submitted less than 30 days prior to the continuing education event: $50

Figure: 34 TAC §9.804(b)(3)

Appendix 1

Schedule of Deposits

If the property qualifies as the owner's residence homestead and the appraised or market value is $500,000 or less	$450
If the property qualifies as the owner's residence homestead and the appraised or market value is more than $500,000	$500
If the property does not qualify as the owner's residence homestead and the appraised or market value is $1 million or less	$500
If the property does not qualify as the owner's residence homestead and the appraised or market value is more than $1 million but not more than $2 million	$800
If the property does not qualify as the owner's residence homestead and the appraised or market value of the property is more than $2 million but not more than $3 million	$1,050

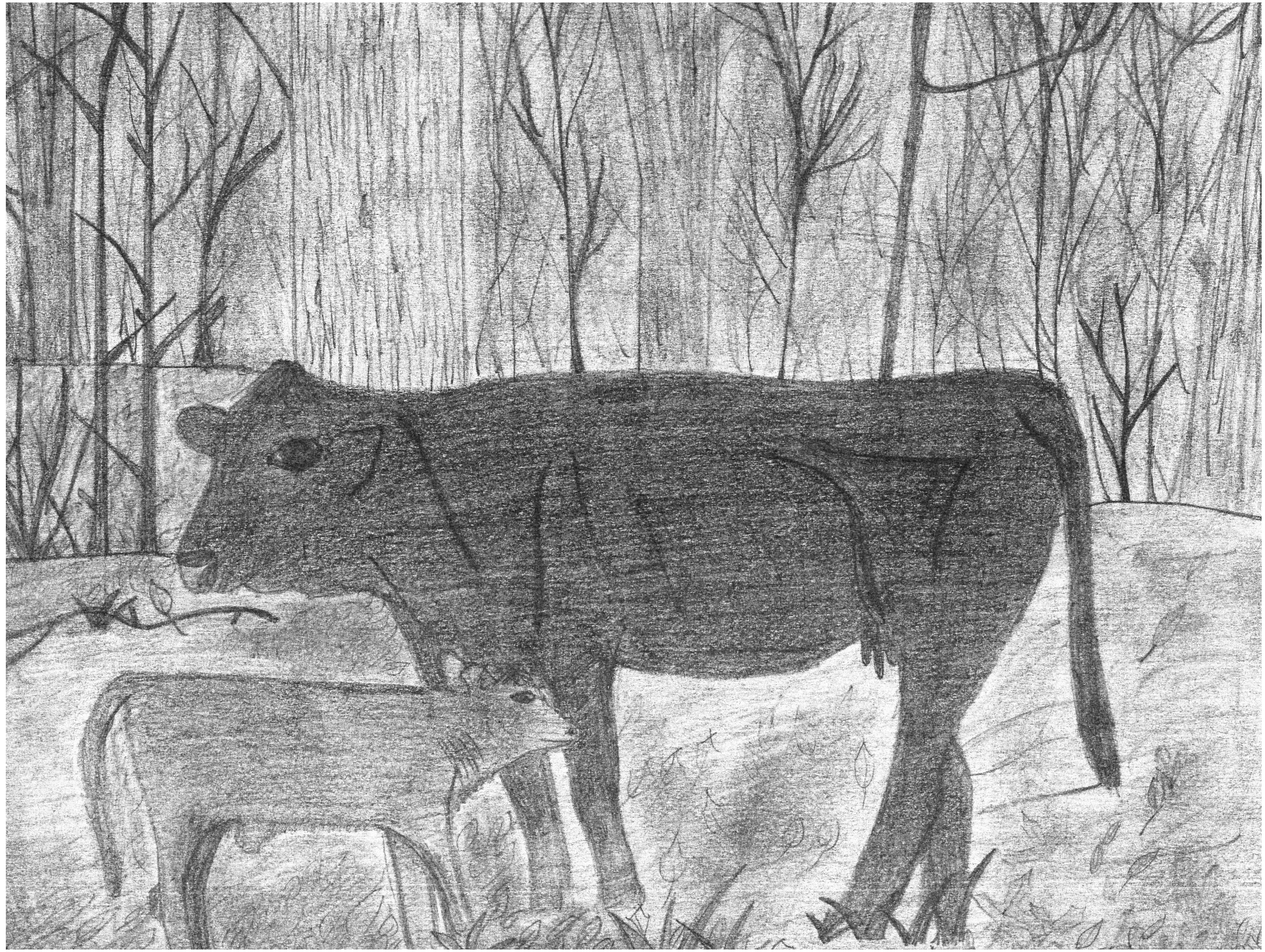
Figure: 34 TAC §9.804(c)(1)

Appendix 2

Arbitrators Fee

The arbitrator's fee shall not exceed:

If the property qualifies as the owner's residence homestead and the appraised or market value is $500,000 or less	$400
If the property qualifies as the owner's residence homestead and the appraised or market value is more than $500,000	$450
If the property does not qualify as the owner's residence homestead and the appraised or market value is $1 million or less	$450
If the property does not qualify as the owner's residence homestead and the appraised or market value is more than $1 million but not more than $2 million	$750
If the property does not qualify as the owner's residence homestead and the appraised or market value of the property is more than $2 million but not more than $3 million	$1,000



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *State of Texas v. BP Exploration & Production Inc., et al.,* Case No. 13 cv 4677, consolidated with MDL No. 2179, in the U.S. District Court for the Eastern District of Louisiana.

Background: On April 20, 2010, explosions and fires destroyed the Mobile Offshore Drilling Rig ("MODU") *Deepwater Horizon* at the site of the Macondo Well, approximately 50 miles from the Mississippi River delta. Eleven people aboard the rig lost their lives; many others were injured. Oil from the Macondo Well flowed into the Gulf of Mexico for months. Oil from the well entered Texas territorial waters, causing harm to the coastal area, the estuarine environment and native species, both in Texas waters and migrating to and from Texas waters.

The State of Texas filed a lawsuit against Transocean Offshore Deepwater Drilling Inc. ("Transocean"), the owner/operator of the *Deepwater Horizon,* associated companies, and others, alleging violations of the Texas Water Code, the Texas Natural Resources Code, and other law.

Nature of the Settlement: The lawsuit against Transocean and associated companies will be settled by a settlement agreement and a dismissal in the district court.

Proposed Settlement: The proposed settlement provides for the recovery of economic damages and attorneys' fees in the total sum of $2 million.

The Office of the Attorney General will accept written comments relating to the proposed settlement for thirty (30) days from the date of publication of this notice. Copies of the proposed settlement may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed settlement may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the settlement, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (MC-066), P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0911; email *Thomas.Edwards@texasattorneygeneral.gov.*

TRD-201503528
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: September 1, 2015

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Cancer Prevention and Research Institute of Texas

Request for Applications R-16-REI-1 Recruitment of Established Investigators

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Recruitment of Established Investigators. The aim of this award mechanism is to bolster cancer research in Texas by providing financial support to attract world class research scientists with distinguished professional careers to Texas universities and cancer research institutes to establish research programs that add research talent to the State. This award will support established academic leaders whose body of work has made an outstanding contribution to cancer research. Awards are intended to provide institutions with a competitive edge in recruiting the world's best talent in cancer research, thereby advancing cancer research efforts and promoting economic development in the State of Texas. The recruitment of outstanding scientists will greatly enhance programs of scientific excellence in cancer research and will position Texas as a leader in the fight against cancer. Applications may address any research topic related to cancer biology, causation, prevention, detection or screening, or treatment.

The maximum amount that may be requested by applicant institutions is $6 million (total costs) for a 5-year period.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, June 22, 2015, through 3:00 p.m. Central Time on Monday, June 20, 2016. Applications will be reviewed and approved continuously throughout Fiscal Year 2016. Only applications submitted via the CPRIT Application Receipt System *(www.CPRITGrants.org)* portal will be considered eligible for evaluation. A detailed Request for Applications (RFA) is available online at *www.cprit.state.tx.us.*

TRD-201503507
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: August 31, 2015

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Request for Applications R-16-RFT-1 Recruitment of First-Time Tenure-Track Faculty Members

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Recruitment of First-Time Tenure-Track Faculty Members. The aim of this award mechanism is to bolster cancer research in Texas by providing financial support to attract very promising investigators who are pursuing their first faculty appointment at the level of assistant professor (first-time, tenure-track faculty members). These individuals must have demonstrated academic excellence, innovation during predoctoral and/or postdoctoral research training, commitment to pursuing cancer research, and exceptional potential for achieving future impact in basic, translational, population-based, or clinical research. Awards are

intended to provide institutions with a competitive edge in recruiting the world's best talent in cancer research, thereby advancing cancer research efforts and promoting economic development in the State of Texas. The recruitment of outstanding scientists will greatly enhance programs of scientific excellence in cancer research and will position Texas as a leader in the fight against cancer. Applications may address any research topic related to cancer biology, causation, prevention, detection or screening, or treatment.

The maximum amount that may be requested by applicant institutions is $2,000,000 (total costs) for a 4-year period.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, June 22, 2015, through 3:00 p.m. Central Time on Monday, June 20, 2016. Applications will be reviewed and approved continuously throughout Fiscal Year 2016. Only applications submitted via the CPRIT Application Receipt System *(www.CPRITGrants.org)* portal will be considered eligible for evaluation. A detailed Request for Applications (RFA) is available online at *www.cprit.state.tx.us.*

TRD-201503508
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: August 31, 2015

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Request for Applications R-16-RRS-1 Recruitment of Rising Stars

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Recruitment of Rising Stars. The aim of this award mechanism is to bolster cancer research in Texas by providing financial support to attract individuals whose work has outstanding merit, who show a marked capacity for self-direction, and who demonstrate the promise for continued and enhanced contributions to the field of cancer research ("Rising Stars"). Awards are intended to provide institutions with a competitive edge in recruiting the world's best talent in cancer research, thereby advancing cancer research efforts and promoting economic development in the State of Texas. The recruitment of outstanding scientists will greatly enhance programs of scientific excellence in cancer research and will position Texas as a leader in the fight against cancer. Applications may address any research topic related to cancer biology, causation, prevention, detection or screening, or treatment.

The maximum amount that may be requested by applicant institutions is $4,000,000 (total costs) over a 5-year period.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, June 22, 2015, through 3:00 p.m. Central Time on Monday, June 20, 2016. Applications will be reviewed and approved continuously throughout Fiscal Year 2016. Only applications submitted via the CPRIT Application Receipt System *(www.CPRITGrants.org)* portal will be considered eligible for evaluation. A detailed Request for Applications (RFA) is available online at *www.cprit.state.tx.us.*

TRD-201503509
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: August 31, 2015

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Comptroller of Public Accounts

Notice of Request for Information

Pursuant to House Bill 483 of the 84th Texas legislature ("Act") the Texas Comptroller of Public Accounts ("CPA") announces the issuance of a Request for Information No. 212p ("RFI") to gather information regarding a precious metals bullion depository and related services. Responses to the RFI will aid CPA's general understanding of the types of offerings which are commercially available in this industry. CPA is looking for information pertaining to the bullion depository services contemplated in the Act and as further described in *Section C* of this RFI. These services may include, but are not limited to, providing a physical and secure bullion depository in Texas. The bullion depository should have a mechanism for accepting, withdrawing, transferring and transporting bullion deposits, collecting reasonable fees, accounting, assessing bullion value and publishing accurate data for account holders and Texas residents as prescribed by the rules to be promulgated by CPA.

Contact: The RFI is currently available electronically on the *Electronic State Business Daily* ("ESBD") at: http://esbd.cpa.state.tx.us. Parties who are unable to access the RFI on the ESBD may request a hard copy of the RFI by contacting Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Closing Date: Responses must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, October 2, 2015. **Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.**

TRD-201503561
Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: September 2, 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, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/07/15 - 09/13/15 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/07/15 - 09/13/15 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 09/01/15 - 09/30/15 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 09/01/15 - 09/30/15 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/15 - 12/31/15 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/15 - 12/31/15 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 10/01/15 - 12/31/15 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code[1] for the period of 10/01/15 - 12/31/15 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 10/01/15 - 12/31/15 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/15 - 12/31/15 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 10/01/15 - 12/31/15 is 18% for Consumer/Agricultural/Commercial credit through $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.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201503514
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 1, 2015

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Texas Financial Education Endowment Grant Program

The Finance Commission of Texas announces the availability of $250,000 in grant funds from the Texas Financial Education Endowment (TFEE). This grant program is designed to support and promote financial capability, education, and responsibility of Texans. The endowment supports innovative consumer credit building activities and programs for youth and adults throughout the state.

Visit the TFEE site at: *www.tfee.texas.gov* for more information.

TFEE Contact:

Dana Edgerton

info@tfee.texas.gov

TRD-201503503
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 31, 2015

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 12, 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 October 12, 2015. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Anthony J. Duncan; DOCKET NUMBER: 2015-0447-WOC-E; IDENTIFIER: RN107843617; LOCATION: Hutto, Williamson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.0301(c) and §37.003, and 30 TAC §30.5(a) and §30.331(b), by failing to obtain a valid wastewater operator license prior to performing process control duties at the facility; PENALTY: $563; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2015-0669-AIR-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit Number O2165, Special Terms and Conditions Number 8, New Source Review Permit Number 7719A, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to comply with the permitted hourly emissions rate; PENALTY: $13,125; Supplemental Environmental Project offset amount of $5,250; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: City of Dickinson; DOCKET NUMBER: 2015-0680-WQ-E; IDENTIFIER: RN105576581; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: municipal storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with a Texas Pollutant Discharge Elimination System Small Municipal Separate Storm Sewer System General Permit; PENALTY: $12,375; Supplemental Environmental Project offset amount of $9,900; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Moran; DOCKET NUMBER: 2015-0972-PWS-E; IDENTIFIER: RN101392181; LOCATION: Moran, Shackelford 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: $315; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Throckmorton; DOCKET NUMBER: 2015-0821-PWS-E; IDENTIFIER: RN101410553; LOCATION: Throckmorton, Throckmorton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the non-acute surface water treatment technique violations during the month of October 2012; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the first, second, third and fourth quarters of 2014 and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit a DLQOR for the first, second and third quarters of 2014; and 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper samples at the required ten sample sites, have the samples analyzed at a TCEQ approved laboratory, and submit the results to the executive director for the January 1, 2012 - December 31, 2014 monitoring period; PENALTY: $648; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Coleman County Special Utility District; DOCKET NUMBER: 2015-0735-PWS-E; IDENTIFIER: RN101212520; LOCATION: Coleman, Coleman County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average and to provide public notification and submit a copy of the public notification to the executive director regarding the exceedance of the MCL for TTHM for the fourth quarter of 2014 and failing to provide public notification to the executive director regarding the exceedance of the MCL for TTHM for the fourth quarter of 2014; PENALTY: $672; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: EA Engineering, Science, and Technology, Incorporated, PBC; DOCKET NUMBER: 2015-0631-WQ-E; IDENTIFIER: RN100242270; LOCATION: Longview, Gregg County; TYPE OF FACILITY: groundwater remediation site; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG830445, Part III. Section A. Effluent Limitations Number 1, by failing to comply with permitted effluent limitations; PENALTY: $938; Supplemental Environmental Project offset amount of $375; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Fort Bend County Municipal Utility District Number 25; DOCKET NUMBER: 2015-0855-MWD-E; IDENTIFIER: RN105805840; LOCATION: Sugar Land, Fort Bend 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 WQ0012003002, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,937; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Hampton Enterprises, LLC dba Bar-H Country Store and BBQ; DOCKET NUMBER: 2015-0867-PST-E; IDENTIFIER: RN102246535; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) 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 30 TAC §115.242(d)(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: $2,136; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Malhi International Incorporated dba Cowboy Mart 2; DOCKET NUMBER: 2015-0774-PST-E; IDENTIFIER: RN101674372; LOCATION: Harker Heights, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $11,670; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: MILLER GROVE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0607-PWS-E; IDENTIFIER: RN101456978; LOCATION: near Cumby, Hopkins 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: $330; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: MIRANDO CITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-1261-MWD-E; IDENTIFIER: RN101455624; LOCATION: Mirando, Webb County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014207001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; and 30 TAC §30.350(d) and §305.125(1), and TPDES Permit Number WQ0014207001, Operational Requirements Number 9 and Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; PENALTY: $11,880; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(13) COMPANY: North Orange Water and Sewer, LLC; DOCKET NUMBER: 2015-0604-MWD-E; IDENTIFIER: RN102078896; LOCATION: Orange, Orange County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011155001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0011155001, Monitoring and Reporting Requirements Number 7.c, by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Beaumont Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance events in November 2013, February 2014 and May 2014; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0011155001, Sludge Provisions, by failing to timely submit the annual sludge report to the Beaumont Regional Office by September 30, 2014; and 30 TAC §305.125(1) and TPDES Permit Number WQ0011155001, Definitions and Standard Permit Conditions, by failing to perform all measurements, tests and calculations in a representative manner to ensure the accurate reporting of data; PENALTY: $6,102; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Presidio County Water Improvement District 1 dba Redford Water Supply; DOCKET NUMBER: 2015-0694-PWS-E; IDENTIFIER: RN101266054; LOCATION: Presidio, Presidio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.20 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (ii)(III), (B)(ii), and (D)(vii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(s)(1) and (2)(C)(i), by failing to calibrate the facility's two well meters once every three years and by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion resistant screen, facing downward, elevated, and located as to minimize the drawing of contaminants into the well; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: $650; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: Regency Field Services LLC; DOCKET NUMBER: 2015-0750-AIR-E; IDENTIFIER: RN100213628; LOCATION: near Sunray, Moore County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O629, Special Terms and Conditions Number 11, by failing to submit the Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: $3,375; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: San Felipe Stone, Incorporated (Site 1 and Site 2); DOCKET NUMBER: 2015-0789-WQ-E; IDENTIFIER: RN105982839 (Site 1) and RN108348111 (Site 2); LOCATION: Leuders, Haskell County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration for Site 1 annually; and 30 TAC §342.25(b), by failing to register Site 2 as an APO no later than 10 business days before the beginning date of regulated activities; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: SPENCER #1 ENTERPRISES, INCORPORATED dba Amigo Food Mart; DOCKET NUMBER: 2015-0689-PST-E; IDENTIFIER: RN102248481; LOCATION: South Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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: $4,618; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2015-0594-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and §122.143(4), Federal Operating Permit Number O1498, Special Terms and Conditions Number 18, New Source Review Permit Numbers 6825A, PSDTX49, and N65, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $46,876; Supplemental Environmental Project offset amount of $18,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2015-0655-PWS-E; IDENTIFIER: RN101248391; LOCATION: Palacios, Jackson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(s)(2)(C)(i), by failing to properly verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11786 for calendar years 2013 and 2014; PENALTY: $150; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: United States Postal Service; DOCKET NUMBER: 2015-0223-PWS-E; IDENTIFIER: RN101223675; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.106(e), 290.107(e), and 290.122(c)(2)(A) and (f), by failing to provide the results of triennial minerals and synthetic organic chemical contaminants (methods 504, 515, and 531) samples to the executive director and failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to provide the results of the mineral and synthetic organic chemical contaminants sampling for the January 1, 2011 - December 31, 2013 monitoring period; 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper tap

samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the January 1, 2012 - December 31, 2014 monitoring period; 30 TAC §290.106(e) and §290.122(c)(2)(A) and (f), by failing to provide the results of annual nitrate sampling to the executive director and failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to provide the results for the nitrate sampling for the 2013 monitoring period; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91012405 for Fiscal Years 2010 - 2015; PENALTY: $375; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: ZAA Enterprises, Incorporated dba Flash Mart Abrams; DOCKET NUMBER: 2015-0657-PST-E; IDENTIFIER: RN103136362; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 USTs; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: $8,189; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201503513
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2015

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Amended Notice of Hearing

JPHD, Inc.

SOAH Docket No. 582-15-5000

TCEQ Docket No. 2015-0664-MWD

Proposed Permit No. WQ0015201001

APPLICATION.

JPHD, Inc., 17024 Hamilton Pool Road, Austin, Texas 78738, has applied to the Texas Commission on Environmental Quality (TCEQ) for new TCEQ Permit No. WQ0015201001, to authorize the disposal of treated domestic wastewater effluent at a daily average flow not to exceed 450,000 gallons per day via subsurface drip irrigation on 6 areas with a minimum total surface area of 104.79 acres divided into 36 zones. The draft permit does not authorize the discharge of pollutants into water in the state.

The wastewater treatment facility and disposal site will be located 3.2 miles west of the intersection of State Highway 71 and Hamilton Pool Road, on Hamilton Pool Road in Travis County, Texas 78738. The wastewater treatment facility and disposal site will be located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Bee Cave Public Library, 4000 Galleria Parkway, Bee Cave, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.306944&lng=-98.02&zoom=13&type=r*

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. September 29, 2015

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on July 10, 2015. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at *http://www.tceq.texas.gov/*.

Further information may also be obtained from JPHD, Inc., at the address stated above or by calling Mr. Daniel Ryan, P.E, LJA Engineering, Inc., at (512) 439-4700.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued on August 26, 2015.

TRD-201503445
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 27, 2015

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Amended Notice of Hearing

NASH FM 529, LLC

SOAH Docket No. 582-15-4942

TCEQ Docket No. 2015-0663-MWD

Proposed Permit No. WQ0015264001

APPLICATION.

Nash FM 529, LLC, 10940 West Sam Houston Parkway North, Suite 300, Houston, Texas 77064, a land developer, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015264001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day.

This amended notice is being published to acknowledge the Applicant's change of address. The Applicant's correct address is stated above.

The facility will be located approximately 2,000 feet southeast from the intersection of Beckendorff Road and Porter Road in Harris County, Texas 77493. The treated effluent will be discharged to a man-made ditch; thence to South Mayde Creek; thence to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for both the man-made ditch and South Mayde Creek. The designated uses for Segment No. 1014 are limited aquatic life use and primary contact recreation. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in downstream water bodies with exceptional, high, or intermediate aquatic life use, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Katy Branch Library, 5414 Franz Road, Katy, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.857807&lng=-95.78487&zoom=13&type=r.*

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. October 19, 2015

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on July 10, 2015. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at *http://www.tceq.texas.gov/.*

Further information may also be obtained from Nash FM 529, LLC at the address stated above or by calling Ms. Jennifer Mays, P.E., Brown & Gay Engineers, Inc., at (281) 558-8700, Extension 8304.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued on August 26, 2015.

TRD-201503446
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 27, 2015

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Enforcement Orders

An order was entered regarding Ted Booher and Rapid Marine Fuels, LLC dba Rapid Environmental Services, LLC, Docket No. 2013-0374-MLM-E on August 28, 2015 assessing $18,815 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 City of Ladonia, Docket No. 2014-1768-PWS-E on August 26, 2015 assessing $1,130 in administrative penalties with $226 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jana Gardner and Richard E. Gardner dba 2 Js Cafe & Marina, Docket No. 2014-1901-PWS-E on August 26, 2015 assessing $782 in administrative penalties with $156 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 Martin Operating Partnership L.P., Docket No. 2015-0211-AIR-E on August 26, 2015 assessing $1,398 in administrative penalties with $279 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 Samuel Coronado dba Citrus Trailer Park, Docket No. 2015-0237-PWS-E on August 26, 2015 assessing $53 in administrative penalties with $10 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eggemeyer Land Clearing, LLC, Docket No. 2015-0241-WQ-E on August 26, 2015 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2527, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VELVIN OIL COMPANY, INC., Docket No. 2015-0294-IWD-E on August 26, 2015 assessing $1,375 in administrative penalties with $275 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 HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA dba Longhorn Council, Boy Scouts of America, Docket No. 2015-0297-PWS-E on August 26, 2015 assessing $1,722 in administrative penalties with $344 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 Bell-Milam-Falls Water Supply Corporation, Docket No. 2015-0392-WQ-E on August 26, 2015 assessing $1,550 in administrative penalties with $310 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 City of Nome, Docket No. 2015-0410-PWS-E on August 26, 2015 assessing $805 in administrative penalties with $161 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 Michael Porter dba SILVEIRA INDUSTRIES INC., Docket No. 2015-0434-LII-E on August 26, 2015 assessing $1,200 in administrative penalties with $240 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 Aurora Povlich, Docket No. 2015-0448-MSW-E on August 26, 2015 assessing $1,312 in administrative penalties with $262 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 Allied Equipment, Inc., Docket No. 2015-0503-AIR-E on August 26, 2015 assessing $1,562 in administrative penalties with $312 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 ASPRI INVESTMENTS, LLC dba BD Food Mart, Docket No. 2015-0537-PST-E on August 26, 2015 assessing $3,375 in administrative penalties with $675 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 SAGERTON WATER SUPPLY CORPORATION, Docket No. 2015-0557-PWS-E on August 26, 2015 assessing $165 in administrative penalties with $33 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Grapeland, Docket No. 2015-0578-PWS-E on August 26, 2015 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRASSLAND WATER SUPPLY CORPORATION, Docket No. 2015-0677-PWS-E on August 26, 2015 assessing $930 in administrative penalties with $186 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tejas Production Services, Inc., Docket No. 2015-0739-AIR-E on August 26, 2015 assessing $2,188 in administrative penalties with $437 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.

A field citation was entered regarding ETXPG, LLC, Docket No. 2015-0919-WQ-E on August 26, 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 Sumeer Homes, Inc., Docket No. 2015-0938-WQ-E on August 26, 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 F&H Builders, LLC, Docket No. 2015-0948-WQ-E on August 26, 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-201503534
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2015

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Mohammed Islam dba S & S Beer Wine & Groceries

SOAH Docket No. 582-15-5608

TCEQ Docket No. 2015-0113-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. October 1, 2015

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed August 14, 2015, concerning assessing administrative penalties against and requiring certain actions of Mohammed Islam d/b/a S & S Beer Wine & Groceries, for violations in Clay County, Texas, of: 30 Texas Administrative Code §37.815(a) and (b).

The hearing will allow Mohammed Islam d/b/a S & S Beer Wine & Groceries, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Mohammed Islam d/b/a S & S Beer Wine & Groceries, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Mohammed Islam d/b/a S & S Beer Wine & Groceries to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes. Mohammed Islam d/b/a S & S Beer Wine & Groceries, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 37; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Amanda Patel, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued on August 31, 2015.

TRD-201503500
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 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 **October 12, 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 **October 12, 2015.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Brookshire Farms, LLC; DOCKET NUMBER: 2015-0424-WR-E; TCEQ ID NUMBER RN107924722; LOCATION: 1336 Wilpitz Road, Brookshire, Waller County; TYPE OF FACILITY: commercial polo farm; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $1,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: CIC INVESTMENTS, INC. d/b/a Ingram Cleaners; DOCKET NUMBER: 2014-1867-MLM-E; TCEQ ID NUMBERS: RN105386692 and RN100677103; LOCATION: 1514 South Treadaway Boulevard (Facility 1) and 2666 Buffalo Gap Road (Facility 2), Abilene, Taylor County; TYPE OF FACILITY: dry cleaning facility (Facility 1) and dry cleaning drop station (Facility 2); RULES VIOLATED: 40 Code of Federal Regulations §262.11 and 30 TAC §§335.62, 335.503, and 335.513, by failing to conduct waste determinations and classifications on all waste streams generated at Facility 1; Texas Health and Safety Code (THSC), §374.102 and 30 TAC §337.11(e), by failing to renew Facility 1's dry cleaner registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.70(a) and (b) and §337.72(1), by failing to maintain dry cleaner records and retain documentation of dry cleaning solvent purchases and make them available for review for five years from the date on which the record is made (Facility 1); THSC, §374.102 and 30 TAC §337.11(e), by failing to renew Facility 2's dry cleaner registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §335.6(c), by failing to update Facility 2's Notice of Registration; PENALTY: $26,226; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: LUFKIN CREOSOTING CO., INC.; DOCKET NUMBER: 2013-0993-IHW-E; TCEQ ID NUMBER: RN101638906; LOCATION: 5865 South United States Highway 69, Lufkin, Angelina County; TYPE OF FACILITY: wood preserving facility; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §262.42(a) and 30 TAC §335.13(j), by failing to contact the transporter and/or owner or operator of the designated hazardous waste disposal facility within 35 days of the date the waste was accepted by the initial transporter, if the generator does not receive a copy of the manifest signed by the owner or operator of the designated facility; 40 CFR §265.31 and §265.440(c)(1)(i), (ii), and (iii), and 30 TAC §335.69(a)(4) and §335.112(a)(2), by failing to describe in the Contingency Plan how the facility will respond to infrequent and incidental storage yard drippage and by failing to operate the facility to minimize the possibility of unplanned spills and/or releases to the air and soil; 40 CFR §262.40(c) and 30 TAC §335.70(a) and §335.513, by failing to maintain records of hazardous waste determinations and classifications; 40 CFR §§262.34(a)(1)(iii), 265.15, 265.440, 265.441, 265.443 and 265.444, and 30 TAC §335.69(a)(1)(C) and §335.112(a)(18), by failing to meet the requirements for the assessment and operation of the drip pad; and 40 CFR §262.34(a)(1)(iii) and §265.443(i), and 30 TAC §335.69(a)(1)(C), by failing to thoroughly clean the drip pad surface in a manner and frequency sufficient to remove accumulated residues of hazardous waste and/or other materials, thereby allowing weekly inspections of the entire drip pad surface, including failing to clean the drip pad surface at least once every 90 days; PENALTY: $30,627; Supplemental Environmental Project offset amount of $15,313 applied to the Big Thicket Association for the *Wetland Species and Ecosystem Analysis;* STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: U.S. Land Corp.; DOCKET NUMBER: 2014-1750-MWD-E; TCEQ ID NUMBER: RN102095288; LOCATION: approximately 2.36 miles southwest of Shepard Cemetery, 2.15 miles northwest of the Lewis Creek Power Station, and approximately 3.13 miles northeast of the east end of the Farm-to-Market Road 1097 Bridge across Lake Conroe, Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013960001, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013960001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $26,000; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201503515
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2015

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 12, 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 October 12, 2015.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss

the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Carl Doug Stanley, Jr.; DOCKET NUMBER: 2014-1356-MLM-E; TCEQ ID NUMBER: RN107196123; LOCATION: 8785 East Boley Lane, Silsbee, Hardin County; TYPE OF FACILITY: property; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: $1,312; 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.

(2) COMPANY: Mike Cano; DOCKET NUMBER: 2014-1832-LII-E; TCEQ ID NUMBER: RN105190730; LOCATION: 1202 Sheppard Lane, Wylie, Collin County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: Texas Occupations Code, §1903.251, TWC, §37.003, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, or servicing an irrigation system; Texas Occupations Code, §1903.251, TWC, §37.003, and 30 TAC §30.5(b), by failing to refrain from advertising or representing to the public that he can perform services for which a license is required without holding a current license or employing an individual who holds a current license; and Texas Occupations Code, §1903.251, TWC, §37.003, and 30 TAC §344.34(b), by failing to refrain from using or attempting to use the license or license number of someone else who is a licensed irrigator, licensed installer, licensed irrigation technician, or licensed irrigation inspector; PENALTY: $1,000; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Primal Nights Corporation; DOCKET NUMBER: 2015-0193-PWS-E; TCEQ ID NUMBER: RN106838543; LOCATION: 5940 West Interstate Highway 20 near Odessa, Ector County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A), (B), and (f), by failing to collect routine distribution water samples for coliform analysis and by failing to post public notification and provide a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual public health service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90680222; PENALTY: $1,676; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(4) COMPANY: REVEILLE PEAK RANCH, L.L.C.; DOCKET NUMBER: 2014-1024-WR-E; TCEQ ID NUMBER: RN107463549; LOCATION: 105 County Road 114, Burnet County; TYPE OF FACILITY: outdoor event, adventure, and education center; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $3,750; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400.

(5) COMPANY: Shelton Adams; DOCKET NUMBER: 2015-0409-LII-E; TCEQ ID NUMBER: RN107887325; LOCATION: 5904 South Cooper Street, Suite 104, Arlington, Tarrant County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting for, installing, altering, repairing, and/or servicing irrigation systems; PENALTY: $963; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: WPL Investments III, L.L.C. d/b/a Pine Ridge Mobile Home Park; DOCKET NUMBER: 2014-0848-WQ-E; TCEQ ID NUMBER: RN107125288; LOCATION: the intersection of Keith Road and Callahan Lane, Lumberton, Hardin County; TYPE OF FACILITY: mobile home park; RULES VIOLATED: TWC, §26.039(b), by failing to notify the commission of a discharge within 24 hours after becoming aware of the discharge; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater from the facility's collection system into or adjacent to water in the state; PENALTY: $2,625; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201503516
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2015

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Lane Plating Works, Inc. and Stag Management Incorporated

SOAH Docket Number 582-15-5607

TCEQ Docket Number 2015-0423-IHW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the SOAH will conduct a public hearing at:

10:00 a.m. October 1, 2015

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 18, 2015 concerning assessing administrative penalties against and requiring certain actions of LANE PLATING WORKS, INC. and STAG MANAGEMENT INCORPORATED, for violations in Dallas County, Texas, of: Texas Water Code (TWC) §26.121; 30 Texas Administrative Code (TAC) §335.4, §335.6(c), §335.9(a)(1) and (a)(1)(G), §350.3(1), §335.62, §335.69(a), (d)(1), and (d)(2), §335.112(a)(8) and (a)(9), §335.122(a)(1), §335.503, and §335.504; 40 Code of Federal Regulations (CFR) §262.11, §262.34(a), (c)(1)(i) and (c)(1)(ii), §265.16(d)(2) and (d)(4), §265.174, §265.193(a)(1), and §265.195(b)(2); and Agreed Order Docket Number 2011-0662-IHW-E, Ordering Provisions Numbers 2.a., 2.b.i., 2.b.ii and 2.b.iv.

The hearing will allow LANE PLATING WORKS, INC. and STAG MANAGEMENT INCORPORATED, the Executive Director, and the Commission' s Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford LANE

PLATING WORKS, INC. and STAG MANAGEMENT INCORPORATED, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of LANE PLATING WORKS, INC. and STAG MANAGEMENT INCORPORATED to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director' s Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. LANE PLATING WORKS, INC. and STAG MANAGEMENT INCORPORATED, the Executive Director of the Commission, and the Commission' s Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: TWC §7.054 and TWC Chapter 7, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code (TAC) Chapters 70 and 335; TWC §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §70.108 and §70.109 and ch. 80, and 1 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting Jennifer Cook, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the sameP.O.Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ' s Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued on August 31, 2015.

TRD-201503499
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 2015

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Notice of Rescheduling of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

In the September 4, 2015, issue of the *Texas Register* (40 TexReg 5954) the Texas Commission on Environmental Quality (commission) published a notice of public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 336, Radioactive Substances Rules in Austin on September 29, 2015, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle.

The public hearing is rescheduled at the same location on September 22, 2015, at 2:00 p.m.

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2015-012-336-WS. The comment period closes October 4, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Bobby Janecka, Radioactive Material Licensing Unit, (512) 239-6415.

TRD-201503511
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 1, 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: 30-day Pre-election Report due October 6, 2014 for Candidates and Officeholders

Sarah M. Pavitt, 6801 Breezy Hill Dr., Austin, Texas 78724

Deadline: 8-day Pre-election Report due February 24, 2014, for Committees

Texas Moore, 131 Deer Run St., Pleasanton, Texas 78064-1509

Deadline: 8-day Pre-election Report due October 27, 2014, for Committees

Todd M. Smith, 2204 Hazeltine Ln., Austin, Texas 70317

Deadline: Semiannual Report due January 15, 2015, for Committees

Todd M. Smith, 2204 Hazeltine Ln., Austin, Texas 70317

Deadline: Lobby Activities Report due January 12, 2015

Todd M. Smith, 2204 Hazeltine Lane, Austin, Texas 78747

Deadline: Lobby Activities Report due June 10, 2015

Ellen Margaret Joyce, 3928 Balcones Dr., Austin, Texas 78731

Deadline: Personal Financial Statement due June 30, 2015

Laura G. Maczka, 301 Overcreek Dr., Richardson, Texas 75080-2618

Deadline: Personal Financial Statement due September 17, 2015

Sarah M. Pavitt, 6801 Breezy Hill Dr., Austin, Texas 78724

TRD-201503442
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: August 26, 2015

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 29, 2015 through August 31, 2015. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 4, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, October 5, 2015.

FEDERAL AGENCY ACTIONS:

Applicant: Matagorda County Navigation District No. 1

Location: The project site is located in Matagorda Bay at Palacios Channel, Station 10 to Station 30, in Palacios, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Carancahua Pass, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 28.58056 North; Longitude: 96.29167 West

Sartwelle Lake Beneficial Use Site:

LATITUDE & LONGITUDE (NAD 83):

Latitude: 28.662010 North; Longitude: 96.309638 West

Designated Placement Area 2-4:

LATITUDE & LONGITUDE (NAD 83):

Latitude: 28.535480 North; Longitude: 96.315912 West

Project Description: The applicant proposes to perform maintenance dredging along three segments of the Palacios Channel for navigation purposes and beneficially use the dredged material for marsh creation at Sartwelle Lake. The three segments measure 27,800 linear feet (area 1), 14,000 linear feet (area 2), and 4,000 linear feet (area 3). Such activities include hydraulic dredging methodology to a depth of -12 feet mean low tide (MLT) with 2 feet of advanced maintenance to -14 feet MLT for approximately 731,904 cubic yards (CY) of non-vegetated sandy bottom. The applicant wishes to beneficially use the dredged material to restore approximately 299 acres of subsided marsh in Sartwelle Lake area. Approximately 671,917 CY of dredged material from areas 1 & 2 will be placed in Sartwelle Lakes area. Approximately

59,987 CY of dredged material from area 3 will be placed in unconfined designated placement areas 2 - 4.

CMP Project No: 15-1565-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2014-00782. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at *federal.consistency@glo.texas.gov.* Comments should be sent to Mr. Newby at the above address or by email.

TRD-201503542
Anne L. Idsal
Chief Clerk / Deputy Land Commissioner
General Land Office
Filed: September 2, 2015

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 22, 2015, at 9:00 a.m. to receive public comment on proposed interim per diem Medicaid reimbursement rates for small and large, state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in Room 5155 of the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes the following interim reimbursement rates for small and large state-operated ICF/IIDs operated by DADS. The proposed rates will be effective September 1, 2015, and were determined in accordance with the rate-setting methodology listed below under "Methodology and Justification."

Small State-Operated ICF/IID

Proposed interim daily rate: $649.48

Large State-Operated ICF/IID - Medicaid Only clients

Proposed interim daily rate: $856.70

Large State-Operated ICF/IID - Dual-eligible Medicaid/Medicare clients

Proposed interim daily rate: $829.19

HHSC is proposing these interim rates so that adequate funds will be available to serve clients in these facilities. The proposed interim rates

account for actual and projected increases in costs to operate these facilities.

Methodology and Justification. The proposed rates were determined in accordance with the rate-setting methodologies codified at Texas Administrative Code (TAC) Title 1, §355.456(e), relating to Reimbursement Methodology.

Briefing Package. A briefing package describing the proposed payment rates will be available at *http://www.hhsc.state.tx.us/rad/rate-packets.shtml* on September 11, 2015. Interested parties may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at *RAD-LTSS@hhsc.state.tx.us.* The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to *LTSS@hhsc.state.tx.us.* In addition, written comment may be sent by overnight mail or hand-delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751-2316.

TRD-201503510
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: September 1, 2015

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified organizations to provide services for industry recognized skills assessment, certification, and training for the Gulf Coast Workforce Board and its operating affiliate, Workforce Solutions. A proposal package will be available for download from *www.wrksolutions.com* or *www.h-gac.com* beginning at 10:00 a.m. Central Standard Time on Friday, September 4, 2015. H-GAC will also fill requests for hard copies of the proposal package beginning at that time. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or *carol.kimmick@h-gac.com.* H-GAC will not host a bidders' conference. You may email questions to *carol.kimmick@h-gac.com* through Tuesday, September 15, 2015. Proposals are due at H-GAC offices on or before 12:00 noon Central Standard Time on Friday, October 2, 2015. Mailed proposals must be postmarked no later than Tuesday, September 29, 2015. H-GAC will not accept late proposals; we will make no exceptions.

TRD-201503529
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: September 1, 2015

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Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified organizations to provide services for disconnected young adults in a demonstration project for the Gulf Coast Workforce Board and its operating affiliate, Workforce Solutions. A proposal package will be available for download from *www.wrksolutions.com* or *www.h-gac.com* beginning at 10:00 a.m. Central Standard Time on Friday, September 4, 2015. H-GAC will also fill requests for hard copies of the proposal package beginning at that time. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or *carol.kimmick@h-gac.com.* A bidder's conference is scheduled for Tuesday, September 15 at 11:00 a.m. in H-GAC Conference Room A, 3555 Timmons, Second Floor, Houston, Texas 77027. Proposals are due at H-GAC offices on or before 12:00 noon Central Standard Time on Friday, October 2, 2015. Mailed proposals must be postmarked no later than Tuesday, September 29, 2015. H-GAC will not accept late proposals; we will make no exceptions.

TRD-201503530
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: September 1, 2015

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Legislative Budget Board

Request for Qualifications

Notice of Request for Qualifications: The Legislative Budget Board (LBB) issues this Request for Qualifications (RFQ) to pre-qualify vendors to assist the LBB in conducting a variety of performance reviews of Texas School, Charter School, and Community College Districts (Districts). Vendors may apply to be pre-qualified to provide expertise related to one or more of the functional areas listed in §3.2 of the RFQ.

Contact: The LBB is the Issuing Office and the sole point of contact for the RFQ. Questions concerning the RFQ must be in writing and addressed to:

Legislative Budget Board

(512) 475-2902 (fax)

Email: *performancereview.contracts@lbb.state.tx.us*

Closing Date: Applications must be received in the issuing office at the address specified above no later than 5:00 p.m. CZT, on August 31, 2016. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: The Team Manager with the assistance of the Contract Administrator will review all applications for compliance, experience, and thoroughness. All applications will be evaluated under the following criteria: Knowledge of Functional Area and Review Process and Experience Related to Functional Area and Review Process.

The LBB reserves the right to accept or reject any or all applications submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFQ. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFQ.

The anticipated schedule of events is as follows: This is an "ongoing" process of pre-qualifying applicants.

TRD-201503512
Julie Ivie
Assistant Director
Legislative Budget Board
Filed: September 1, 2015

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Texas Lottery Commission

Scratch Game Number 1723 "Merry Money"

1.0 Name and Style of Game.

A. The name of Scratch Game No. 1723 is "MERRY MONEY". The play style is "other".

1.1 Price of Scratch Ticket.

A. Tickets for Scratch Game No. 1723 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Game No. 1723.

A. Display Printing - That area of the Scratch 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 Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: SNOWMAN SYMBOL, DRUM SYMBOL, EAR MUFF SYMBOL, ICICLE SYMBOL, HORN SYMBOL, IGLOO SYMBOL, NUTCRACKER SYMBOL, FIRE SYMBOL, TURKEY SYMBOL, CABIN SYMBOL, SCARF SYMBOL, LIGHTS SYMBOL, WREATH SYMBOL, STAR SYMBOL, HOT COCOA SYMBOL, MITTEN SYMBOL, GINGERBREAD MAN SYMBOL, SLEIGH SYMBOL, DEER SYMBOL, DOVE SYMBOL, ANGEL SYMBOL, MUSIC SYMBOL, SNOWFLAKE SYMBOL, CANDY SYMBOL, BELL SYMBOL, CANDLE SYMBOL, TREE SYMBOL, HOLLY SYMBOL, JINGLE SYMBOL, STOCKING SYMBOL, ORNAMENT SYMBOL, HAT SYMBOL, GIFT SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250, $500 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1723 - 1.2D

PLAY SYMBOL	CAPTION
SNOWMAN SYMBOL	SNMAN
DRUM SYMBOL	DRUM
EAR MUFF SYMBOL	EARMF
ICICLE SYMBOL	ICICLE
HORN SYMBOL	HORN
IGLOO SYMBOL	IGLOO
NUTCRACKER SYMBOL	NTCRKR
FIRE SYMBOL	FIRE
TURKEY SYMBOL	TURKEY
CABIN SYMBOL	CABIN
SCARF SYMBOL	SCARF
LIGHTS SYMBOL	LIGHTS
WREATH SYMBOL	WREATH
STAR SYMBOL	STAR
HOT COCOA SYMBOL	COCOA
MITTEN SYMBOL	MITTEN
GINGERBREAD MAN SYMBOL	GBMAN
SLEIGH SYMBOL	SLEIGH
DEER SYMBOL	DEER
DOVE SYMBOL	DOVE
ANGEL SYMBOL	ANGEL
MUSIC SYMBOL	MUSIC
SNOWFLAKE SYMBOL	SNOW
CANDY SYMBOL	CANDY
BELL SYMBOL	BELL
CANDLE SYMBOL	CANDLE
TREE SYMBOL	TREE
HOLLY SYMBOL	HOLLY
JINGLE SYMBOL	JINGLE
STOCKING SYMBOL	STCKNG
ORNAMENT SYMBOL	ORNMNT
HAT SYMBOL	HAT
GIFT SYMBOL	WINX5
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$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: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $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 (1723), 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: 1723-0000001-001.

K. Pack - A Pack of "MERRY MONEY" Scratch Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Scratch Game Ticket, or Scratch Ticket - A Texas Lottery "MERRY MONEY" Scratch Game No. 1723 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 Scratch Ticket. A prize winner in the "MERRY MONEY" Scratch Game is determined once the latex on the Ticket is scratched off to expose 39 (thirty-nine) Play Symbols. If a player reveals 2 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals a "Gift" Play Symbol, the player wins 5 TIMES the PRIZE for that GAME! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Game.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Game Ticket, all of the following requirements must be met:

1. Exactly 39 (thirty-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 39 (thirty-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 39 (thirty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 39 (thirty-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 Scratch 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 Scratch Game (or a Ticket of equivalent sales price from any other current Texas Lottery Scratch 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 Play Symbols on a Ticket.

D. A non-winning Play Symbol will never be the same as a winning Play Symbol.

E. A Ticket may have up to three matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

F. The "JINGLE", "WREATH" and "ORNMNT" Play Symbols will never appear together in any combination in the same GAME.

G. The "GIFT" (win x 5) Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MONEY" Scratch Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MERRY MONEY" Scratch Game prize of $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 "MERRY MONEY" Scratch 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 "MERRY MONEY" Scratch 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 "MERRY MONEY" Scratch Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Game prizes must be claimed within 180 days following the end of the Scratch 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. A Scratch Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch 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 Scratch Game Tickets and shall not be required to pay on a lost or stolen Scratch Game Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,520,000 Tickets in the Scratch Game No. 1723. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1723 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	965,600	8.82
$10	681,600	12.50
$20	284,000	30.00
$25	170,400	50.00
$50	94,501	90.16
$100	14,200	600.00
$250	2,130	4,000.00
$500	213	40,000.00
$100,000	6	1,420,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.85. 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 Scratch Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Game No. 1723 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 Scratch Game closing procedures and the Scratch Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Game No. 1723, 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-201503556
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 2, 2015

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Scratch Game Number 1724 "Stocking Stuffer"

1.0 Name and Style of Game.

A. The name of Scratch Game No. 1724 is "STOCKING STUFFER". The play style is "key number match".

1.1 Price of Scratch Ticket.

A. Tickets for Scratch Game No. 1724 shall be $2.00 per Ticket.

1.2 Definitions in Scratch Game No. 1724.

A. Display Printing - That area of the Scratch 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 Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, GIFT SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 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:

Figure 1: GAME NO. 1724 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
GIFT SYMBOL	DBL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$30,000	30 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $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 (1724), 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: 1724-0000001-001.

K. Pack - A Pack of "STOCKING STUFFER" Scratch 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 configurations.

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 Scratch Game Ticket, or Scratch Ticket - A Texas Lottery "STOCKING STUFFER" Scratch Game No. 1724 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 Scratch Ticket.

A prize winner in the "STOCKING STUFFER" Scratch Game is determined once the latex on the Ticket is scratched off to expose up to 18 (eighteen) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GIFT" Play Symbol, the player wins DOUBLE 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 Scratch Game.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Game Ticket, all of the following requirements must be met:

1. Exactly 18 (eighteen) 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 18 (eighteen) 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 18 (eighteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 18 (eighteen) 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 Scratch 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 Scratch Game (or a Ticket of equivalent sales price from any other current Texas Lottery Scratch Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to eight (8) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same locations.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "Gift" (doubler) Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol locations.

H. The "Gift" (doubler) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning location will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "STOCKING STUFFER" Scratch Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the

procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "STOCKING STUFFER" Scratch 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 a "STOCKING STUFFER" Scratch 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 "STOCKING STUFFER" Scratch 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 "STOCKING STUFFER" Scratch Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Game prizes must be claimed within 180 days following the end of the Scratch 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. A Scratch Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch 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 Scratch Game Tickets and shall not be required to pay on a lost or stolen Scratch Game Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Tickets in the Scratch Game No. 1724. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1724 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	887,040	11.36
$4	887,040	11.36
$5	241,920	41.67
$10	120,960	83.33
$20	80,640	125.00
$50	61,950	162.71
$100	4,200	2,400.00
$1,000	52	193,846.15
$30,000	6	1,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.41. 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 Scratch Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Game No. 1724 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 Scratch Game closing procedures and the Scratch Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Scratch Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Game No. 1724, 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-201503552
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 2, 2015

♦ ♦ ♦

Scratch Game Number 1726 "Happy Holidays"

1.0 Name and Style of Game.

A. The name of Scratch Game No. 1726 is "HAPPY HOLIDAYS". The play style is "key number match".

1.1 Price of Scratch Ticket.

A. Tickets for Scratch Game No. 1726 shall be $10.00 per Ticket.

1.2 Definitions in Scratch Game No. 1726.

A. Display Printing - That area of the Scratch 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 Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, GIFT SYMBOL, BELL SYMBOL, $10.00, $20.00, $50.00, $100, $500, $1,000 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1726 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
GIFT SYMBOL	DOUBLE
BELL SYMBOL	WIN ALL
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$250,000	2HUN50THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $10.00 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 $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1726), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1726-0000001-001.

K. Pack - A Pack of "HAPPY HOLIDAYS" Scratch Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Scratch Game Ticket, or Scratch Ticket - A Texas Lottery "HAPPY HOLIDAYS" Scratch Game No. 1726 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 Scratch Ticket. A prize winner in the "HAPPY HOLIDAYS" Scratch Game is determined once the latex on the Ticket is scratched off to expose 56 (fifty-six) Play Symbols. The player must scratch the entire play area to reveal 6 WINNING NUMBERS Play Symbols and 25 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GIFT" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "BELL" Play Symbol, the player wins ALL 25 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Game.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Game Ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 56 (fifty-six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 56 (fifty-six) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch 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 Scratch Game (or a Ticket of equivalent sales price from any other current Texas Lottery Scratch Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty five (25) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching

Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same locations.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than five (5) times.

G. The "Gift" (doubler) and "Bell" (win all) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol locations.

H. The "Gift" (doubler) Play Symbol will only appear as dictated by the prize structure.

I. The "Bell" (win all) Play Symbol will only appear as dictated by the prize structure.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. On Tickets that contain the "Bell" (win all) Play Symbol, none of the "WINNING NUMBERS" Play Symbols will match any of the "YOUR NUMBERS" Play Symbols and the "Gift" (doubler) Play Symbol will not appear.

L. No prize amount in a non-winning location will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "HAPPY HOLIDAYS" Scratch Game prize of $10.00, $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 "HAPPY HOLIDAYS" Scratch Game prize of $1,000 or $250,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HAPPY HOLIDAYS" Scratch 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 "HAPPY HOLIDAYS" Scratch 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 "HAPPY HOLIDAYS" Scratch Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Game prizes must be claimed within 180 days following the end of the Scratch 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. A Scratch Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch 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 Scratch Game Tickets and shall not be required to pay on a lost or stolen Scratch Game Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,520,000 Tickets in the Scratch Game No. 1726. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1726 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	883,200	6.25
$20	662,400	8.33
$50	110,400	50.00
$100	70,058	78.79
$500	5,612	983.61
$1,000	230	24,000.00
$250,000	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.19. 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 Scratch Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Game No. 1726 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 Scratch Game closing procedures and the Scratch Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Game No. 1726, 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-201503559
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 2, 2015

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Scratch Game Number 1781 "Casino Cash"

1.0 Name and Style of Game.

A. The name of Scratch Game No. 1781 is "CASINO CASH". The play style is "key number match".

1.1 Price of Scratch Ticket.

A. Tickets for Scratch Game No. 1781 shall be $10.00 per Ticket.

1.2 Definitions in Scratch Game No. 1781.

A. Display Printing - That area of the Scratch 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 Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, CHIP SYMBOL, 5X SYMBOL, $100 BILL SYMBOL, $10.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $5,000, $10,000 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1781 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
CHIP SYMBOL	WIN
5X SYMBOL	WINX5
$100 BILL SYMBOL	WIN$100
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY

$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$10,000	10 THOU
$250,000	250 THOU

E. Serial Number- A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1781), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1781-0000001-001.

K. Pack - A Pack of "CASINO CASH" Scratch Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Scratch Game Ticket, or Scratch Ticket - A Texas Lottery "CASINO CASH" Scratch Game No. 1781 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 Scratch Ticket. A prize winner in the "CASINO CASH" Scratch Game is determined once the latex on the Ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "CHIP" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "$100 bill" Play Symbol, the player wins $100 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 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Game Ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 55 (fifty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch 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 Scratch Game (or a Ticket of equivalent sales price from any other current Texas Lottery Scratch 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 YOUR NUMBERS Play Symbols on a Ticket.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. A Ticket may have up to three matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. The "5X" (WINX5) Play Symbol will only appear as dictated by the prize structure.

H. The "$100 BILL" (WIN$100) Play Symbol will always appear with the $100 Prize Symbol.

I. The "CHIP" (WIN) Play Symbol will never appear more than once on a Ticket.

J. The "$100 BILL" (WIN$100) Play Symbol will never appear more than once on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASINO CASH" Scratch Game prize of $10.00, $20.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASINO CASH" Scratch Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASINO CASH" Scratch 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 "CASINO CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CASINO CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Game prizes must be claimed within 180 days following the end of the Scratch 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. A Scratch Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch 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 Scratch Game Tickets and shall not be required to pay on a lost or stolen Scratch Game Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Tickets in the Scratch Game No. 1781. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1781 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	604,800	8.33
$20	504,000	10.00
$25	100,800	50.00
$50	84,000	60.00
$100	53,172	94.79
$250	15,120	333.33
$500	1,890	2,666.67
$1,000	798	6,315.79
$10,000	84	60,000.00
$250,000	3	1,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.69. 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 Scratch Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Game No. 1781 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 Scratch Game closing procedures and the Scratch Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Game No. 1781, 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-201503560

Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 2, 2015

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Aerojet Ordnance Tennessee (TLLRWDCC #1-0100-00)

1367 Old State Route 34

Jonesborough, Tennessee 37659

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503521
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Alaron Nuclear Services (TLLRWDCC #1-0101-00)

2138 State Route 18

Wampum, Pennsylvania 16157

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503522
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

U.S. Army (TLLRWDCC #1-0102-00)

1367 Old State Route 34

Jonesborough, Tennessee 37659

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503523
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Entergy Operations, Inc. - River Bend Station (TLLRWDCC #1-0103-00)

5485 U.S. Highway 61

St. Francisville, Louisiana 70775

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503524
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Qal-Tek Associates, LLC (TLLRWDCC #1-0104-00)

3998 Commerce Circle

Idaho Falls, Idaho 83401

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503525
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

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Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Tennessee Valley Authority (TLLRWDCC #1-0105-00)

1101 Market Street

Chattanooga, Tennessee 37402

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503526
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Philotechnics, Ltd (TLLRWDCC #1-0106-00)

201 Renovare Boulevard

Oak Ridge, Tennessee 37830

The application will be placed on the Compact Commission web site, *www.tllrwdcc.org,* where it will be available for inspection and copying.

Comments on the application are due to be received by September 28, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: *administration@tllrwdcc.org.*

TRD-201503531
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 1, 2015

♦ ♦ ♦

North Central Texas Council of Governments

Notice of Award

The North Central Texas Council of Governments issued a competitive call for projects to award Federal Transit Administration (FTA) funding for two programs: the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. §5310) and the Urbanized Area Formula Program (49 U.S.C. §5307) for Job Access/Reverse Commute (JA/RC) projects.

In total, five projects were selected for award of approximately $4.4 million. For more information on the projects submitted and selected, or future competitive calls for projects, please visit *http://www.nctcog.org/ftafunding.*

TRD-201503498
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 31, 2015

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 25, 2015, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016.

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 45070.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Winfield, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45070.

TRD-201503461
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2015

♦ ♦ ♦

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 26, 2015, to amend a certificated service area for a service area exception within Goliad County, Texas.

Docket Style and Number: Application of AEP Texas Central Company for an Electric Certificate of Convenience and Necessity for a Service Area Exception in Goliad County. Docket Number 45075.

The Application: AEP Texas Central Company (AEP TCC) filed an application for a service area boundary exception to allow AEP TCC to provide service to a specific customer located within the certificated service area of Karnes Electric Cooperative, Inc. (KEC). KEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than September 18, 2015 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45075.

TRD-201503550
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 2, 2015

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Regional Water Planning Group B

Request for Statement of Qualifications to Prepare a Regional Water Plan

The Red River Authority of Texas is the designated administrative agency for the Regional Water Planning Group - Area B. In this capacity, the Authority is requesting Statements of Qualifications from consulting engineers interested in preparing the 2021 Regional Water Plan for Area - B, consistent with the requirements set forth in 31 TAC Chapters 355, 357 and 358. The final date for submittal of Statement of Qualifications is October 8, 2015, with the final selection occurring by the Regional Water Planning Group - Area B at its meeting scheduled on October 21, 2015.

All firms interested in providing a Statement of Qualifications should present qualifications that illustrate their experience and competence in similar projects. As a minimum, the proposed project management shall possess professional engineering registration in the State of Texas.

The Statement of Qualifications shall be limited to 10 pages, excluding the resumes of project members. The Authority specifically requests succinct submittals tailored to this project. Thirty copies of the Statement of Qualifications are required. The submittals will be evaluated based on the following:

A. Reference list of regional water planning projects that have been completed by your firm with descriptions of the projects, members of the project team(s), time schedule and cost estimate accuracy, and contact persons who are able to verify the information presented;

B. The name of the individual that will be the Project Manager and his/her experience in the preparation of regional water planning projects;

C. List the specific individuals (by name), their hierarchy, relevant experience and technical expertise in regional water planning, and the specific tasks each will be performing, of all personnel to be assigned to the development of the scope of work;

D. The names of individuals that will participate in the study and their experience and role in this study;

E. Describe in writing your firm's approach to completing the Plan in accordance with 31 TAC Chapters 355, 357, and 358 and your firm's current workload and its ability to comply with the scope of work;

F. Provide the general location, size and description of your firm and services offered and the location, size and description of any sub-consultants that may be employed as part of the project team; and

G. Acknowledgment that if requested, you will prepare and make a presentation to the Regional Water Planning Group - Area B, if selected to a "short list".

Please submit 30 copies of the proposal no later than 5:00 p.m. on October 8, 2015 to:

Curtis W. Campbell, General Manager

Red River Authority of Texas

P.O. Box 240

Wichita Falls, Texas 76307-0240

Phone: (940) 723-2236

Fax: (940) 723-8531

curtis.campbell@rra.texas.gov

TRD-201503505
Curtis W. Campbell
General Manager
Regional Water Planning Group B
Filed: August 31, 2015

♦ ♦ ♦

Texas Department of Savings and Mortgage Lending

Notice of Application for Change of Control of a Savings Bank

Notice is hereby given that on August 5, 2015, application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of First Baird Bancshares, Inc., and therefore, First Bank Texas, SSB, Baird, Texas, by the Estate of Joe E. Sharp, Zan Sharp Prince, and Robert Justin Sharp, Executors; Pop's Family Irrevocable Trust, Zan Sharp Prince, Trustee; Zan Sharp Prince; Matthew Scott Sharp; Robert Justin Sharp; and Keleigh Sharp Greenwood, as a group acting in concert.

This application is filed pursuant to 7 Texas Administrative Code (TAC) §§75.121-127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-201503502
Ernest Garcia
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: August 31, 2015

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Supreme Court of Texas

In the Supreme Court of Texas

Misc. Docket No. 15-9154

FINAL APPROVAL OF AMENDMENTS TO ARTICLE XII OF THE STATE BAR RULES

ORDERED that:

1. By order dated April 28, 2015, in Misc. Docket No. 15-9077, the Supreme Court of Texas approved amendments to Article XII, Section 4 of the State Bar Rules and invited public comment. Having reviewed the public comments, the Court gives final approval to the amendments.

2. The amendments remove the MCLE exemption for an emeritus member. Emeritus member is defined in Texas Government Code section 81.052(e).

3. For compliance years that begin on or after June 1, 2016, an emeritus member must fulfill the MCLE requirements applicable to all members of the State Bar, unless the member is eligible for another exemption. Accredited continuing legal education and self-study completed within the 12 months immediately preceding the first compliance year for an emeritus member that begins on or after June 1, 2016, may be used to meet the MCLE requirements for that initial compliance year.

4. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

Dated: August 28, 2015

_____

Nathan L. Hecht, Chief Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

_____

John P. Devine, Justice

_____

Jeffrey V. Brown, Justice

TEXAS MINIMUM CONTINUING LEGAL EDUCATION RULES

(Article XII, State Bar Rules)

...

Section 4. Accreditation

(A) The Committee shall develop criteria for the accreditation of continuing legal education activities and shall designate the number of hours to be earned by participation in such activities, as approved by the Committee. In order for an activity to be accredited, the subject matter must directly relate to legal subjects and the legal profession, including professional responsibility, legal ethics, or law practice management. The Committee may, in appropriate cases, extend accreditation to qualified activities that have already occurred. The Committee shall not extend credit to activities completed in the ordinary course of the practice of law, in the performance of regular employment, as a volunteer service to clients or the general public, as a volunteer service to government entities, or in a member's regular duties on a committee, section or division of any bar related organization. The Committee may extend accredited status, subject to periodic review, to a qualified sponsor for its overall continuing legal education curriculum. No examinations shall be required.

(B) Self-study credit may be given for individual viewing or listening to audio, video, or digital media; reading written material; attending organized in-office educational programs; or other activities approved by the Committee. No more than three hours of credit may be given during a compliance year for self-study activities. Time spent viewing or listening to audio, video, or digital media as part of an organized CLE activity approved by the Committee counts as conventional continuing legal education and is not subject to the self-study limitation.

(C) Credit may be earned through teaching or participating in an accredited CLE activity. Credit shall be granted for preparation time and presentation time, including preparation credit for repeated presentations.

(D) Credit may be earned through legal research-based writing upon application to the Committee provided the activity (1) produced material published or to be published in the form of an article, chapter, or book written, in whole or in part, by the applicant; (2) contributed substantially to the continuing legal education of the applicant and other attorneys; and (3) is not done in the ordinary course of the practice of law, the performance of regular employment, or as a service to clients.

(E) The Committee may, in appropriate cases charge a reasonable fee to the sponsor for accrediting CLE activities.

(F) A member who holds a full-time faculty position in any law school which is approved by the American Bar Association may be credited as fulfilling the requirements of this article, except as to the minimum requirements for CLE in legal ethics and professional responsibility. A member who holds a part-time faculty position in any such law school may claim participatory credit for the actual hours of class instruction time not to exceed 12 hours per compliance year, except as to the minimum requirements for CLE in legal ethics and professional responsibility.

~~(G) The Committee shall grant exemption from this Article to any emeritus member of the State Bar of Texas. (Emeritus as defined by the State Bar Act, Section 81.052 (e)).~~

(~~H~~G) Credit to meet the minimum educational requirement shall be extended to attorneys who are members of the Senate and House of Representatives of present and future United States and Texas Legislatures for each regular session in which the attorney member shall serve.

(~~I~~H) No credit shall be given for activities directed primarily to persons preparing for admission to practice law.

(~~J~~I) Credit, not to exceed 30 hours in any compliance year, may be earned for attending a law school class after admission to practice in Texas provided (1) that the member officially registered for the class with the law school; and (2) that the member completed the course as required by the terms of registration. Credit for approved attendance at law school classes shall be for the actual number of hours of class instruction time the member is in attendance at the law school course.

...

TRD-201503495
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: August 31, 2015

♦ ♦ ♦

In the Supreme Court of Texas

Misc. Docket No. 15-9155

ORDER AMENDING TEXAS RULE OF CIVIL PROCEDURE 21 TO EXEMPT TRUANCY CASES FROM THE ELECTRONIC FILING MANDATE

ORDERED that:

1. During the 2015 legislative session, the Legislature passed H.B. 2398, which makes truant conduct a civil, rather than a criminal, offense. *See* Acts 2015, 84th Leg., R.S., ch. 935 (H.B. 2398). When the bill takes effect on September 1, 2015, truancy court proceedings will be governed by new Title 3A of the Family Code. *Id.* §27. In some counties, the truancy court will be the constitutional county court. *Id.* §27, sec. 65.004 (to be codified at TEX. FAM. CODE §65.004).

2. Texas Rule of Civil Procedure 21 exempts from the civil electronic-filing mandate for district and county courts "juvenile cases under Title 3 of the Family Code." To clarify that documents in truancy cases are not required to be filed electronically, the Court amends Rule 21 as shown in this order, effective September 1, 2015.

3. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

Dated: August 28, 2015

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

_____

John P. Devine, Justice

_____

Jeffrey V. Brown, Justice

Rule 21. Filing and Serving Pleadings and Motions

* * *

(f) Electronic Filing.

(1) Requirement. Except in juvenile cases under Title 3 of the Family Code and truancy cases under Title 3A of the Family Code, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required.

* * *

TRD-201503496
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: August 31, 2015

♦ ♦ ♦

In the Supreme Court of Texas

Misc. Docket No. 15-9156

ORDER ACCELERATING JUVENILE CERTIFICATION APPEALS AND REQUIRING JUVENILE COURTS TO GIVE NOTICE OF THE RIGHT TO AN IMMEDIATE APPEAL

ORDERED that:

During the 2015 legislative session, the Legislature passed S.B. 888, which amends Family Code section 56.01 to permit an immediate appeal from the decision of a juvenile court under section 54.02 waiving its exclusive jurisdiction and certifying the juvenile to stand trial as an adult. *See* Acts 2015, 84th Leg., R.S., ch. 74 (S.B. 888). The Act also requires this Court to "adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of an order waiving jurisdiction under Section 54.02 and transferring the child to criminal court for prosecution." *Id.* §3, sec. 56.01(h-1) (codified at TEX. FAM. CODE §56.01(h-1)). The Act takes effect on September 1, 2015.

Pending the adoption of rules, the following procedures govern in actions under the Juvenile Justice Code, Title 3 of the Family Code, effective September 1, 2015:

1. The appeal of an order under Family Code section 54.02 certifying a juvenile to stand trial as an adult is governed by the Texas Rules of Appellate Procedure applicable to accelerated appeals.

2. When a juvenile court certifies a juvenile to stand trial as an adult, the court must inform the juvenile and the juvenile's attorney, orally on the record in open court and in writing in the certification order:

a. that the juvenile may immediately appeal the certification decision under Family Code section 56.01; and

b. that, by order of this Court, the appeal is accelerated under the Texas Rules of Appellate Procedure applicable to accelerated appeals.

3. Appellate courts should, so far as reasonably possible, ensure that certification appeals are brought to final disposition in conformity with the following time standards:

a. *Courts of Appeals.* Within 180 days of the date the notice of appeal is filed.

b. *Supreme Court.* Within 180 days of the date the petition for review is filed.

The Clerk is directed to:

1. file a copy of this order with the Secretary of State;

2. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

3. send a copy of this order to each elected member of the Legislature; and

4. submit a copy of the order for publication in the *Texas Register.*

Dated: August 28, 2015.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

TRD-201503497
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: August 31, 2015

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Levelland and Hockley County, through their agent, the Texas Department of Transportation (TxDOT), intend to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for the current aviation project as described below.

Current Project: City of Levelland and Hockley County; TxDOT CSJ No.: 1505LVLND.

Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate and mark Runway 17-35;

2. Rehabilitate and mark Runway 8-26;

3. Rehabilitate parallel and cross taxiways;

4. Rehabilitate apron;

5. Rehabilitate hangar access taxiways; and

6. Rehabilitate taxiways to Runway 8-26.

The DBE goal for the design phase of the current project is 10%. The goal will be re-set for the construction phase. TxDOT Project Manager is Robert Johnson, P.E.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Levelland Municipal Airport may include the following:

1. Reconfigure taxiway lead in to Runway 8;

2. Reconfigure taxiway extending beyond Runway 17;

3. Removal of taxiway extending beyond Runway 17; and

4. Add run-up area for Runway 17.

The City of Levelland and Hockley County reserve the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting "Levelland Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division no later than October 6, 2015, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey using one of the delivery methods below:

Overnight Delivery

TxDOT- Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier

TxDOT- Aviation

150 East Riverside Drive

5th Floor, South Tower

Austin, Texas 78704

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Robert Johnson, P.E., Project Manager.

TRD-201503532

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 1, 2015

♦ ♦ ♦

Aviation Division - Request for Qualifications for Professional Engineering Services

Pecos County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for services described below.

Airport Sponsor: Pecos County; TxDOT CSJ No. 1506FTSTK; Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate and mark Runway 12/30;
2. Rehabilitate and mark Runway 3/21;
3. Rehabilitate parallel and cross taxiways;
4. Rehabilitate apron;
5. Rehabilitate hangar access taxiway; and
6. Demolish taxiway D pavement

The DBE goal for the design phase is set at 15%. The goal will be re-set for the construction phase. TxDOT Project Manager is Robert Johnson, P.E.

To assist in your qualification preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting "Fort Stockton/Pecos County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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cepted. Please mark the envelope of the forms to the attention of Kelle Chancey using one of the delivery methods below:

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TxDOT- Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier

TxDOT- Aviation

150 East Riverside Drive

5th Floor, South Tower

Austin, Texas 78704

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Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Robert Johnson, P.E., Project Manager.

TRD-201503533
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 1, 2015

♦ ♦ ♦

Public Notice - Overall Federal Aviation Administration (FAA) Three-Year Disadvantaged Business Enterprise Goal, Fiscal Years 2016 - 2018

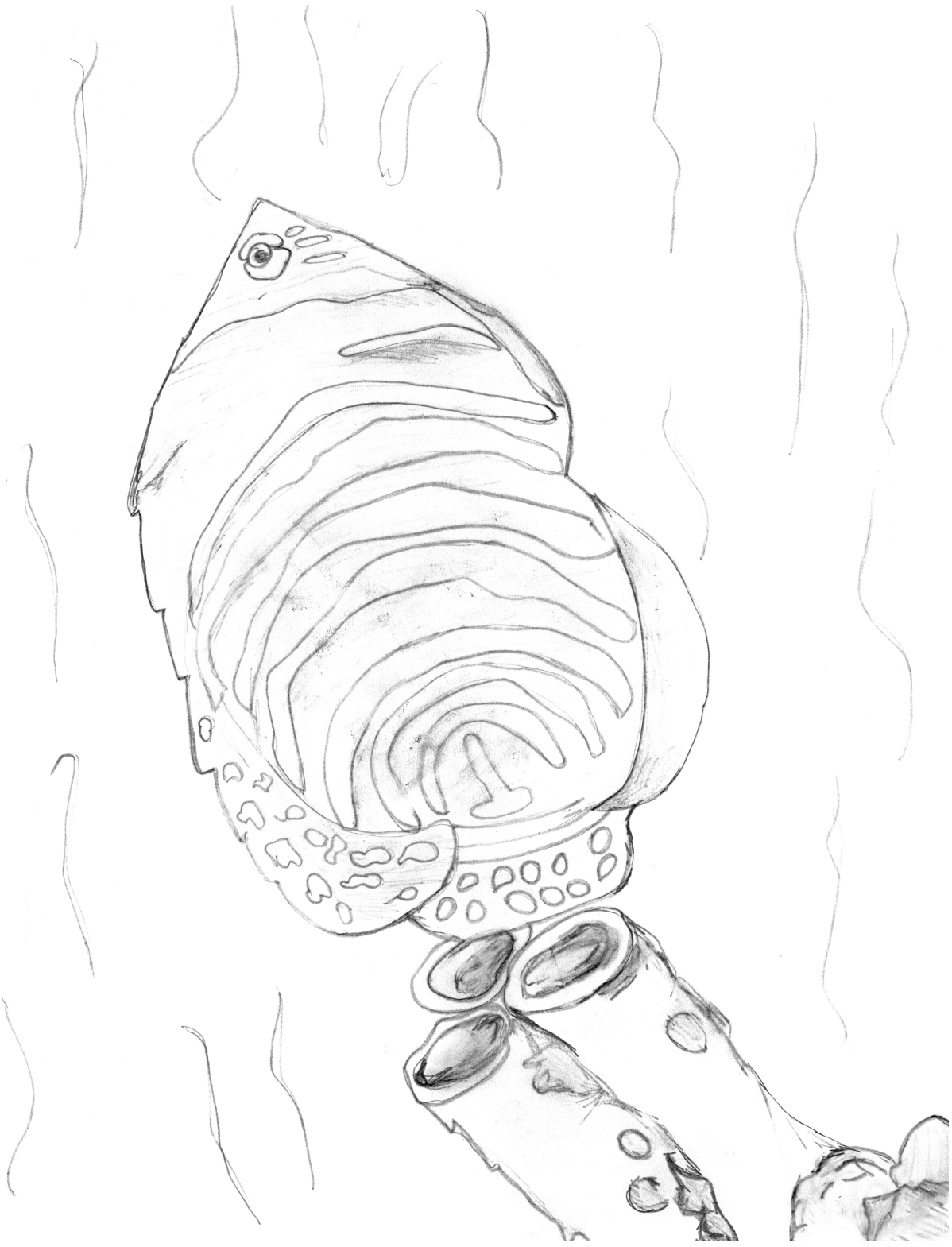
In accordance with Title 49, Code of Federal Regulations (C.F.R.), Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Title 49 C.F.R. §26.45 requires the recipients of federal funds, including the Texas Department of Transportation (department), to set an overall goal for DBE participation in U.S. Department of Transportation assisted contracts. As part of this goal-setting process, the department is publishing this notice to inform the public of the proposed overall goal, and to provide instructions on how to obtain copies of documents explaining the rationale for the goal.

The proposed overall FAA DBE goal for Fiscal Years 2016 - 2018 is 11.6%. The proposed goal and goal-setting methodology are available for inspection and comment between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date this notice is published. The information may be viewed in the office of the Texas Department of Transportation, Office of Civil Rights, 200 East Riverside Drive, Austin, Texas 78704. Any questions concerning inspection of the DBE goal and methodology should be directed to the Office of Civil Rights by calling (512) 416-4700.

The department will accept written comments on the DBE goal until October 11, 2015. Written comments should be submitted to Eli Lopez, Office of Civil Rights, 125 E. 11th St., Austin, Texas 78701; fax: (512) 416-4711; email: *eli.lopez@txdot.gov*.

TRD-201503504
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 31, 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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