TEXAS REGISTER

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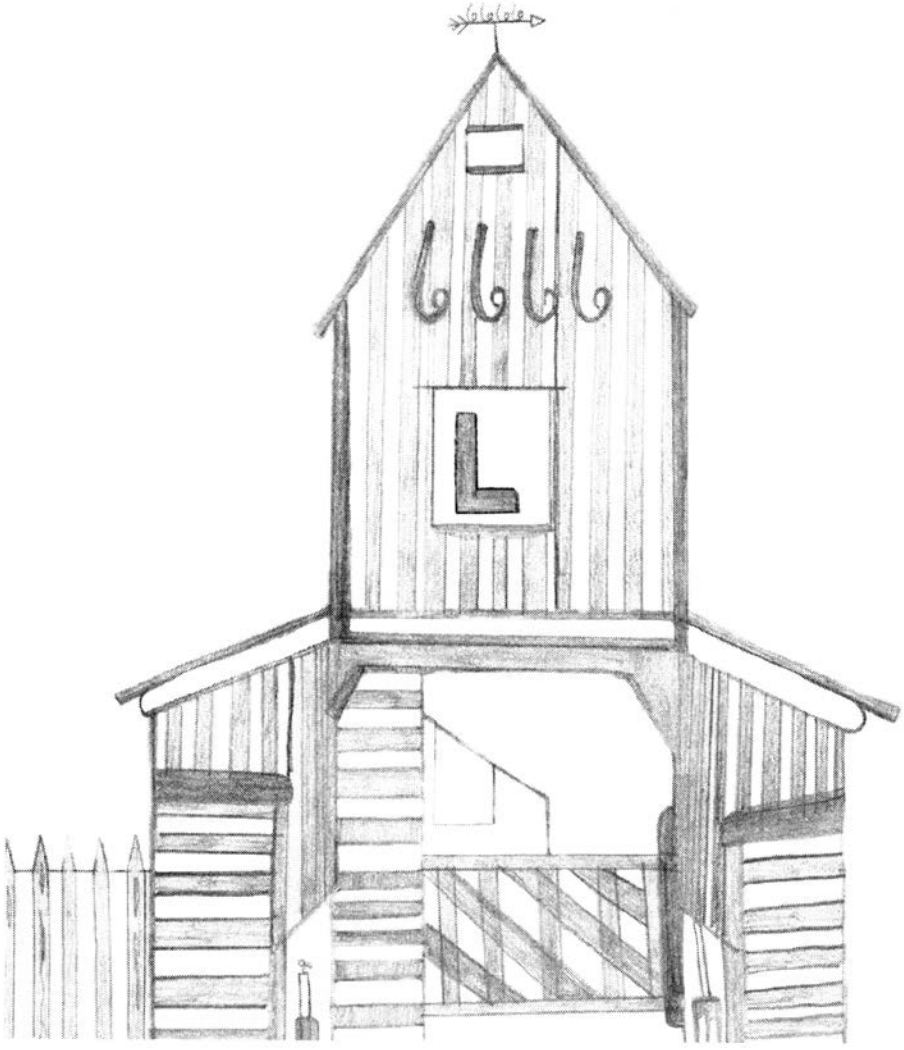

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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 GOVERNOR

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

Proclamation 41-3462

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the wildfires that started on October 13, 2015, have caused a disaster in Bastrop County in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Bastrop County based on the existence of such disaster and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

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

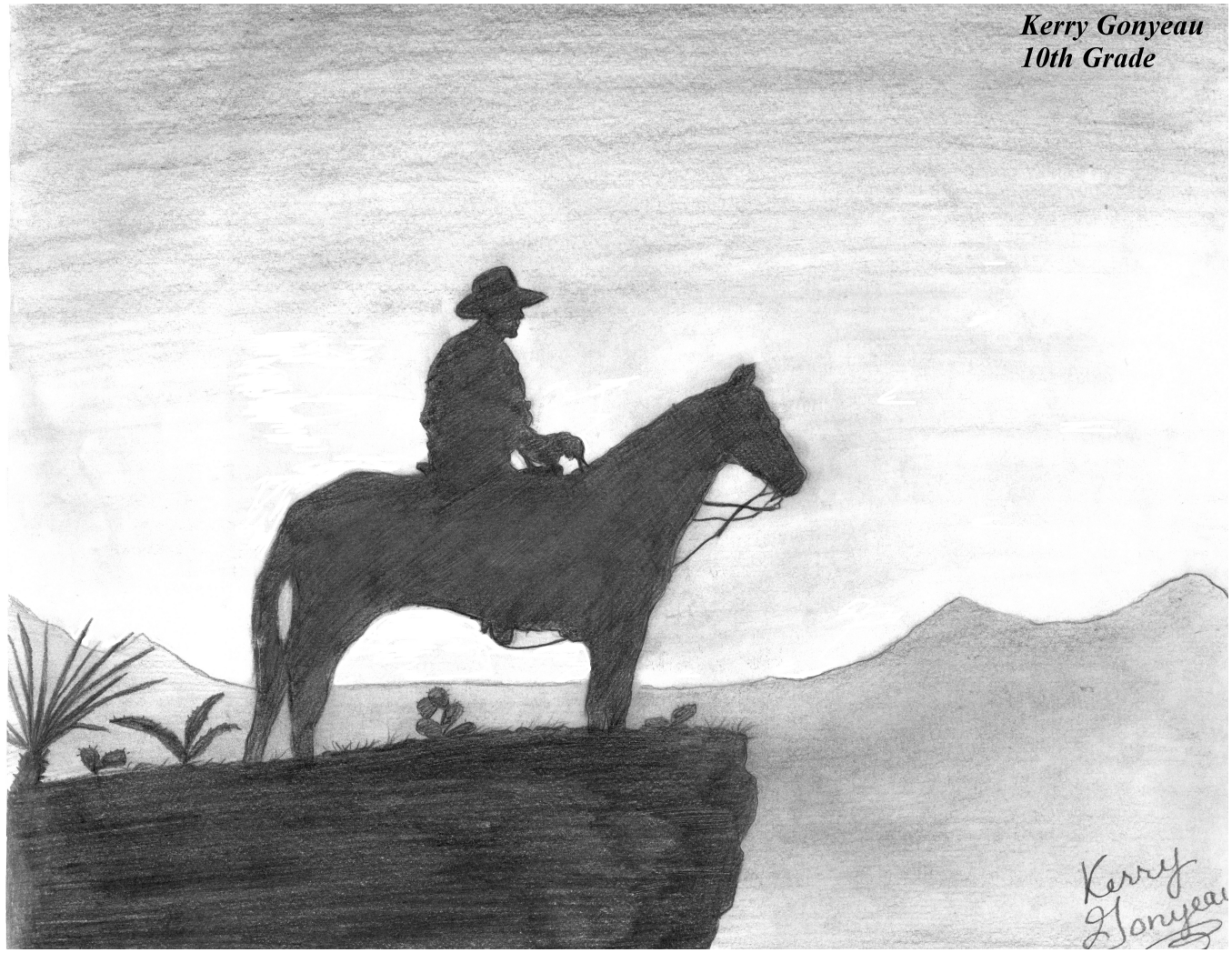
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of October, 2015.

Greg Abbott, Governor

TRD-201504714

♦ ♦ ♦


Kerry Gonyeau
10th Grade
Kerry Gonyeau

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-0062-KP

Requestor:

The Honorable Jerry Rochelle

Bowie County Criminal District Attorney

601 Main

Texarkana, Texas 75504

Re: Whether Texas law allows photographic insurance enforcement systems

(RQ-0062-KP)

Briefs requested by November 30, 2015

RQ-0063-KP

Requestor:

The Honorable Joseph Pickett

Chair, Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

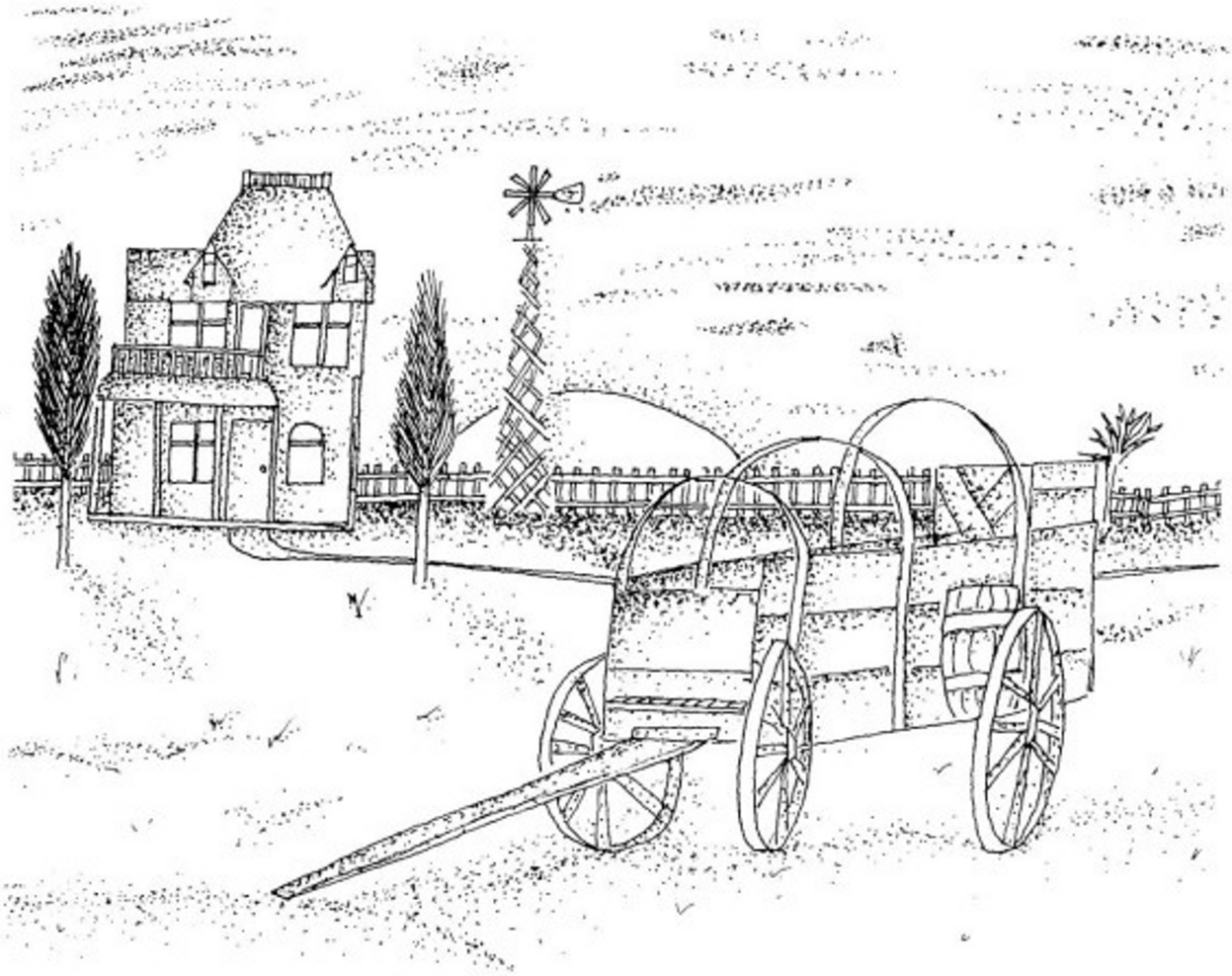
Re: Authority of the Texas Department of Transportation to enter into design-build contracts during the 2016-2017 fiscal biennium (RQ-0063-KP)

Briefs requested by November 30, 2015

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

TRD-201504631
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 30, 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 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES

1 TAC §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67, 163.69

(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 State Office of Administrative Hearings or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The State Office of Administrative Hearings (SOAH) proposes to repeal Chapter 163, §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67, and 163.69.

The existing chapter has been developed to provide a uniform set of procedural rules to be followed in arbitration proceedings for certain enforcement actions of the Texas Department of Aging and Disability Services at SOAH. Repeal of the existing rules will allow the simultaneous adoption of new rules, which are being concurrently proposed, that remain uniform in application but that are clearer, updated, and easier to use.

Thomas Walston, General Counsel, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Walston also has determined that for the first five-year period the repeal is in effect, the anticipated public benefit will be to ensure more uniform, clearer, and better-organized guidelines for participants in the arbitration proceedings for certain enforcement actions of the Texas Department of Aging and Disability Services at SOAH. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Written comments on the proposed repeal must be submitted within 30 days after publication of the proposal in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, by email at: debra.anderson@soah.texas.gov, or by facsimile to (512) 463-7791.

The repeal is proposed under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

Code provisions to which these amendments relate are Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32.

§163.1. Definitions.
§163.2. Construction of this Chapter.
§163.3. Opportunity to Elect Arbitration.
§163.4. Notice of Election of Arbitration.
§163.5. Initiation of Arbitration.
§163.6. Jurisdictional Challenges.
§163.7. Changes of Claim.
§163.9. Filing and Service of Documents.
§163.11. Selection of Arbitrator.
§163.13. Notice to and Acceptance of Appointment by Arbitrator who is not a SOAH Judge.
§163.15. Disclosure Requirements and Challenge Procedure.
§163.17. Vacancies.
§163.19. Qualifications of Arbitrators.
§163.21. Costs of Arbitration.
§163.23. Stenographic Record.
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§163.27. Interpreters.
§163.29. Duties of the Arbitrator.
§163.31. Communication of Parties with Arbitrator.
§163.33. Date, Time, and Place of Hearing.
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§163.51. Exclusion of Witnesses.
§163.53. Evidence by Affidavit.
§163.55. Order of Proceedings.
§163.57. Evidence Filed after the Hearing.
§163.59. Attendance Required.

§163.61. Order.

§163.63. Effect of Order.

§163.65. Clerical Error.

§163.67. Appeal.

§163.69. Other SOAH Rules of Procedure.

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

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

TRD-201504618
Thomas H. Walston
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 475-4931

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CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES REGARDING CONVALESCENT AND NURSING HOMES

The State Office of Administrative Hearings (SOAH) proposes new Chapter 163, Arbitration Procedures for Certain Enforcement Actions of the Department of Aging and Disability Services (DADS) Regarding Convalescent and Nursing Homes, consisting of Subchapter A, §§163.1, 163.3, and 163.5, concerning general information; Subchapter B, §§163.51, 163.53, 163.55, 163.57, and 163.59, concerning election and initiation of arbitration; Subchapter C, §163.101, concerning filing and service of documents; Subchapter D, §§163.151, 163.153, 163.155, 163.157, 163.159, and 163.161, concerning selection of arbitrator and costs; Subchapter E, §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, and 163.235, concerning arbitration proceedings; and Subchapter F, §§163.251, 163.253, and 163.255, concerning arbitration order.

Background and Justification

The new chapter is being proposed to update and reorganize the chapter for ease of reference and use.

Section-by-Section Summary

New Subchapter A is entitled General Information and contains §§163.1, 163.3, and 163.5. These sections set out SOAH's rules concerning definitions; construction of this chapter; and other SOAH rules of procedure.

New Subchapter B is entitled Election and Initiation of Arbitration and contains §§163.51, 163.53, 163.55, 163.57, and 163.59. These sections set out SOAH's rules concerning opportunity to elect arbitration; notice of election of arbitration; initiation of arbitration; jurisdictional challenges; and changes of claim.

New Subchapter C is entitled Filing and Service of Documents and contains §163.101. This section sets out SOAH's rule concerning filing and service of documents.

New Subchapter D is entitled Selection of Arbitrator and Costs and contains §§163.151, 163.153, 163.155, 163.157, 163.159, and 163.161. These sections set out SOAH's rules concerning selection of arbitrator; notice to and acceptance of appointment by arbitrator who is not a SOAH judge; vacancies; qualifications of arbitrators; duties of the arbitrator; and cost of arbitration.

New Subchapter E is entitled Arbitration Proceedings and contains §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, and 163.235. These sections set out SOAH's rules concerning exchange and filing of information; preliminary conference; discovery; stenographic record; electronic record; interpreters; communication of parties with arbitrator; date, time, and place of hearing; representation; attendance required; public hearings and confidential material; order of proceedings; control of proceedings; evidence; witnesses; exclusion of witnesses; evidence by affidavit; and evidence filed after the hearing.

New Subchapter F is entitled Arbitration Order and contains §§163.251, 163.253, and 163.255. These sections set out SOAH's rules concerning the order; effect of the order; and clerical error.

Fiscal Note

The new chapter and subchapters are proposed to update and reorganize the chapter for ease of reference and use.

Thomas Walston, General Counsel, has determined that for the first five-year period the new chapter is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new chapter.

Mr. Walston also has determined that for the first five-year period the new chapter is in effect, the anticipated public benefit will be to ensure more uniform, clearer, and better-organized guidelines for participants in the arbitration proceedings for certain enforcement actions of the Texas Department of Aging and Disability Services at SOAH. There will be no effect on small businesses as a result of enforcing the new chapter. There is no anticipated economic cost to individuals who are required to comply with the proposed new chapter.

Small Business and Micro-business Impact Analysis

Mr. Walston has determined that the new chapter is a revision of existing rules and does not impose new or additional requirements on small businesses. The proposed new chapter will not have an adverse economic effect on either small businesses or micro-businesses because the proposed new chapter will not require providers to alter their business practices.

Cost to Persons and Effect on Local Economies

Mr. Walston anticipates that there will be an economic cost to persons who elect arbitration under the proposed new chapter during the first five years the rules will be effect. Health and Safety Code §242.083(c) requires the party electing arbitration to pay the cost of arbitration. Total fees and expenses for an arbitrator for a day may not exceed $500.

There is no anticipated negative impact on local employment or local economies.

Public Benefit

Mr. Walston also has determined that for the first five-year period the new chapter is in effect the public benefit anticipated as a result of the new chapter will be more efficient administration

of the rules for arbitration proceedings that are consistent with Health and Safety Code Chapter 242, Subchapter H-2. Arbitration of Certain Disputes.

Regulatory Analysis

Mr. Walston has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Taking Impact Assessment

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

Public Comment

Written comments must be submitted within 30 days after publication of the proposed new chapter in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at debra.anderson@soah.texas.gov, or by facsimile to Debra Anderson at (512) 475-4994. Comments must be received within 30 days after publication of this proposal in order to be considered.

SUBCHAPTER A. GENERAL INFORMATION

1 TAC §§163.1, 163.3, 163.5

Statutory Authority

The new sections are proposed under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorize SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, Government Code, Chapters 2001 and 2003, and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§163.1. Definitions.

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

(1) Administrative law judge or judge--An individual appointed by the chief administrative law judge of the State Office of Administrative Hearings (SOAH) under Government Code, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Government Code, §2003.043.

(2) APA--Government Code, Chapter 2001.

(3) Authorized representative--An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

(4) Chief judge--The chief administrative law judge or his or her designee for action under this chapter. Any designee shall be a person qualified to serve as an arbitrator.

(5) Code--Health and Safety Code, Chapter 242 as it may be amended from time to time.

(6) DADS--The Department of Aging and Disability Services.

(7) Facility--An institution as defined by the Code §242.002(10).

(8) Order--The award or final order issued by the arbitrator.

§163.3. Construction of this Chapter.

Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter genders shall each include the other; and the singular and plural number shall each include the other.

§163.5. Other SOAH Rules of Procedure.

Unless specific applicable procedures are set out in this chapter, other SOAH rules of procedure found at Chapter 155 of this title (relating to Rules of Procedure), Chapter 157 of this title (relating to Temporary Administrative Law Judges), and Chapter 161 of this title (relating to Requests for Records) may apply in arbitration proceedings under this chapter. The rules that specifically apply include:

(1) 1 TAC 155, Subchapter A, §155.7 (relating to Computation of Time);

(2) 1 TAC 155, Subchapter C, §155.101 (relating to Filing Documents);

(3) 1 TAC 155, Subchapter C, §155.103 (relating to Service of Documents on Parties);

(4) 1 TAC 155, Subchapter D, §155.151 (relating to Assignment of Judges to Cases);

(5) 1 TAC 155, Subchapter D, §155.153 (relating to Powers and Duties);

(6) 1 TAC 155, Subchapter E, §155.201 (relating to Representation of Parties);

(7) 1 TAC 155, Subchapter I, §155.405 (relating to Participation by Telephone or Videoconference);

(8) 1 TAC 155, Subchapter I, §155.417 (relating to Stipulations);

(9) 1 TAC 155, Subchapter I, §155.425 (relating to Procedure at Hearing);

(10) 1 TAC 155, Subchapter I, §155.431 (relating to Conduct and Decorum);

(11) 1 TAC 155, Subchapter J, §155.503 (relating to Dismissal Proceedings);

(12) 1 TAC 157, §157.1 (relating to Temporary Administrative Law Judges); and

(13) 1 TAC 161, §161.1 (relating to Charges for Copies of Public Records).

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

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

TRD-201504619

Thomas H. Walston
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 475-4931

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SUBCHAPTER B. ELECTION AND INITIATION OF ARBITRATION

1 TAC §§163.51, 163.53, 163.55, 163.57, 163.59

The new sections are proposed under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorize SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003, and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§163.51. Opportunity to Elect Arbitration.

(a) Except as otherwise prohibited by the Code, DADS or any affected facility may elect arbitration as an alternative to a contested case proceeding or to a judicial proceeding relating to any of the following disputes arising under the Code, Subchapter H-2:

(1) renewal of a license under §242.033;

(2) suspension, revocation, or denial of a license under §242.061;

(3) assessment of a civil penalty under §242.065;

(4) assessment of a monetary penalty under §242.066; or

(5) assessment of a penalty as described in §32.021(n), Human Resources Code.

(b) Arbitration may not be elected if the facility has had an arbitration order levied against it in the previous five years.

(c) The election of arbitration is a representation that the party choosing arbitration is solvent and able to bear the costs of the proceeding. In cases where the facility is responsible for paying SOAH's costs and expenses, SOAH will require that an authorized representative of the facility provide:

(1) a deposit for the costs of the proceeding, based on SOAH's reasonable determination of the amounts expected to be incurred; and

(2) an affidavit acknowledging the facility's responsibility and duty to pay SOAH's costs and expenses.

(d) An election to engage in arbitration under this chapter is irrevocable and binding on the facility and DADS. However, an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.

§163.53. Notice of Election of Arbitration.

(a) Pursuant to Code §242.252(b), in an enforcement lawsuit filed in court:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the court in which the lawsuit is pending and sending copies to the office of the attorney general and to DADS or its designee.

(A) The notice of election must be filed no later than the tenth day after the date on which the answer is due or the date on which the answer is filed with the court, whichever is earlier.

(B) If a civil penalty is requested by an amended or supplemental pleading in a lawsuit, the affected facility must file its notice of election of arbitration not later than the tenth day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(C) If the election of arbitration is challenged, the parties shall seek a prompt ruling from the court on the challenge. If a court finds SOAH has jurisdiction to conduct an arbitration, the Health and Human Services Appeal Division shall immediately file the court's order and the notice of election of arbitration at SOAH and request the arbitration be processed in the usual manner.

(2) DADS may elect arbitration by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under paragraph (1) of this subsection.

(b) In an administrative enforcement proceeding originally docketed at SOAH:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the docket clerk at SOAH no later than the tenth day after receiving notice of hearing that complies with the requirements of the Administrative Procedure Act. A copy of this election shall be sent to DADS's representative of record in the relevant action and to DADS or its designee.

(2) DADS may elect arbitration under this chapter by filing a notice of election with the docket clerk at SOAH no later than the date that the facility may elect arbitration under paragraph (1) of this subsection and sending a copy of the notice of election to the facility's representative of record in the relevant action.

(c) The date of filing shall be the date affixed upon a notice of election by a date-stamp utilized by the docket clerk at the court for judicial proceedings, or by the docket clerk of SOAH for administrative proceedings.

(d) The notice of election shall include a written statement that contains:

(1) the nature of the action that is being submitted to arbitration, as listed in this Subchapter, §163.51(a) (relating to Opportunity to Elect Arbitration);

(2) a brief description of the factual and/or legal controversy, including an estimate of the amount of any penalties sought;

(3) an estimate of the length of the arbitration hearing on the merits and the extensiveness of the record necessary to determine the matter;

(4) the remedy sought;

(5) a statement that the facility has not been the subject of an arbitration order within the previous five years;

(6) any special information that should be considered in selecting an arbitrator;

(7) if a hearing location other than Austin is requested, an explanation for requesting that location;

(8) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration; and

(9) a statement that arbitration is not otherwise prohibited by the Code.

§163.55. Initiation of Arbitration.

(a) When a notice of election of arbitration is filed at SOAH, the notice shall be date stamped and the file given a SOAH docket number that identifies it as a case submitted for arbitration. Parties shall include this docket number on all subsequent correspondence and documents filed with SOAH relating to the arbitration.

(b) The party that did not initiate the arbitration may file an answering statement with SOAH within ten days after receipt of the notice of election from the electing party. That answering statement should include a response to the claim and any challenge to the election of arbitration. If the party that did not initiate the arbitration does not file an answering statement, SOAH will presume that party denies the claim and does not challenge the election of arbitration. Failure to file an answering statement shall not operate to delay the arbitration.

§163.57. Jurisdictional Challenges.

(a) Parties who raise jurisdictional challenges to an election for arbitration in a judicial enforcement action are required to seek an expeditious ruling from the court in which the election was filed.

(b) Jurisdictional challenges brought to an election for arbitration in an administrative enforcement proceeding shall be decided by the presiding administrative law judge in the contested case.

§163.59. Changes of Claim.

If either party desires to make any new or different claim, it shall be made in writing and filed with SOAH. The other party may, within ten days from the date of such filing, file an answer with SOAH. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

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

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

TRD-201504620
Thomas H. Walston
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 475-4931

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SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §163.101

The new section is proposed under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorize SOAH to establish procedural rules for its hearings.

The new section affects Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003, and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§163.101. Filing and Service of Documents.

(a) All documents a party files with SOAH shall be governed by the provisions of 1 TAC §155.101 (relating to Filing Documents).

(b) All documents a party files with SOAH shall be simultaneously served on the other parties. Service of documents on parties shall be governed by the provisions of 1 TAC §155.103 (relating to Service of Documents on Parties).

(c) Except as provided herein, any oral or written communication, other than a communication authorized under subsection (a) of this section, from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to SOAH, for transmittal to the arbitrator. After the arbitrator has been appointed in a case, materials may be filed directly with the arbitrator, if:

(1) the parties agree;

(2) the arbitrator agrees; and

(3) the service requirements of this section are met.

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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Thomas H. Walston
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State Office of Administrative Hearings
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For further information, please call: (512) 475-4931

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SUBCHAPTER D. SELECTION OF ARBITRATOR AND COSTS

1 TAC §§163.151, 163.153, 163.155, 163.157, 163.159, 163.161

The new sections are proposed under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorize SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003, and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§163.151. Selection of Arbitrator.

(a) The parties may agree upon an arbitrator qualified under this chapter and submit that individual's name with their initial statements.

(b) Arbitrators designated by the parties.

(1) Parties who agree to retain a qualified non-SOAH arbitrator shall notify the chief judge within ten days of the arbitrator's retention.

(2) The notice must include the name, address, and telephone number of the arbitrator selected; a statement that the parties have entered into an agreement with the arbitrator regarding the arbitrator's rate and method of compensation; and an affirmation that the arbitrator is qualified to serve according to the provisions of this chapter.

(3) The chief judge shall issue an order specifying the date by which the arbitration must be completed.

(c) If the parties do not agree on a non-SOAH arbitrator who is willing and available to serve, SOAH will provide a list of potential SOAH arbitrators.

(d) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days of receiving the list of potential SOAH arbitrators, with a copy served on all other parties. Such objections will be reviewed by the chief judge.

(e) SOAH will notify the parties of the arbitrator appointed.

(f) Until an arbitrator has been appointed, the chief judge may rule on pending matters, including dispositive motions.

§163.153. Notice to and Acceptance of Appointment by Arbitrator Who Is Not a SOAH Judge.

(a) Notice of the appointment of the arbitrator shall be sent to the arbitrator by SOAH, together with a copy of this chapter and an acceptance form for the arbitrator to sign and return. The signed acceptance of the arbitrator shall be filed with SOAH prior to the first pre-hearing conference or other meeting of the parties to the arbitration.

(b) The acceptance of the arbitrator shall state that the arbitrator is qualified and willing to serve as arbitrator in accordance with this chapter, and with the current Code of Ethics for Arbitrators in Commercial Disputes issued by the American Bar Association and the American Arbitration Association. It shall also state that the arbitrator foresees no difficulty in completing the arbitration according to the schedule set out in this chapter.

(c) A potential arbitrator must not accept appointment in or continue handling any matter in which the arbitrator believes or perceives that participation as an arbitrator would be a conflict of interest or create the impression of a conflict. The duty to disclose is a continuing obligation throughout the arbitration process.

(d) Upon objection of a party to the continued service of an arbitrator, the chief judge shall provide the arbitrator and all parties an opportunity to respond. After consideration of these responses, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

§163.155. Vacancies.

If for any reason an appointed arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to the chief judge, declare the office vacant. The chief judge may fill a vacancy by appointing a SOAH arbitrator. Objections for cause to the appointed arbitrator shall be filed in accordance with this Subchapter, §163.151(d) (relating to Selection of Arbitrator). During the period of a vacancy, the chief judge may rule on pending matters, including dispositive motions.

§163.157. Qualifications of Arbitrators.

(a) The chief judge may appoint as an arbitrator any SOAH administrative law judge.

(b) A potential arbitrator who is not a SOAH administrative law judge shall be on an approved list of a nationally recognized association that performs arbitration services or meet the following minimum standards:

(1) Have at least five years of experience in health care and/or the legal profession and/or alternative dispute resolution with recognized expertise in his/her profession(s).

(2) Have the attributes necessary to be a successful arbitrator, including expertise, honesty, integrity, impartiality, and the ability to manage the arbitration process.

(3) May not represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies, and he/she must affirm that he/she will not undertake any such representation during the pendency of the arbitration proceeding.

(c) The chief judge may remove an arbitrator if she/he determines that the arbitrator no longer meets the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.

§163.159. Duties of the Arbitrator.

The arbitrator shall:

(1) secure appropriate facilities for the hearing, giving preference to using state facilities;

(2) protect the interests of DADS and the facility;

(3) ensure that all relevant evidence has been disclosed to the arbitrator, DADS, and facility; and

(4) render an order consistent with applicable state and federal law, including the Code and this chapter.

§163.161. Cost of Arbitration.

(a) An arbitrator's fees and expenses shall not exceed the statutory daily maximum for case preparation, prehearing conferences, hearings, preparation of the order, and any other required post-hearing work. Rates charged for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses. If a party requests that an arbitration hearing be held outside of Austin, and the arbitrator agrees to hold the arbitration in that location, incidental expenses would include the cost of renting a room for the hearing and the arbitrator's travel expenses.

(c) SOAH charges fees for the services provided by SOAH arbitrators at the hourly rate approved in the General Appropriations Act, but the total amount charged for a SOAH arbitrator's services in an arbitration proceeding conducted under these rules shall not exceed the statutory daily maximum.

(d) The party electing arbitration must pay the cost of the arbitration.

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

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SUBCHAPTER E. ARBITRATION PROCEEDINGS

1 TAC §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, 163.235

The new sections are proposed under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorize SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003, and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§163.201. Exchange and Filing of Information.

(a) Unless the arbitrator orders otherwise, by the 30th day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information:

(1) List of witnesses that a party expects to call with a short summary of their expected testimony;

(2) Any and all documents or other tangible things that contain information relevant to the subject matter, including any documents that will be testified about at the hearing or that witnesses have reviewed in preparing for their testimony.

(b) Not later than the seventh day before the first day of the arbitration hearing, sooner if so directed by the arbitrator, DADS and the facility shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute, with the relevant portions clearly indicated; and

(2) information relating to a proposed resolution of the dispute.

(c) The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures, for example, redacting resident identities, to ensure that all such material remains confidential.

(d) Each producing party's documents shall be labeled by name or initials of the party and Bates-stamped or otherwise consecutively numbered in the lower right hand corner of each page.

§163.203. Preliminary Conference.

The arbitrator may set a preliminary conference and may require parties to file a statement of position prior to that conference. The statement of position shall include:

(1) stipulations of the parties to uncontested facts and applicable law;

(2) citation to the statutory and regulatory law, both state and federal, that controls the controversy;

(3) a list of the issues of fact and law that are in dispute between the parties, including a citation to legal authorities that each party relies on for its legal positions;

(4) proposals designed to expedite the arbitration proceedings, including minimizing preparation and decision time required of the arbitrator;

(5) a list of documents that the parties have exchanged and a schedule for the delivery of any additional relevant documents, indicating the approximate length of each document;

(6) the identification of witnesses expected to be called during the arbitration proceeding, with a short summary of their expected testimony; and

(7) other matters as specified by the arbitrator.

§163.205. Discovery.

Discovery is not allowed in a proceeding under this chapter, except by agreement with the other party or by order of the arbitrator upon a showing of good cause. Any discovery will be completed no later than 14 days before the opening of the arbitration hearing on the merits, unless otherwise ordered by the arbitrator. Discovery should not be filed with SOAH or the arbitrator unless there is a related dispute which must be resolved by the arbitrator. No more than four hours of deposition testimony may be taken by either party, unless otherwise ordered by the arbitrator.

§163.207. Stenographic Record.

An official stenographic record of the proceeding is not required, but DADS or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made. A copy of any transcript prepared at the request of a party shall be provided to the arbitrator.

§163.209. Electronic Record.

DADS shall make an electronic recording of the proceeding. If there is no stenographic record of the proceeding, the original recording or a copy will be provided to the arbitrator at the close of the proceeding if the arbitrator so requests. At the arbitrator's request, DADS shall also record prehearing conferences.

§163.211. Interpreters.

When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the setting. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with the APA, §2001.055;

(2) reader services or other communication services for blind and sight impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

§163.213. Communication of Parties with Arbitrator.

(a) DADS and the facility shall not communicate with the arbitrator other than at an oral hearing, or through properly filed documents, unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication from the parties, other than a communication authorized under subsection (a) of this section, shall be directed to SOAH for transmittal to the arbitrator.

§163.215. Date, Time, and Place of Hearing.

(a) The arbitration hearing shall be scheduled to begin no later than the 90th day after the date that the arbitrator is selected.

(b) The arbitrator shall set the date, time, and place for each hearing. She/he shall send a notice of hearing to the parties at least 30 days in advance of the hearing date, unless otherwise agreed to by the parties. A copy of such notice shall be simultaneously filed with SOAH by the arbitrator.

(c) The arbitrator may grant a continuance of the arbitration at the request of DADS or the facility. The arbitrator may not unreasonably deny a request for a continuance.

(d) Arbitration hearings normally will be held at SOAH's hearings facility in Austin, Texas. If a party seeks to have the arbitration hearing held elsewhere, the party shall submit a written request to the arbitrator and make a showing of good cause. The arbitrator shall have sole discretion to determine whether to grant such a request. If the arbitrator grants the request, the arbitrator shall determine how the incidental expenses of holding the arbitration hearing outside of Austin will be apportioned between the parties. Incidental expenses include the cost of renting a room for the hearing and the arbitrator's travel expenses. Preference will be given to using state facilities. The arbitrator may require that the incidental expenses be paid in advance of the arbitration hearing.

§163.217. Representation.

Any party may be represented by counsel or other authorized representative.

§163.219. Attendance Required.

(a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a continuance.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before issuing an order.

§163.221. Public Hearings and Confidential Material.

Hearings held under this chapter shall be open to the public. The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures to ensure that such material remains confidential during the hearing. All exhibits shall be returned to DADS following the issuance of the order by the arbitrator, where they shall be maintained in accordance with DADS' rules.

§163.223. Order of Proceedings.

(a) Opening statements. The arbitrator may ask each party to make an opening statement to clarify the issues involved.

(b) The complaining party shall then present evidence to support its claim. The defending party shall then present evidence to support its claim. Witnesses for each party shall answer questions propounded by the other party and the arbitrator.

(c) The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence within the time frames set by the arbitrator.

(d) Exhibits offered by either party may be received in evidence by the arbitrator.

(e) The parties may make closing statements as they desire, but the record may not remain open for written briefs unless ordered by the arbitrator. If the arbitrator requests briefs the arbitration hearing shall be deemed "closed" on the date that the last requested brief is filed.

§163.225. Control of Proceedings.

The arbitrator shall exercise reasonable control over the proceedings, including but not limited to the manner and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the determination of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

§163.227. Evidence.

(a) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Practice and Remedies Code, §171.007, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under this Subchapter, §163.205 (relating to Discovery).

§163.229. Witnesses.

Witnesses shall testify under oath. Testimony may be presented in a narrative, without strict adherence to a "question and answer" format.

§163.231. Exclusion of Witnesses.

Any party may request that the arbitrator exclude witnesses from the hearing except when they are testifying. If such a request is made, the arbitrator shall instruct the witnesses not to discuss the case outside the official hearing other than with the designated representatives or attorneys in the case. However, an individual who is a party or any other single party representative shall not be excluded under this rule. A witness or other person violating these instructions may be punished by the exclusion of evidence as the arbitrator deems appropriate.

§163.233. Evidence by Affidavit.

The arbitrator may receive and consider evidence of witnesses by affidavit. Affidavit testimony must be filed with the arbitrator and served on the other party no later than 30 days before the hearing. The other party will have 15 days to file any objection to the admissibility of the affidavit or to file controverting affidavits. The arbitrator shall give such evidence only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

§163.235. Evidence Filed After the Hearing.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, all parties shall be afforded an opportunity to examine such documents or other evidence. Such materials shall be served as provided in Subchapter C of this Chapter, §163.101 (relating to Filing and Service of Documents).

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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Thomas H. Walston
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SUBCHAPTER F. ARBITRATION ORDER

1 TAC §§163.251, 163.253, 163.255

The new sections are proposed under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorize SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003, and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§163.251. Order.

(a) The arbitrator may enter any order consistent with state and federal law applicable to a dispute described in Subchapter B of this Chapter, §163.51 (relating to Opportunity to Elect Arbitration).

(b) The order shall be entered no later than the 60th day after the close of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and DADS or its designee and send a copy to the parties.

§163.253. Effect of Order.

An order of an arbitrator under this chapter is final and binding on all parties. A party's right to appeal is limited to the provisions of the Code.

§163.255. Clerical Error.

For the purpose of correcting clerical errors, an arbitrator retains jurisdiction of the order for 20 days after the date of the order.

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.50, 74.55, 74.69, 74.74, 74.80, 74.105

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) §§74.10, 74.50, 74.55, 74.69, 74.74 and 74.80; and proposes new rule §74.105, regarding the Elevators, Escalators, and Related Equipment program.

House Bill 3741 (H.B. 3741), 84th Legislature, Regular Session (2015), authorized the Texas Commission of Licensing and Regulation (Commission) to adopt rules and standards for removing equipment from service and set fees for applying to remove equipment from service. The proposed amendments and new rule are necessary to implement the changes made by H.B. 3741 and make editorial corrections.

The proposed amendments to §74.10 add the definitions "Out of Service" and "Removed from Service". Editorial changes are also made to renumber the paragraphs.

Proposed amendments to §74.50 create the department's reporting requirements for equipment that has been removed from service.

The proposed amendments to §74.55 add removal from service to the reporting requirements for inspectors and make an editorial change.

The proposed amendment to §74.69 makes an editorial change.

Proposed amendment to §74.74 adds the section reference for inspectors to comply with when removing a piece of equipment from service.

Proposed amendment to §74.80 adds the fee for each piece of equipment from service.

Proposed new §74.105 sets the standards for equipment being removed from service.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rule are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed amendments and new rule. Mr. Kuntz projects an increase in revenue of approximately $1,000 calculated by estimating approximately fifty pieces of equipment being temporarily removed from service on an annual basis times the application fee adopted in §74.80.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and new rule are in

effect, the public will benefit by increased safety on regulated equipment.

There will be no anticipated economic effect on small and micro-businesses that are required to comply with the rules as proposed. To the contrary, small and micro-businesses taking advantage of the new §74.105 will actually benefit because they will avoid potential enforcement violations and penalties; as well as being able to delay expensive repairs to better manage costs by temporarily removing equipment in need of repair from service which will result in savings.

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

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

The amendments and new rule are proposed under Texas Occupations Code, Chapter 51, and Health and Safety Code, Chapter 754, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Health and Safety Code, Chapter 754. No other statutes, articles, or codes are affected by the proposal.

§74.10. Definitions.

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

(1) - (28) (No change.)

(29) Out of Service--Equipment rendered inoperative in accordance with ASME Code A17.1.

(30) [~~(29)~~] Owner--A person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to a building or facility in which equipment regulated by the Act is located. For purposes under this chapter and the Act, an owner may designate an agent. The term "owner" when used in the chapter shall be construed to include the owner's agent.

(31) [~~(30)~~] Owner's Agent--The person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that has been authorized by the owner to act on the behalf of the owner as relates to a building or facility in which equipment regulated by the Act is located.

(32) [~~(31)~~] Proof of Inspection--A document provided to the owner by the registered inspector after the completion of an acceptance inspection of new equipment to inform the public that the equipment has been inspected.

(33) [~~(32)~~] Proof of Inspection Sticker--An adhesive label placed by the registered inspector on the Proof of Inspection or the certificate of compliance indicating the inspection has been performed.

(34) [~~(33)~~] Publicly Visible Area of Building--A location within the building where regulated equipment is located that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any regulated equipment is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(35) [~~(34)~~] Qualified Historic Building or Facility--A building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(36) [~~(35)~~] Related Equipment--The term means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(37) Removed from Service--Equipment rendered inoperative in accordance with standards adopted in §74.105.

(38) [~~(36)~~] Reportable Condition--A condition which exists where a defect requires the equipment to be rendered inoperative in a manner reasonably calculated [~~removed from operation~~] to prevent [~~a risk of~~] injury to passengers, operators, or the general public.

(39) [~~(37)~~] Responsible Party--The person or persons meeting the experience requirements of the Act and designated by the contractor to attend continuing education in compliance with this chapter.

(40) [~~(38)~~] Serious Bodily Injury--A major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(41) [~~(39)~~] Unit of Equipment--One elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(42) [~~(40)~~] Variance, New Technology ("new technology variance")--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications.

(43) [~~(41)~~] Waiver--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.50. Reporting Requirements--Owner.

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

(f) Within thirty (30) days of the date equipment is removed from service, the owner must notify the department by submitting a completed Inspection Report, including the applicable fee required by §74.80.

§74.55. Reporting Requirements--Inspector.

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

(e) Inspectors, using the Online Inspection Reporting System, for each piece of equipment inspected, must report to the department within 72 hours of completing an acceptance inspection, [~~or~~] annual inspection or removal from service.

§74.69. Responsibilities of the Owner--Accidents and Reportable Conditions.

(a) (No change.)

(b) For an accident reported under this section, the equipment shall be removed from service and shall not be moved (except as necessary to extricate an injured party), used, [~~or effect a life-saving rescue~~)] or returned to service until a representative of the department completes an investigation and issues an approval to return the unit to service.

(c) (No change.)

§74.74. Responsibilities of the Inspector--Inspection Procedures.

(a) - (i) (No change.)

(j) For equipment removed from service, the inspector must comply with §74.105.

§74.80. Fees.

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

(i) The fee for "Removed from Service" is $20 per unit of equipment.

§74.105. Standards for Equipment Removed from Service.

(a) Equipment may only be removed from service by a registered inspector using the following procedures:

(1) Hydraulic elevators must be brought to the lowest landing with the doors closed and the main line disconnect switch locked in the off position.

(2) Electric elevators must be brought to the top landing, with the doors closed and the main line disconnect switch locked in the off position.

(3) Escalators must have their main line disconnect switch locked in the off position and each end of the escalator barricaded.

(4) All other related equipment must have their main line disconnect switch locked in the off position.

(b) Equipment removed from service may only have the power restored:

(1) by a registered Contractor performing upgrades or alterations;

(2) by a registered Inspector performing an Acceptance or Annual Inspection; or

(3) with approval of the Department.

(c) All other related equipment must have their main line disconnect switch locked in the off position.

(d) Equipment removed from service shall be returned to service after performing an approved acceptance or annual inspection performed in accordance with §74.66.

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §1.414, concerning the 2016 assessment of maintenance taxes and fees imposed by the Insurance Code. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2016 on the basis of gross premium receipts for calendar year 2015.

EXPLANATION. Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also proposes amendments in subsections (a) - (f) and (h) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsections (a)(1) - (9), (c)(1) - (3), (d), (e), and (f) to update rates to reflect the methodology the department developed for 2016.

Finally, the department proposes amendments that are nonsubstantive in nature to conform with the department's writing style guides.

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2016:

In general, the department's 2016 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2015.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1281 (HB 1), Acts of the 84th Legislature, Regular Session, 2015 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the

commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2016 fiscal year until the next assessment collection period in 2017. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the workers' compensation research and evaluation group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department includes an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduces the total cost need by subtracting the estimated ending fund balance for fiscal year 2015 (August 31, 2015) and estimated fee revenue collections for fiscal year 2016. The resulting balance is the estimated revenue need that must be supported during the 2016 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocates the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines' a proportionate share of the total costs for maintenance taxes or fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC).

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2016 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2016 fiscal year until the next assessment collection period in 2017. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at August 31, 2015, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2016. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the workers' compensation research and evaluation group.

To determine the revenue need, the department considered the following factors that are applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2016 from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2016 fiscal year until the next assessment collection period in 2017. The

department adds these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2015. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates proposed in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is an estimated income of $144,639,887 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Meyer also has determined that for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the section will be the collection of maintenance tax and fee assessments.

The cost in 2016 to an insurer that received premiums in 2015 will be: for motor vehicle insurance, .055 of 1 percent of those gross premiums; for casualty insurance and fidelity, guaranty, and surety bonds, .077 of 1 percent of those gross premiums; for fire insurance and allied lines, including inland marine, .341 of 1 percent of those gross premiums; for workers' compensation insurance, .065 of 1 percent of those gross premiums; and for title insurance, .103 of 1 percent of those gross premiums.

An insurer that receives premiums for workers' compensation insurance in 2015 will also pay 1.478 percent of that premium for the operation of DWC and OIEC and .015 of 1 percent of that premium to fund the Workers' Compensation Research and Evaluation Group's activities. A workers' compensation self-insurance group will pay 1.478 percent of its 2015 gross premium for the group's retention under Labor Code §407A.301 and .065 of 1 percent of its 2015 gross premium for the group's retention under Labor Code §407A.302.

The cost in 2016 for an insurer that received premiums in 2015 for life, health, and accident insurance, will be .040 of 1 percent of those gross premiums. In 2016, an HMO will pay $.28 per enrollee if it is a single service HMO or a limited service HMO, and $.84 per enrollee if it is a multiservice HMO. In 2016, a third party administrator will pay .013 of 1 percent of its correctly reported gross amount of administrative or service fees received in 2015. In 2016, for a nonprofit legal services corporation issuing prepaid legal services contracts, the cost will be .022 of 1 percent of correctly reported gross revenues for 2015.

In 2016, to fund the Workers' Compensation Research and Evaluation Group's activities, a workers' compensation certified self-insurer will pay .015 of 1 percent of the tax base calculated under Labor Code §407.103(b), and a workers' compensation self-insurance group will pay .015 of 1 percent of the tax base calculated under Labor Code §407.103(b).

Finally, in 2016, a workers' compensation certified self-insurer will pay 1.478 percent of the tax base calculated under Labor Code §407.103(b).

Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the maintenance tax or fee. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. These persons are similarly compensated between $24 and $42 an hour. The actual time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form. In the case of a certified self-insurer, DWC will calculate the maintenance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined the proposal may have an adverse economic effect on approximately 117 insurance companies and HMOs and approximately 275 third party administrators that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from the costs of the maintenance taxes and fees. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit and cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses does not depend on the size of the business. For insurers in the following lines of insurance, the cost of compliance depends on the amount of gross premiums in 2015: motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; and life, health, and accident insurance. For annuity and endowment contracts, the cost of compliance depends on the amount of gross considerations in 2015. For HMOs, the cost of compliance depends on the number of enrollees in 2015. For third party administrators, the cost of compliance depends on the amount of correctly reported gross administrative or service fees in 2015. For nonprofit legal services corporations issuing prepaid legal services contracts, the cost of compliance depends on the correctly reported gross revenues. For workers' compensation certified self-insurers and workers' compensation certified self-insurance groups, the cost of compliance depends on the tax base calculated under Labor Code §407.103(b).

In accord with Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide the rates of assessment for maintenance taxes and fees for 2016 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; HMOs; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different tax rates for small and micro businesses, and (iii) exempting small and micro businesses from the tax requirements.

Not adopting the proposed rule. Under Insurance Code §251.003, if the commissioner does not advise the comptroller of the applicable maintenance tax assessment rates, the comptroller must assess taxes based on the previous year's assessment. Use of the previous year's rates and the estimated assessment bases for 2015, the department estimates revenue collections would exceed amounts needed by approximately $2.7 million. If no rule is adopted the department would collect excess revenue to fund the department's costs. The department has rejected this option.

Adopting different taxes for small and micro businesses. The current methodology is already the most equitable methodology the department can develop. The department applies an assessment methodology that contemplates a smaller assessment for small or micro businesses because the assessment is determined based on number of enrollees, gross premiums, or gross amount of administrative or service fees. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has fewer enrollees, lower gross premiums, or a lower gross amount of administrative or service fees. However, based on the proposed rule, a small or micro business would pay a smaller assessment, and would reduce its risk of economic harm. The department has rejected this option.

Exemption of small and micro businesses from the tax requirements. As noted above, the current methodology is already the most equitable methodology the department can develop. The tax methodology currently used contemplates a small business paying lower maintenance taxes because assessments are based on number of enrollees, gross premiums, or gross amount of administrative or service fees. A small or micro business that has fewer enrollees, has lower gross premiums, or receives fewer gross administrative or service fees would be assessed lower taxes. If the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. The department has rejected this option.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

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

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on December 14, 2015, by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Simultaneously submit an additional copy of the comments to the Texas Department of Insurance, Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to joe.meyer@tdi.texas.gov. Separately submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the commissioner shall ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account shall be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation un-

der Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance. Section 254.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health,

and accident insurers. Section 257.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code 258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the commissioner shall annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO shall pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to Insurance Code Chapter 961 with gross revenues subject to taxation under Insurance Code §260.003. Section 260.001 also provides that the tax required by Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the commissioner may not exceed 1 percent of the corporation's gross revenues subject to taxation under Insurance Code §260.003. Section 260.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation shall pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. Section 271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent. Section 271.004 provides that the commissioner shall annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the commissioner shall consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance. Section 271.006 requires an insurer to pay maintenance fees under this chapter on the correctly reported gross premiums from writing title insurance in Texas.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C. Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of

a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer shall pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the commissioner of insurance to set and certify to the comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the commissioner of insurance shall annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the workers' compensation research and evaluation group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Section 407.104(b) provides that the department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer shall remit the taxes and fees to DWC.

The Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section shall be collected by the comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it shall be collected by the comptroller in the manner provided by Insurance Code Chapter 255.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Amendments in this proposal to §1.414 affect Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001, 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

§1.414. Assessment of Maintenance Taxes and Fees, 2016 [~~2015~~].

(a) The department assesses the following rates for maintenance taxes and fees on gross premiums of insurers for calendar year 2015 [~~2014~~] for the lines of insurance specified in paragraphs (1) - (9) of this subsection:

(1) for motor vehicle insurance, under Insurance Code §254.002, the rate is .055 [.060] of 1 [1.0] percent;

(2) for casualty insurance and fidelity, guaranty, and surety bonds, under Insurance Code §253.002, the rate is .077 [.080] of 1 [1.0] percent;

(3) for fire insurance and allied lines, including inland marine, under Insurance Code §252.002, the rate is .341 [.340] of 1 [1.0] percent;

(4) for workers' compensation insurance, under Insurance Code §255.002, the rate is .065 [.066] of 1 [1.0] percent;

(5) for workers' compensation insurance, under Labor Code §403.003, the rate is 1.478 [1.533] percent;

(6) for workers' compensation insurance, under Labor Code §405.003, the rate is .015 [.016] of 1 [1.0] percent;

(7) for workers' compensation insurance, under Labor Code §407A.301, the rate is 1.478 [1.533] percent;

(8) for workers' compensation insurance, under Labor Code §407A.302, the rate is .065 [.066] of 1 [1.0] percent; and

(9) for title insurance, under Insurance Code §271.004, the rate is .103 [.076] of 1 [1.0] percent.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2015 [2014] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, under Insurance Code §257.002, is .040 of 1 [1.0] percent.

(c) The department assesses rates for maintenance taxes for calendar year 2015 [2014] for the following entities as follows:

(1) under Insurance Code §258.003, the rate is $.28 per enrollee for single service health maintenance organizations, $.84 per enrollee for multiservice health maintenance organizations, and $.28 per enrollee for limited service health maintenance organizations;

(2) under Insurance Code §259.003, the rate is .013 [.010] of 1 [1.0] percent of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) under Insurance Code §260.002, the rate is .022 [.020] of 1 [1.0] percent of the correctly reported gross revenues for nonprofit legal services corporations issuing prepaid legal services contracts.

(d) Under Labor Code §405.003, each certified self-insurer must pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2016 [2015] at a rate of .015 [.016] of 1 [1.0] percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Under Labor Code §405.003 and §407A.301, each workers' compensation self-insurance group must pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2016 [2015] at a rate of .015 [.016] of 1 [1.0] percent of the tax base calculated under Labor Code §407.103(b).

(f) Under Labor Code §407.103 and §407.104, each certified self-insurer must pay a self-insurer maintenance tax in calendar year 2016 [2015] at a rate of 1.478 [1.533] percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(h) The taxes assessed under subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts on March 1, 2016 [2015].

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

Filed with the Office of the Secretary of State on November 2, 2015.

TRD-201504636
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 676-6584

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. Under Insurance Code §843.156, the term "insurance company" as used in this proposal includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

EXPLANATION. The proposed amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2016 calendar year. The proposed amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2015 calendar year, and from each foreign insurer examined during the 2015 calendar year using the same methodology.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also proposes amendments in subsections (b)(1), (c)(1), (c)(2)(A), (c)(2)(B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department proposes an amendment to delete the language in subsection (b)(2) stating that a foreign insurer must pay the department an additional assessment of 35 percent under Insurance Code §401.155. The language in subsection (b)(2) is no longer necessary because the department proposes an amendment to add language to subsection (b)(2) that will implement HB 2163, 83rd Legislature, 2013 (Insurance Code §401.152(a-1)), and impose an annual assessment on foreign insurers that are examined by the department in 2015. The assessment will be sufficient to meet expenses necessary for examinations in an amount computed in the same manner as the amount imposed for domestic insurers.

The department proposes amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2016.

The department proposes an amendment to subsection (c)(3) and adds the language "because of a redomestication" to clarify that the proportional assessment for a company that was a domestic insurance company for less than a full calendar year applies only to a foreign insurance company that redomesticates to Texas and not to a foreign insurance company that merges with a Texas domestic insurance company.

Finally, the department proposes amendments that are nonsubstantive in nature to conform with the department's writing style guides.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2016.

In general, the department's 2016 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2015.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1281 (HB 1), Acts of the 84th Legislature, Regular Session, 2015 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2016 fiscal year until the next assessment collection period in 2017. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2016 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2015 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2015 to determine the proposed rate of assessment for admitted assets.

The 2015 General Appropriations Act does not contain a rider directing the department to reimburse the General Revenue Fund from the Texas Department of Insurance Operating Fund Account for the costs of insurance premium tax credits for examination fees and overhead assessments, which will result in the reduction of the revenue need and rates. Although Insurance Code §401.156(a) allows the department to use dollars received from the examination overhead assessment to pay for the reimbursement of premium tax credits for examination costs, the reimbursement is no longer necessary.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposed amendments will be in effect, the expected fiscal impact on state government is estimated income of $13,068,688 to the Texas Department of Insurance Examination Self-Directed Account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Meyer also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the section will be adequate and reasonable assessment rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2016 calendar year. Mr. Meyer has determined that the direct economic cost to entities required to comply with the proposed amendments will vary.

The examination expense will consist of the actual salary of the examiner directly attributable to the examination and the actual expenses of the examiner directly attributable to the examination, including transportation, lodging, meals, subsistence expenses, and parking fees. The actual salary of an examiner is to be determined by dividing the annual salary of the examiner by the total number of working days in a year, and a company or group is to be assessed the part of the annual salary attribut-

able to each working day the examiner examines the company or group.

The amount of the assessment in 2016 for every domestic insurer and those foreign insurers examined in 2015 will be .00133 of 1 percent of the company's admitted assets as of December 31, 2015, excluding pension assets specified in subsection (c)(2)(A), and .00415 of 1 percent of the company's gross premium receipts for 2015, excluding pension related premiums specified in subsection (c)(2)(B), and premiums related to welfare benefits described in subsection (c)(6).

There are two components of costs for entities required to comply with the assessment requirements in the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the assessment. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. The compensation is generally between $24 and $42 an hour. The department estimates that the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. For those domestic and foreign companies with an overhead assessment of less than $25 as computed under §7.1001(c)(2)(A) and (B), a minimum overhead assessment of $25 will be assessed.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 18 domestic insurance companies that are small or micro businesses required to comply with the proposed rules. It is not possible to anticipate the number or size of foreign insurance companies that may be required to comply with the proposed rule, because of the limited number of examinations the department conducts on foreign insurance companies. The department has determined that none of the workers' compensation self-insurance groups that must comply with the proposed rule would qualify as a small or micro business.

Adverse economic impact may result from costs associated with examination fees and the amount of the required assessment resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit or cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on: for workers' compensation self-insurance groups, the length of time it takes to conduct an examination, the annual salary of the examiner, and expenses associated with the examination; and for domestic and foreign insurers, the length of time it takes to conduct an examination, expenses associated with the examination, and the admitted assets and gross premium receipts of the company.

In accord with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to propose a rule addressing examination fees and assessments for domestic and foreign insurance companies and workers' compensation self-insurance groups.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment requirement for small and micro businesses, and (iii) exempting small or micro businesses from the assessment requirements.

Not adopting the proposed rule. Without adopting the proposed rule the department would be unable to collect the necessary funds to cover the examination functions of the department. The purpose of conducting examinations is to monitor the activities and solvency of insurance companies. Failure of the department to perform its examination functions could result in public harm if a company does not comply with the Insurance Code or becomes insolvent and this is not detected because of the lack of regular examinations. Not adopting the rule would also result in the department being out of compliance with Insurance Code §§401.151(c) and 401.152(a-1), which direct the department to impose an annual assessment on domestic and foreign insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the insurer examination laws of Texas. This option has been rejected.

Adopting a different assessment requirement for small and micro businesses. The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that results in a smaller assessment, down to a minimum assessment of $25, for domestic and foreign insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The department anticipates that a domestic or foreign insurer that is a small or micro business most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based on the proposed assessment requirements of the rule, that small or micro business would pay a smaller assessment, reducing its risk of economic harm. This option has been rejected.

Exempting small or micro businesses from the assessment requirements. As previously noted, the current methodology used to develop the proposed rule is already the most equitable that the department can develop. The department applies a methodology that contemplates a domestic or foreign insurer that is a small or micro business paying less of an assessment if it writes fewer premiums or has less admitted assets. However, if the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

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

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central

time, on December 14, 2015, by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Simultaneously submit an additional copy of the comments to Texas Department of Insurance, Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to joe.meyer@tdi.texas.gov. Separately submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendment is proposed under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority shall pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

Insurance Code §401.151 also provides that the department shall collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department shall consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas shall reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section §401.152(a-1) states that the department shall also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by this section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the commissioner. Additionally, §401.152 provides that the commissioner shall determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Labor Code §407A.252(b) provides that the commissioner of insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

CROSS REFERENCE TO STATUTE. Amendments in this proposal to §7.1001 affect Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b).

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2016 [~~2015~~].

(a) Under Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Under Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2016 [~~2015~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Under Insurance Code §401.152(a-1), a foreign insurance company examined in 2015, or an exam beginning in 2015 and completed in 2016, must pay an annual assessment in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers. The amount imposed must be computed in the same manner as the amount imposed for domestic insurers as applicable under subsection (c) of this section.

[~~(2) Under Insurance Code §401.155, a foreign insurance company must pay an additional assessment of 35 percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals.~~]

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Under Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accord with this subsection.

(1) A domestic insurance company must pay the actual salaries and expenses of the examiners allocable to an examination of the company. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2016 [~~2015~~]. The expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) .00133 [~~.00231~~] of 1 [~~1.0~~] percent of the admitted assets of the company as of December 31, 2015 [~~2014~~], taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)); and

(B) .00415 [~~.00928~~] of 1 [~~1.0~~] percent of the gross premium receipts of the company for the year 2015 [~~2014~~], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during calendar year 2015 because of a redomestication [~~2014~~], the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during calendar year 2015 [~~2014~~].

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than $25, a domestic insurance company must pay a minimum overhead assessment of $25.

(5) The department will base the overhead assessments on the assets and premium receipts reported in the annual statements.

(6) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accord with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.).

(d) Under Labor Code §407A.252, a workers' compensation self-insurance group must pay the actual salaries and expenses of the examiners allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2016 [~~2015~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance at the address provided on the invoice not later than 30 days from the invoice 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.

Filed with the Office of the Secretary of State on November 2, 2015.

TRD-201504637
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 676-6584

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

SUBCHAPTER D. COMPREHENSIVE REHABILITATION SERVICES

40 TAC §107.705, §107.714

The Texas Health and Human Services Commission on behalf of the Department of Assistive and Rehabilitative Services (DARS) proposes amendments to §107.705, concerning Definitions, and new §107.714, concerning Consumer (Client) Participation.

BACKGROUND AND JUSTIFICATION

House Bill 2463, 84th Legislature, Regular Session, 2015, the DARS Sunset Bill addressed the agency's Comprehensive Rehabilitation Services (CRS) Program, adding statutory authority for the program, currently operated by rule only. The bill also required DARS to adopt rules for the program, which include requirements for client participation in the costs of the comprehensive rehabilitation services. The CRS program currently includes a client participation requirement addressed in program policy and contractor standards referred to as consumer participation. DARS is proposing to promulgate new rules for the existing CRS consumer participation requirements.

Client participation is a monthly contribution the client (consumer) may be required to pay for participation in the CRS Program. The consumer's contribution is based on 200 percent of the current United States Health and Human Services Poverty Guidelines, and information about the consumer's income, family status, and economic need. The consumer's contribution must not exceed the cost of the goods and services provided by CRS.

SECTION-BY-SECTION SUMMARY

Section 107.705, Definitions, is amended to add definitions of "basic living requirements," "consumer participation," "liquid assets," "net monthly income," "provider," and "third-party payer."

Section 107.714, Consumer (Client) Participation, explains the following:

§107.714(a) states that consumer participation is a monthly contribution the consumer may be required to pay toward CRS goods and services and that it applies to consumers in active services, as well as those on the interest list who are both eligible and receiving services;

§107.714(b) states that the consumer participation only applies when the CRS consumer's liquid assets exceed the current basic living requirements (BLR) established by DARS;

§107.714(b)(1), (2), (3), and (4) state the criteria on which the BLR calculations are based;

§107.714(c) states that CRS Program calculates the amount of the consumer participation regardless of the availability of private insurance or other third-party payer reimbursements and that obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly cost share amount;

§107.714(d)(1), (2), and (3) state what the consumer participation calculation will take into account;

§107.714(e) states that the consumer participation must not exceed the cost of the goods and services provided by the CRS Program and that it is applied only in months that billable goods and services are provided;

§107.714(f) states that the consumer participation is paid to the service provider by the consumer directly;

§107.714(g) states that the consumer participation will be deducted from the amount paid to the service provider by the CRS Program and must be reflected in the service authorization given to the provider by the CRS Program;

§107.714(h) states that the consumer may choose not to disclose financial information, but doing so may result in the presumption that the consumer has adequate resources to participate fully in the cost of CRS goods and services;

§107.714(i) (1) and (2) state that consumer participation does not apply when the consumer is eligible for Supplemental Security Income or Social Security Disability Income and to certain services specified;

§107.714(j) states that DARS management may waive the consumer participation when the consumer's participation towards the cost of services would prevent the consumer from receiving a necessary service;

§107.714(k) states that the consumer participation must be reviewed annually by the CRS Program;

§107.714(l) states that to the extent that the consumer is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services;

§107.714(m) (1), (2), and (3) state the actions that may be taken by a consumer, consumer's representative, or a court appointed guardian or representative who disagrees with the calculated consumer participation amount;

§107.714(n) states how information about CRS consumer participation procedures and BLR used to administer the CRS Program may be obtained.

FISCAL NOTE

Rebecca Trevino, DARS Chief Financial Officer, has determined that during the first five-year period the proposed amended and new rule are in effect there will be no fiscal impact to state government. The proposed amended and new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Trevino has also determined that there will be no effect on small businesses or micro businesses to comply with the amended and new rule, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Trevino has determined that for each year of the first five years that the amended and new rule are in effect, the public will benefit from the rules. The anticipated public benefit of enforcing the proposed amended and new rule with regard to this program will be ensuring that the necessary rules are in place to provide a clear and concise understanding of the Comprehensive Rehabilitation Services (CRS) Program.

REGULATORY ANALYSIS

DARS 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

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Austin, Texas 78756; or by email to *DARSrules@dars.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The proposed amendment and new rule are authorized by the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The amendment and new rule are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

§107.705. Definitions.

The following words and terms, when used in this subchapter, have the following meanings for the Comprehensive Rehabilitation Services (CRS) Program [~~program~~] unless the context clearly indicates otherwise:

(1) Ancillary services--Goods and services that support core CRS services but are not primary interventions. Examples of ancillary services include supplies, medications, and transportation.

(2) Aquatic therapy--A type of therapy that involves an exercise method in water to improve a person's range of motion, flexibility, muscular strength and toning, cardiovascular endurance, fitness, and/or mobility.

(3) Art therapy--A type of therapy in which persons use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety, and/or increase self-esteem.

(4) Audiological services--Evaluation and treatment of hearing, balance, or related disorders.

(5) Basic Living Requirements (BLR)--A framework for determining whether the consumer should pay any of the cost of services which considers the family's net monthly income, liquid assets, and expenses an eligible consumer can reasonably be expected to incur including but not limited to home mortgage or rent payments, prescribed diet or medicine expenses, and other medical or disability related expenses.

(6) [~~(5)~~] Behavior management--A set of coordinated services that provide a person with specialized interventions designed to increase adaptive behaviors and to reduce maladaptive or socially unacceptable behaviors, up to and including violent dyscontrol, that prevent or interfere with the person's inclusion within the home environment and the community.

(7) [~~(6)~~] Case management--Services that assist consumers in the planning, coordination, monitoring, and evaluation of services with emphasis on quality of care, continuity of services, and cost-effectiveness.

(8) [~~(7)~~] Certified professional--A person with the knowledge, experience, and skills to perform a specific job who is paid for performing that job. The person's expertise is verified by a certificate earned by passing an exam that is accredited by an organization or association that monitors and upholds prescribed standards for the profession involved. Examples of certified professionals include a certified brain injury specialist, certified nursing assistant, certified medical assistant, certified medication aide, and certified nurse aide.

(9) [~~(8)~~] Chemical dependency services--Planned services that are structured to help a person abstain from using drugs and/or alcohol. Services include identifying and changing behavior patterns that are maladaptive, destructive, or injurious to health and which are related to or result from substance-related disorders, and identifying and changing behavior patterns to restore appropriate levels of physical, psychological, and social functioning.

(10) [~~(9)~~] Cognitive rehabilitation therapy (CRT)--A type of therapy that helps a person to learn or relearn cognitive skills that have been lost or altered due to a traumatic brain injury. Services will enable the person to compensate for lost cognitive functions and include reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(11) Consumer participation--A monthly contribution the consumer (client) may be required to pay for participation in the Comprehensive Rehabilitation Services (CRS) Program.

(12) [~~(10)~~] Core services--A set of fundamental services that are essential to rehabilitation of persons who have a traumatic brain injury or traumatic spinal cord injury or both. Specific core services are based on assessed individualized needs.

(13) [~~(11)~~] CRS Program--Comprehensive Rehabilitation Services Program.

(14) [~~(12)~~] Dietary and nutritional services--Services that develop a prescribed diet to meet basic or special therapeutic nutritional needs.

(15) [~~(13)~~] Durable medical equipment and supplies--Equipment that provides therapeutic benefits to a person whose medical conditions require the equipment and supplies.

(16) [~~(14)~~] Family and caregiver education and training services--Information that provides a foundation for relationships with a person who has a traumatic brain injury or traumatic spinal cord injury, or both.

(17) [~~(15)~~] Family therapy--A specialized type of psychotherapy that helps families and caregivers in intimate relationships to nurture healing and development.

(18) [~~(16)~~] Group therapy--A type of therapy with two or more persons in addition to a therapist who have a common therapeutic purpose or to achieve a common goal.

(19) [~~(17)~~] Home modification--The use of assistive or adaptive equipment or devices that may be installed in a person's home to enable the person to perform household tasks. This equipment must be removable from the residence without causing permanent damage to the property. Examples include grab bars in bathrooms or portable ramps for persons who use wheelchairs or who have other mobility impairments.

(20) [~~(18)~~] Interdisciplinary team (IDT)--A team of professionals that closely coordinates services to achieve treatment goals in order to minimize a consumer's physical or cognitive disabilities and to maximize functional capacity.

(21) [~~(19)~~] Individual therapy--A collaborative process between a therapist and person that is intended to facilitate change and improve quality of life.

(22) [~~(20)~~] Inpatient comprehensive medical rehabilitation--Services provided, as recommended by an interdisciplinary team in a hospital setting, to address medical and rehabilitation issues that require 24-hour-a-day nursing services. These services are available to people who have a traumatic brain injury or traumatic spinal cord injury, or both.

(23) [~~(21)~~] Individualized written rehabilitation plan (IWRP)--A plan developed by CRS staff, which outlines the goals, services, and other aspects of service provision in the CRS Program [~~program~~]. It may include elements of the individualized program plan developed by the provider and other members of the interdisciplinary team.

(24) [~~(22)~~] Lawful permanent resident--Any person not a citizen of the United States who is residing in the United States per legally recognized and lawfully recorded documentation identifying them as such. A lawful permanent resident is also known as a "Permanent Resident Alien," "Resident Alien Permit Holder," and "Green Card Holder."

(25) [~~(23)~~] Licensed professional--A person who has completed a prescribed program of study in a health field, and who has obtained a license indicating his or her competence to practice in that field. Examples of licensed professionals include a registered nurse, physician, and social worker.

(26) [~~(24)~~] Limited skilled-nursing--Skilled-nursing for a limited time. This service involves providing or delegating personal care services and medication administration consistent with rules established by the Texas Board of Nursing; assessing a patient to determine the care required; and delivering temporary skilled nursing services for minor illness, injury, or emergency for a period not to exceed 30 days.

(27) Liquid assets--Cash and assets from savings or other accounts.

(28) [~~(25)~~] Massage therapy--A type of therapy involving the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for therapeutic purposes. Massage therapy constitutes a health care service if the massage therapy is for therapeutic purposes.

(29) [~~(26)~~] Medical services--Services or supplies that are needed for the diagnosis or treatment of medical conditions.

(30) [~~(27)~~] Mental restoration services--Limited or short term psychiatric services, including treatment and psychotherapy, for mental conditions that are stable or slowly progressive.

(31) [~~(28)~~] Music therapy--A type of therapy using musical or rhythmic interventions to restore, maintain, or improve a person's social or emotional functioning, mental processing, or physical health.

(32) Net Monthly Income--Monthly take-home pay after taxes and other payroll deductions.

(33) [~~(29)~~] Neuropsychological and neuropsychiatric services--A comprehensive battery of tests to evaluate neurocognitive, behavioral, and emotional strengths and weaknesses and their relationship to normal and abnormal central nervous system functioning.

(34) [~~(30)~~] Occupational therapy--A type of therapy using evaluation and treatment to develop, recover, or maintain the daily living skills of persons who have a physical, mental, and/or cognitive disorder consistent with Occupational Therapy Practice Act, Occupations Code.

(35) [~~(31)~~] Orthosis--A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of a neuromuscular or musculoskeletal disease, injury, or deformity, consistent with the Orthotics and Prosthetics Act, Occupations Code.

(36) [~~(32)~~] Outpatient services--Medical treatment, without admittance to a hospital that corrects or modifies a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to independence. These services are available to people who have a traumatic brain injury or traumatic spinal cord injury, or both.

(37) [~~(33)~~] Over-the-counter medication--Medication that can be obtained without a prescription.

(38) [~~(34)~~] PABI--Post-acute brain injury--A brain injury at the post-acute stage, which is when the patient is medically stable and deemed ready to engage in intensive rehabilitation.

(39) [~~(35)~~] Paraprofessional--A person to whom a particular aspect of a professional task is delegated, but who is not licensed as a fully qualified professional. A paraprofessional is qualified, through experience, training, or a combination thereof, to provide services. Paraprofessionals must have, at a minimum, a high school diploma or its equivalent.

(40) [~~(36)~~] Personal assistance services--Services provided in a residential setting to a person who needs prompts and hands-on supports to participate in services. Services may include, but are not limited to, providing order, safety, and cleanliness assistance; assisting with medication or therapeutic regimens; preparing and serving meals; assisting with laundry; providing supervision and care to meet basic needs; and ensuring evacuation in case of an emergency.

(41) [~~(37)~~] Personal attendant care services--Services provided in a home setting to persons with approved medical needs only, and only when provision of services in the home setting is necessary to enable the person to participate in CRS service arrays, which may include assistance with toileting routines, transferring, bathing, dressing, medications, meals, and activities of daily living.

(42) [~~(38)~~] Physical restoration services--Services that correct or substantially modify, within a reasonable period of time, a physical condition that is stable or slowly progressive.

(43) [~~(39)~~] Physical therapy--A type of therapy that prevents, identifies, corrects, or alleviates acute or prolonged movement dysfunction or pain of anatomical or physiological origin.

(44) [~~(40)~~] Post-acute brain injury services--Services provided as recommended by an interdisciplinary team to address deficits in functional and cognitive skills based on individualized assessed needs. Services may include behavior management, the development of coping skills, and compensatory strategies. These services may be provided on a residential or non-residential basis.

(45) [~~(41)~~] Post-acute rehabilitation services--Post-acute brain injury services and post-acute spinal cord injury services.

(46) [~~(42)~~] Post-acute spinal cord injury services--Services provided as recommended by an interdisciplinary team to address deficits in functional skills based on individualized assessed needs. These services are provided in the home and in the community (non-residential settings).

(47) [~~(43)~~] Prescription medication--A medicine that legally requires a medical prescription to be dispensed.

(48) [~~(44)~~] Prosthesis--A custom-fabricated or custom-fitted medical device used to replace a missing limb, appendage, or other

external human body part but that is not surgically implanted, consistent with the Orthotics and Prosthetics Act, Occupations Code. Accordingly, the term includes an artificial limb, hand, or foot.

(49) Provider--An entity under contract with DARS to provide Comprehensive Rehabilitation Services.

(50) [~~(45)~~] Provider type--A term that refers to the types of service providers within the CRS Program [~~program~~], consisting of certified professionals, licensed professionals, and paraprofessionals.

(51) [~~(46)~~] Rancho Los Amigos Levels of Cognitive Functioning Scale--A scale developed at the Rancho Los Amigos Hospital in Downey, California, that describes eight levels of post-brain injury cognitive function. At "Level IV - Confused/Agitated," the patient is in a heightened state of activity with severely decreased ability to process information. The patient is detached from the present and responds primarily to his or her own internal confusion and behavior is frequently bizarre and non-purposeful relative to the patient's immediate environment.

(52) [~~(47)~~] Recreational therapy--A type of therapy involving recreational or leisure activities that assist in the restoration, remediation, or rehabilitation of a person's level of functioning and independence in life activities, and that promote health and wellness and reduce or eliminate the activity limitations associated with traumatic brain injury, traumatic spinal cord injury, or both.

(53) [~~(48)~~] Rehabilitation technology--Equipment or technology designed to help persons with disabilities perform tasks that would otherwise require assistance.

(54) [~~(49)~~] Room and board--Shelter, facilities and food, including the customary and usual diets in residential settings and prescribed nutritional meals or supplements.

(55) [~~(50)~~] Service arrays--A set of services provided to eligible persons who have a traumatic brain injury, traumatic spinal cord injury, or both; services are based on assessed individualized rehabilitation needs that consist of outpatient services, inpatient comprehensive medical rehabilitation services, post-acute brain injury services, and post-acute spinal cord injury services.

(56) [~~(51)~~] Speech-language pathology--The application of nonmedical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or a group, consistent with the Occupations Code.

(57) [~~(52)~~] Texas resident--A person who lives in Texas as evidenced by one of the following unexpired documents: a Texas driver's license, an identification card with an address issued by a governmental entity, a utility bill with an address, a voter registration card, a vehicle registration receipt, or other document approved by the Department of Assistive and Rehabilitative Services.

(58) Third-party payer--A company, organization, insurer, or government agency other than DARS that makes payment for goods and services provided to a consumer.

(59) [~~(53)~~] Transportation--Travel and related expenses.

(60) [~~(54)~~] Traumatic brain injury (TBI)--An injury to the brain that is not degenerative or congenital; and caused by an external physical force, which may produce a diminished or altered state of consciousness, resulting in temporary or permanent impairment of cognitive abilities and/or physical functioning, and partial or total functional disability and/or psychosocial maladjustment.

(61) [~~(55)~~] Traumatic spinal cord injury (SCI)--An acute, traumatic lesion of neural elements in the spinal canal resulting in any degree of temporary or permanent sensory or motor deficit, and/or bladder or bowel dysfunction.

(62) [~~(56)~~] Vision services--A sequence of neurosensory and neuromuscular activities individually prescribed and monitored by the doctor to develop, rehabilitate, and enhance visual skills.

§107.714. Consumer (Client) Participation.

(a) The consumer (client) participation is a monthly contribution the consumer (client) may be required to pay for participation in the Comprehensive Rehabilitation Services (CRS) Program. Consumer participation applies to consumers in active services, as well as those on the interest list who are both eligible and receiving services.

(b) The consumer participation is required only for CRS consumers when the consumer's liquid assets exceed the basic living requirement (BLR) level calculated by the CRS Program, and consequently require the consumer to contribute an amount equal to this excess toward the cost of the goods and services provided by the CRS Program. The BLR calculation is based on:

(1) 200 percent of current U. S. Department of Health and Human Services Poverty Guidelines;

(2) DARS BLR tables for the current fiscal year;

(3) DARS policies relating to consumer participation, consumer participation, and BLR; and

(4) information regarding the consumer's income, family status, and economic need.

(c) The CRS Program calculates the amount of the consumer participation owed by the consumer for the goods and services that are provided, regardless of the availability of private insurance or other third-party payer reimbursements. The consumer's obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly consumer participation amount.

(d) The consumer participation calculation will take into account:

(1) the net monthly income and liquid assets of the consumer and the consumer's spouse, parents, or legal guardian or conservator;

(2) allowable expenses, such as monthly home mortgage or rental payments, prescribed diets and medicines used by the consumer, debts imposed by court order; and

(3) family size.

(e) The consumer participation must not exceed the cost of the services provided by the CRS Program in a given month, and it is applied only in months that billable goods and services are provided by the CRS Program.

(f) The consumer participation must be paid to the service provider by the consumer directly.

(g) The consumer participation will be deducted from the amount paid to the service provider by the CRS Program and must be reflected in the service authorization given to the provider by the CRS Program.

(h) The consumer may choose not to disclose financial information, but doing so may result in the presumption that the consumer

has adequate resources to participate fully in the cost of CRS goods and services.

(i) The consumer participation does not apply:

(1) when the consumer is eligible for Supplemental Security Income or Social Security Disability Income.

(2) to certain services, including:

(A) assessments for determining eligibility;

(B) assessments for determining rehabilitation needs, including associated maintenance and transportation;

(C) rehabilitation counseling and guidance and referral for other services;

(D) personal assistance services; and

(E) any auxiliary aid or service that a consumer with a disability requires to participate in the CRS Program.

(j) DARS management may waive the consumer participation when the consumer's participation towards the cost of services would prevent the consumer from receiving a necessary service.

(k) The consumer participation must be reviewed annually by the CRS Program.

(l) To the extent that the consumer is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services.

(m) If the consumer, consumer's representative, or a court appointed guardian or representative disagrees with the calculated consumer participation amount, they can:

(1) request a review by DARS;

(2) contact the DARS Inquiries Line at 1-800-628-5115 for help resolving a problem or concern; or

(3) file a formal complaint with DARS as noted in §107.715 of this chapter (relating to Complaint Resolution Process).

(n) Information about CRS consumer participation procedures and BLR used to administer the CRS Program are available on the DARS website and for viewing at DARS, 4800 North Lamar Boulevard, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on business days.

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 November 2, 2015.

TRD-201504639
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 424-4050

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CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission (HHSC) on behalf of the Department of Assistive and Rehabilitative Services (DARS) proposes amendments to §109.105 in Subchapter A, General Rules; §§109.205, 109.217, 109.221, 109.223 and 109.231, in Subchapter B, Division 1, Board for Evaluation of Interpreters (BEI) Interpreter Certification; §109.315, in Division 2, BEI Court Interpreter Certification; and new §§109.451, 109.453, and 109.457 in new Division 4, concerning BEI Medical Interpreter Certification.

BACKGROUND AND JUSTIFICATION

DARS has recently completed an agency initiative to develop a new medical interpreter performance test (called the BEI Medical Performance Test) for the BEI Interpreter Certification program. The test is designed for interpreters seeking medical certification. Interpreters certified as medical interpreters assist persons who are deaf or hard of hearing in communicating with medical professionals in settings such as hospitals or medical offices.

In partnership with the University of Arizona, DARS DHHS has also developed the American Sign Language (ASL) Proficiency Test and Performance Test for persons who are deaf or hard of hearing and who are seeking interpreter certification. The ASL Proficiency Test and Performance Test will replace the current test for persons who are deaf or hard of hearing and who are seeking interpreter certification, which is outdated and not reliable.

DARS DHHS is proposing new rules for the Medical Performance Test and amending existing BEI rules to incorporate the new ASL Proficiency Test and Performance Test. Rules for the BEI Interpreter Certification program fee schedule will be amended to include new fees for these tests. Test fees help defray the costs of test development, administration, and rating.

Additionally, Senate Bill (S.B.) 1307, 84th Legislature, Regular Session, 2015, requires rule amendments in this proposal that pertain to military personnel. Senate Bill 1307 addresses exceptions to the requirements for military personnel and spouses of military personnel which are applicable to the BEI Interpreter Certification program. Rule amendments are also proposed to address fee waivers for military personnel applying for certification when the applicant otherwise meets all requirements, as required by S.B. 807, 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

Section 109.105, Definitions, is amended to add a new definition for "certified medical interpreter."

Section 109.205, Definitions, is amended to add definitions of "active duty" and "armed forces of the United States" and to modify definitions for "military service member," "military spouse," and "military veteran" to align with S.B. 1307.

Section 109.217, Qualifications and Requirements for a BEI Certificate, is amended to establish the option to take an ASL proficiency test and a performance test for persons who are deaf or hard of hearing. This rule section establishes eligibility requirements and clarifies that applicants must pass the American Sign Language (ASL) Proficiency Test to take the Performance Test. In addition, this rule section eliminates the prerequisite and performance tests previously required of persons who are deaf or hard of hearing and who are seeking certification.

Section 109.221, Validity of Certificates and Recertification, is amended to extend the time by two years for a person who has

served in the military to earn all continuing education units, in accordance with S.B. 1307.

Section 109.223, Certificate Renewal, is amended to allow a person who has served in the military and who has an expired court certificate to renew certification within two-years, in accordance with S.B. 1307.

Section 109.231, Schedule of Fees, is amended to establish a fee for persons taking the Medical Performance Test and the ASL Proficiency Test and Performance Test for persons who are deaf or hard of hearing. It eliminates the prerequisite and performance tests previously required of persons who are deaf or hard of hearing and who are seeking certification. It establishes application fees for persons who have taken the BEI test in another state and want to become Texas certified as Basic, Advanced, or Master. In addition, this rule section is amended to address the waiver of fees for military personnel, in accordance with S.B. 807.

Section 109.315, Qualifications and Requirements of Court Certificate, is amended to allow military service members and military veterans to be issued an expedited BEI court interpreter certificate, in accordance with S.B. 1307.

New §109.451, Purpose, is added to establish a new Division 4, BEI Medical Interpreter Certification.

New §109.453, Legal Authority, is added to establish the legal authority for medical certification under the BEI program.

New §109.457, Qualifications and Requirements for Medical Certificate, is added to establish the qualifications and requirements for a person applying for medical interpreter certification. This rule section is also being added to establish an annual renewal requirement and a five-year continuing education requirement.

FISCAL NOTE

Rebecca Trevino, DARS Chief Financial Officer, has determined that during the first five-year period that the proposed amended and new rules are in effect, there will be a small fiscal impact to state government with regard to the new tests and fees. The anticipated costs to the program for administration of the new tests are $2,025 per year for the first five years. The estimated revenues generated by the new test fees and the subsequent renewal fees gradually increase from $2,975 in the first year to $6,725 by the fifth year. The proposed amended and new rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Trevino has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed amended and new rules, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposal other than the fees stated in the proposed rules. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Trevino has determined that for each year of the first five years that the proposed amended and new rules are in effect, the public will benefit from the rules. The anticipated public benefit of enforcing the proposed amended and new rules with regard to this program will be the establishment of a medical interpreter certification program that ensures that there are interpreters certified to specifically address the medical interpreting needs of consumers who are deaf or hard of hearing that the necessary rules are in place to provide a clear and concise understanding of the BEI program's certifications, including the new Medical Performance Test and the American Sign Language (ASL) Proficiency Test and Performance Test.

REGULATORY ANALYSIS

DARS 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

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Austin, Texas 78756; or by email to *DARSrules@dars.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL RULES

40 TAC §109.105

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

§109.105. Definitions.

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

(1) Americans with Disabilities Act (ADA)--A public law that provides a clear and comprehensive national mandate for eliminating discrimination against people with disabilities and that provides enforceable standards addressing discrimination against people with disabilities.

(2) BEI--The Board for Evaluation of Interpreters.

(3) BEI Certificate--The certificate awarded by DARS to an applicant who has passed designated written and performance tests; the certificate verifies that the person has skills to perform interpreting and transliterating, both expressively and receptively, and specifies the skill level at which the person can perform.

(4) Certified court interpreter--A person who is a qualified interpreter as defined in the Code of Criminal Procedure, Article 38.31, or the Civil Practice and Remedies Code, §21.003 or who is certified under Subchapter B of this chapter (relating to Board for Evaluation of Interpreters) by DARS to interpret court proceedings for a person who is deaf or hard of hearing.

(5) Certified interpreter--A person who holds a valid certificate awarded by DARS or RID. A RID-certified interpreter does not include a certified interpreter awarded through membership.

(6) Certified medical interpreter--A person who is certified under Subchapter B of this chapter by DARS to interpret in medical settings for persons who are deaf or hard of hearing.

(7) [~~(6)~~] Certified trilingual interpreter--A person certified under Subchapter B of this chapter as meeting the proficiency standards established by DARS to facilitate communication both expressively and receptively in English, sign, and Spanish.

(8) [~~(7)~~] DARS--The Department of Assistive and Rehabilitative Services.

(9) [~~(8)~~] DHHS--The Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, DARS.

(10) [~~(9)~~] Director--The director of the Office for Deaf and Hard of Hearing Services.

(11) [~~(10)~~] Intermediary interpreter--A person who is deaf or hard of hearing, who has passed an interpreter skills evaluation and is certified by DARS or RID, and who is proficient at facilitating communication both linguistically and culturally for a person who is deaf or deafblind.

(12) [~~(11)~~] Interpretation--The process of conveying a message both expressively and receptively from verbal/written language to sign or from sign to verbal/written language.

(13) [~~(12)~~] Interpreter or qualified interpreter--A person who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

(14) [~~(13)~~] Prerequisite certificate--The valid certificate required by DHHS that makes a person eligible to apply for a specialized certificate issued by DARS or to apply for a BEI advanced performance test.

(15) [~~(14)~~] Provisional certificate--The certificate awarded by DARS to an applicant currently certified in another jurisdiction who seeks a certificate in Texas.

(16) [~~(15)~~] RID--Registry of Interpreters for the Deaf, Inc., a national organization of interpreters that provides interpreter certification.

(17) [~~(16)~~] Specialty certificate--A trilingual certificate or court certificate awarded by DARS.

(18) [~~(17)~~] Transliteration--The process of conveying a message either from spoken language into a manually coded language or from manually coded language into a spoken language.

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 November 2, 2015.

TRD-201504640

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 424-4050

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SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS
DIVISION 1. BEI INTERPRETER CERTIFICATION

40 TAC §§109.205, 109.217, 109.221, 109.223, 109.231

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

§109.205. Definitions.

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

(1) Active Duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) Armed Forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) [~~(1)~~] BEI Board--The seven-person advisory board appointed by the executive commissioner of HHSC, or his or her designee, to assist in administering the BEI.

(4) [~~(2)~~] Certificates issued:[--]

(A) Basic certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in routine educational and social service settings.

(B) Advanced certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in a variety of complex settings, such as routine medical, social service, K-12 and higher education, routine mental health, and routine quasi-legal.

(C) Master certificate--A certificate issued by DARS to a person who has passed a written test of English proficiency and a skills evaluation ensuring a minimum competency standard to interpret in a variety of highly complex settings, such as medical, mental health, quasi-legal, and educational settings.

(D) Court certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person is qualified to interpret all proceedings of Texas courts, including county, municipal, and justice courts.

(E) Intermediary--Level III certificate--A certificate issued by DARS to a person who is deaf or hard of hearing who has passed a skills evaluation certifying that the person possesses the ability to interpret for a wide range of communication styles, which may include but, not limited to non-standard signs/gestures, limited communication skills, characteristics of Deaf Culture that may not be familiar to hearing interpreters, deaf-blind, minimal language skills, and indigenous communication.

(F) Intermediary--Level V certificate--A certificate issued by DARS to a person who is deaf or hard of hearing who has passed a skills evaluation certifying that the person possesses the ability to interpret in a variety of settings and situations requiring extensive knowledge and training in specialized fields including, but not limited to mental health/psychiatric, medical/surgical, court/legal and matters involving juveniles, demonstrates near flawless skills in interpreting for a wide range of communication styles, which can include-but not limited to non-standard signs/gestures, limited communication skills, characteristics of Deaf Culture that may not be familiar to hearing interpreters, deaf-blind, minimal language skills, and indigenous communication.

(G) Oral Certificate: Basic (OC:B) certificate--A certificate issued by DARS to a person who has passed a skills evaluation in spoken-to-visible and visible-to-spoken communication, certifying that the person has basic proficiency in oral transliteration and speechreading.

(H) Oral Certificate: Comprehensive (OC:C) certificate--A certificate issued by DARS to a person who has passed a skills evaluation in spoken-to-visible and visible-to-spoken communication, certifying that the person has advanced proficiency in oral transliteration and speechreading.

(I) Oral Certificate: Visible (OC:V) certificate--A certificate issued by DARS to a person who is deaf or hard of hearing and who has passed a skills evaluation in visible-to-spoken communication, certifying that the person has advanced proficiency in oral transliteration and speechreading.

(J) Trilingual Advanced certificate--A certificate issued by DARS to a person who has passed a written test of Spanish proficiency and a skills evaluation certifying that the person has the ability to meaningfully and accurately understand, produce, and transform ASL to and from English and Spanish in a culturally appropriate manner, in more complex situations for routine educational and social service settings, such as K-12 educational and administrative interactions.

(K) Trilingual Master certificate--A certificate issued by DARS to a person who has passed a written test of Spanish proficiency and a skills evaluation certifying that the person has the ability to meaningfully and accurately understand, produce, and transform ASL to and from English and Spanish in a culturally appropriate manner, in the most complex situations including complex medical, complex mental health, quasi-legal, and educational settings.

(L) Morphemic Sign System (MSS) certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person can convey a message from verbal English into morphemic signs for English and from morphemic signs for English into verbal English.

(M) Multiple-certificate holder--A BEI certificate holder who possesses or who is awarded more than one BEI certificate.

(N) Signing Exact English (SEE) certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person can convey a message from verbal English into Signed Exact English and from Signed Exact English into verbal English.

(O) Level I certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some daily interpreting situations where expressive skills are usually stronger than receptive skills and sign vocabulary is limited.

(P) Level II certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some routine interpreting situations where the person exhibits good transliterating or interpreting skills, but not both.

(Q) Level III certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey most routine interpreting situations where the person exhibits good expressive and receptive interpreting skills, displays a clear distinction between interpreting and transliterating and possess a sign vocabulary.

(R) Level IV certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits strong expressive and receptive interpreting skills in settings such as medical, legal and psychiatric, demonstrates excellent use of ASL grammar and ASL features, transliterating skills are strong and processing is often at the textual level.

(S) Level V certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits very strong expressive and receptive interpreting skills in setting such as medical, legal and psychiatric, possess an extensive vocabulary, demonstrates sophisticated use of ASL grammar as well as ASL features and transliterates conceptually accurate with appropriate mouthing.

(5) [~~(3)~~] Court proceeding--A proceeding that is under the jurisdiction of Texas courts for civil cases and criminal actions, including arraignments, hearings, examining trials, trials, depositions, mediations, court-ordered arbitrations, or other forms of alternative dispute resolution.

(6) [~~(4)~~] Military service member--A person who is on active duty [~~currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state~~].

(7) [~~(5)~~] Military spouse--A person who is married to a military service member [~~who is currently on active duty~~].

(8) [~~(6)~~] Military veteran--A person who [~~has~~] served on active duty and who was discharged or released from active duty [~~in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces~~].

(9) [~~(7)~~] Trilingual interpreter services--Interpreting services provided by an otherwise qualified interpreter who is proficient in Spanish in addition to English and sign.

§109.217. Qualifications and Requirements for a BEI Certificate.

(a) To apply for or to take any examination for a BEI Certificate, an applicant must:

(1) be at least 18 years old;

(2) have earned a high school diploma or its equivalent; and

(3) not have a criminal conviction that could qualify as grounds for denial, probation, suspension, or revocation of a BEI certificate, or other disciplinary action against any holder of a BEI certificate.

(b) To take the written Test of English Proficiency or to take the American Sign Language Proficiency Test for persons who are deaf or hard of hearing, an applicant must have:

(1) met all the criteria in subsection (a) of this section; and

(2) earned at least 30 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher.

(c) To take a BEI performance test, an applicant must have:

(1) met all the criteria in subsection (a) of this section;

(2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, unless the applicant is applying for a court, medical, or trilingual certificate or except as provided in subsections (e) and (f) of this section.

(3) [~~(2)~~] earned a passing score on the Test of English Proficiency, unless the applicant is applying for a court, medical, or trilingual [~~specialty~~] certificate; or [~~and~~]

(4) earned a passing score on the American Sign Language Proficiency Test if the applicant is deaf or hard of hearing.

[~~(3) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, unless the applicant is applying for a specialty certificate or except as provided in subsections (e) and (f) of this section.~~]

(d) To apply for and to be issued a BEI certificate, an applicant must have:

(1) met all criteria in subsection (a) of this section; and

(2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, except as provided in subsections (e) and (f) of this section; and earned a passing score on the requisite examination for the certificate level sought.

(e) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, is exempt from the educational or degree requirements in subsections (b), (c), and (d) of this section, as long as the BEI certificate remains active and valid.

(f) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, and who applies for an additional BEI certificate level after January 1, 2012, may be exempt from the educational or degree requirements of subsections (b), (c), and (d) of this section, if, at the time the certificate holder applies for, takes, and passes any BEI examination for the additional certificate, the BEI certificate holder:

(1) has an active and valid BEI certificate that is fully compliant with BEI's annual certificate maintenance and five-year recertification rules and requirements;

(2) is not under any type of active or pending disciplinary action from BEI or DHHS; and

(3) satisfies all other rules and requirements applicable to the additional BEI certificate level sought.

(g) A certified interpreter wanting to take a higher level BEI performance test must have the following prerequisite certificate for the corresponding BEI performance test:
Figure: 40 TAC §109.217(g)

§109.221. Validity of Certificates and Recertification.

(a) Certificates are valid for five years, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year certification cycle, a certificate holder must be recertified by DARS.

(b) A certificate holder may be recertified if he or she:

(1) provides written documentation of completing at least the minimum number of required continuing education units, as approved by DARS; or

(2) achieves a passing score on a specified examination; and

(3) is in compliance with all other applicable rules, including those relating to annual certificate renewal, recertification, eligibility, and qualifications.

(c) DARS may not renew or recertify a certificate holder or a former certificate holder seeking to recertify through examination until:

(1) all pending or unresolved complaints, disciplinary actions, or agency orders relating to the current or former certificate holder are resolved with DARS; and

(2) payment of any required renewal or recertification fees are received by DARS within 30 days of their due date.

(d) For multiple certificate holders possessing more than one BEI interpreter certificate, the following rules apply:

(1) When a current BEI certificate holder is awarded an additional BEI certificate, the current and new certificates are assigned a single, new five-year certification cycle that begins on the award date of the newest BEI certificate(s).

(2) The new five-year certification cycle and the annual renewal date each become due as of the award date of the newest BEI certificate.

(3) All certificates are assigned one certificate number.

(4) Any continuing education units (CEUs) earned prior to the multiple certificate award date are void.

(5) The certificate holder, if not a military service member, has five years from the multiple certificate award date to earn all required CEUs. The certificate holder, if a military service member, has seven years from the multiple certificate award date to earn all required CEUs.

(e) Information on current annual certificate renewal and five-year recertification requirements may be obtained from DARS.

§109.223. Certificate Renewal.

(a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to DHHS before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person who is not a military service member whose certificate has been expired for 90 days or less may renew the certificate by

paying to DARS DHHS a renewal fee that is equal to one and one-half times the normally required renewal fee.

(c) A person who is not a military service member whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to DARS DHHS a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

(e) A person who was certified in Texas, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination. The person must pay [~~to DHHS~~] a fee to DARS DHHS that is equal to two times the normally required renewal fee for the certificate.

(f) Not later than the 30th day before the date a [~~person's~~] certificate will [~~is scheduled to~~] expire, DARS DHHS sends written notice of the impending expiration, and certificate renewal instructions, to the person at the person's last known address according to the records of DARS DHHS.

(g) Failure to receive the notice of impending expiration from DARS DHHS, referenced in subsection (f) of this section, does not extend the expiration date of a certificate and does not exempt a person from any requirements of this subchapter.

(h) A person whose court certificate has been expired not more than two years and who failed to renew the court and required BEI prerequisite certificate because the person was serving as a military service member may renew the expired court and prerequisite certificate by paying the required renewal fee to DARS DHHS.

§109.231. Schedule of Fees.

(a) All fees paid to DARS DHHS in relation to the Board for Evaluation of Interpreters (BEI) certification program are non-refundable. DARS is authorized to collect fees for written and performance tests, for annual certificate renewal, and for five-year recertification. The schedule of fees is as follows.

(1) Administrative, application, and test fees:

(A) Test of English Proficiency (TEP)--$95.

(B) American Sign Language Proficiency Test for persons who are deaf or hard of hearing--$75.

(C) [~~(B)~~] Basic Performance Test--$145.

(D) [~~(C)~~] Advanced Performance Test--$170.

(E) [~~(D)~~] Master Performance Test--$195.

(F) [~~(E)~~] Oral Certificate: Basic (OC:B) Performance Test--$85.

(G) [~~(F)~~] Oral Certificate: Comprehensive (OC:C) Performance Test--$105.

(H) [~~(G)~~] Oral Certificate: Visible (OC:V) Performance Test--$50.

(I) [~~(H)~~] Signing Exact English (SEE) Performance Test--$85.

(J) [~~(I)~~] Morphemic Sign System (MSS) Performance Test--$85.

(K) Performance Test for persons who are deaf or hard of hearing--$75.

[~~(J) Level III Intermediary Performance Test--$50.~~]

[~~(K) Level V Intermediary Performance Test--$50.~~]

(L) Test of Spanish Proficiency (TSP)--$95.

(M) Advanced Trilingual Performance Test--$160.

(N) Master Trilingual Performance Test--$185.

(O) Medical Performance Test--$185.

(P) [~~(O)~~] Court application [~~administration~~] fee--$50.

(Q) [~~(P)~~] Court Interpreter Performance Test--$185.

(R) [~~(Q)~~] Court mentor application fee--$60.

(S) [~~(R)~~] Certificate card replacement--$25.

(2) Application fees for persons applying for certification who are BEI certified by another state:

(A) Basic certificate--$50.

(B) Advanced certificate--$50.

(C) Master certificate--$50.

(3) [~~(2)~~] Single certificate renewal and five-year recertification fees:

(A) Annual certificate renewal (on time)--$75.

(B) Annual certificate renewal (1-90 days after expiration date)--$112.50.

(C) Annual certificate renewal (91-364 days after expiration date)--$150.

(D) Court certificate annual renewal (on time)--$55.

(E) Court certificate annual renewal (1-90 days after expiration date)--$82.50.

(F) Court certificate annual renewal (91-364 days after expiration date)--$110.

(G) Five-year recertification (on time)--$70.

(H) Five-year recertification (1-90 days after expiration date)--$105.

(I) Five-year recertification (91-364 days after expiration date)--$140.

(J) Court certificate five-year recertification (on time)--$50.

(K) Court certificate five-year recertification (1-90 days after expiration date)--$75.

(L) Court certificate five-year recertification (91-364 days after expiration date)--$100.

(4) [~~(3)~~] Multiple certificate renewal and five-year recertification fees:

(A) Annual certificate renewal (on time)--$105.

(B) Annual certificate renewal (1-90 days after expiration date)--$157.50.

(C) Annual certificate renewal (91-364 days after expiration date)--$210.

(D) Five-year recertification (on time)--$100.

(E) Five-year recertification (1-90 days after expiration date)--$150.

(F) Five-year recertification (91-364 days after expiration date)--$200.

(b) The application and test fees are waived for an applicant seeking court certification if the applicant is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; 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 the license in this state.

(c) [~~(b)~~] Any remittance submitted to DARS DHHS in payment of a required fee shall be in the form of a personal check, certified check, or money order unless this section requires otherwise. Checks drawn on foreign financial institutions are not acceptable.

(d) [~~(c)~~] An applicant whose check for the application and initial certification fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to DARS DHHS a money order or check for guaranteed funds within 30 days of the date of the receipt of the notice by DARS DHHS. Otherwise, the application and the approval shall be invalid. A penalty fee of $25, in addition to the amount of the check, must be included with the payment remitted to the DARS DHHS office.

(e) [~~(d)~~] A certificate holder whose check for a renewal fee is returned marked insufficient funds, account closed, or payment stopped shall remit to DARS DHHS a money order or check for guaranteed funds within 30 days of the date of receipt of the notice by DARS DHHS. Otherwise, the certificate shall not be renewed. If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration date, a late renewal penalty fee shall be assessed. A penalty fee of $25, in addition to the amount of the check, must be included with the payment remitted to the DARS DHHS office.

(f) [~~(e)~~] Renewing an expired certificate within 12 months of the expiration date requires payment of the applicable renewal fee.

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 November 2, 2015.

TRD-201504641
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 424-4050

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DIVISION 2. BEI COURT INTERPRETER CERTIFICATION

40 TAC §109.315

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

§109.315. Qualifications and Requirements for Court Certificate.

(a) An applicant who is hearing must meet the following qualifications to become a Board for Evaluation of Interpreters (BEI)-certified court interpreter:

(1) hold at least one BEI certificate at Level III, IV, V, IIIi, IVi, Vi, Advanced, Master, or Oral: Comprehensive; or hold certification from Registry of Interpreters for the Deaf (RID) with a Comprehensive Skills Certificate, Certificate of Interpretation/Certificate of Transliteration, Reverse Skills Certificate, Certified Deaf Interpreter, or Master Comprehensive Skills Certificate, or National Interpreter Certification Advanced or National Interpreter Certification Master;

(2) pass the DARS DHHS-approved court interpreter written test, which may only be taken by applicants who hold one of the certificates listed in paragraph (1) of this subsection; and

(3) pass the court performance test, which may only be taken by applicants who have passed the court interpreter written test.

(b) An applicant who is deaf or hard of hearing, and cannot hear sufficiently to take the performance test, must meet the following qualifications to become a BEI-certified court interpreter:

(1) hold at least one BEI certificate at Level III, IV, V, IIIi, IVi, Vi, Advanced, Master, or Oral: Comprehensive; or hold certification from Registry of Interpreters for the Deaf (RID) with a Comprehensive Skills Certificate, Certificate of Interpretation/Certificate of Transliteration, Reverse Skills Certificate, Certified Deaf Interpreter, or Master Comprehensive Skills Certificate, or National Interpreter Certification Advanced or National Interpreter Certification Master;

(2) have completed the following hours of training and/or mentoring:

(A) a minimum of 12 Continuing Education Units (CEUs), which is the equivalent of 120 clock hours, of DARS-DHHS approved courses of instruction in courtroom interpretation knowledge and skills;

(B) a minimum of 120 hours of actual practice provided by a certified court interpreter who has been approved by DARS DHHS to act as a mentor; or

(C) a combined minimum of 120 hours of instruction and mentoring; and

(3) have passed the court interpreter written test, which may only be taken upon completion and approval by DARS DHHS that the applicant has completed the required training and/or mentoring, as set forth in paragraph (2) of this subsection.

(c) An applicant must provide DARS DHHS with documentary proof that the applicant meets the requirements for testing and for certification.

(d) Applicants who formerly held BEI court certification, but who are ineligible to renew their BEI court certification, must meet all applicable qualifications and requirements of this section.

(e) A military service member or military veteran applicant who is deaf or hard of hearing may satisfy the training requirements in subsection (b)(2) of this section with verified military service, training, or education. This subsection does not apply to a military service member or military veteran applicant who is deaf or hard of hearing

and who holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to the laws applicable to DARS.

(f) A military service member, military veteran, or military spouse applicant will be issued an expedited BEI court interpreter certificate if the applicant [~~spouse~~] holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements in subsections (a) or (b) of this section.

(g) A person with an expired certification must not perform work for which a certification is required under Government Code, Chapter 57.

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 November 2, 2015.

TRD-201504642
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 424-4050

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DIVISION 4. BEI MEDICAL INTERPRETER CERTIFICATION

40 TAC §§109.451, 109.453, 109.457

STATUTORY AUTHORITY

The proposed new rules are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

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

§109.451. Purpose.

The purpose of this division is to set out the administration and general procedures governing the certification of medical interpreters for persons who are deaf or hard of hearing in Texas.

§109.453. Legal Authority.

DARS administers and enforces medical certification under the authority of the Human Resources Code, Chapter 81.

§109.457. Qualifications and Requirements for Medical Certificate.

(a) An applicant for a medical certificate must:

(1) provide proof of holding one of the following prerequisite certificates:

(A) valid Board for Evaluation of Interpreters (BEI) Level III, IV, V, Advanced, or Master certificate; or

(B) valid Registry of Interpreters for the Deaf (RID) Comprehensive Skills Certificate (CSC), Certificate of Interpretation (CI) and Certificate of Transliteration (CT); or

(C) valid National Association of the Deaf-Registry of Interpreters for the Deaf (NAD-RID) National Interpreter Certification (NIC) Advanced, or National Interpreter Certification Master; and

(2) meet the following qualifications and requirements:

(A) satisfy qualifications set forth in §109.217 of this chapter (relating to Qualifications and Requirements for a BEI Certificate);

(B) provide written proof to DARS DHHS that the applicant has completed DARS DHHS-approved courses of instruction in medical interpretation, with at least 80 credit hours;

(C) submit the appropriate application;

(D) pay any required fees; and

(E) pass the Medical Performance Test.

(b) Medical certificate holders must satisfy the annual certificate renewal and five-year recertification requirements for both the prerequisite certificate and the medical certificate. For the medical certificate, 20 clock hours of the continuing education unit requirement for the five-year recertification requirement must be in medical interpretation knowledge and skills.

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 November 2, 2015.

TRD-201504643
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 424-4050

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

DIVISION 1. INVESTIGATIONS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, and 700.481; amendments to §§700.506, 700.507, 700.511, and 700.513; and the repeal of §§700.501, 700.502, 700.503, 700.504, and 700.510 in Chapter 700, Child Protective Services (CPS). The primary purpose of the revisions is to update the rules where they are no longer accurate. Many of the rules in this division have not been revised since the mid-nineties. Other rules need updates to reflect work CPS is currently undertaking to streamline investigations policy and practice to support better case outcomes, or to comply with legislation passed during the

2015 legislative session. Another purpose of the revisions is to further define and update CPS's current abuse and neglect definitions in order to better train CPS staff on investigating reports of abuse and neglect, provide clarification to the public on the meaning of the statutory definitions of abuse and neglect applied by CPS in reaching dispositions, and to eliminate ambiguity in interpreting the statutory definitions and current rules. Except for the four changes discussed below, the overarching aim is to explain and amplify, but not alter, current interpretation and practice. The policy and practice shifts that are included in the rule are:

(1) New §700.459 and §700.461 which provide further clarification concerning the definitions of human trafficking that were added to Texas Family Code §261.001 by SB 24, 82nd Texas Legislature, Regular Session (2011), in order to train caseworkers and inform the public on how CPS investigates reports of labor and sex trafficking involving children.

(2) New §700.455 and §700.465 related to prenatal alcohol and controlled substance exposure which provide clarity on the type of evidence needed to support a "reason to believe" (or confirmed) finding for physical abuse versus the type of evidence needed to support a "reason to believe" (or confirmed) finding for neglect.

(3) New §700.473 regarding dispositioning cases in which DFPS took conservatorship of a child with a severe emotional disturbance in order to obtain mental health care for the child, and the exclusion of a disposition in these types of cases from DFPS's central registry of child abuse and neglect, which is based on a statutory change to Texas Family Code §261.001 and §261.002 from Senate Bill (SB) 1889, 84th Texas Legislature, Regular Session (2015). SB 1889 requires DFPS to adopt rules to prohibit the inclusion in the registry when certain circumstances exist, as described in the proposed rule, and to establish guidelines for reviewing records already in the registry which meet the same criteria.

(4) New §700.475 regarding exposure to domestic violence which relates to implementing clarification on what constitutes abuse and neglect in the context of domestic violence based on recommendations from the report developed by the Task Force to Address the Relationship Between Domestic Violence and Child Abuse and Neglect. HHSC established this Task Force, as directed by SB 434, 82nd Texas Legislature, Regular Session (2011), to develop a report with policy recommendations and comprehensive statewide best practice guidelines for CPS and other entities when investigating cases of abuse and neglect that also involve domestic violence. CPS was a participant in the Task Force and has committed to achieving the agreed-upon recommendations from the Task Force. The rule related to domestic violence restates and implements pertinent guidelines from that effort.

In addition to defining and updating CPS's abuse and neglect definitions, the amendments also seek to update the rules where they are no longer accurate. Many of the rules in the division have not been amended since the mid-nineties. Other rules need updates to reflect work CPS is currently undertaking to streamline investigations policy and practice to support better case outcomes as well as to comply with legislation passed during the 2015 legislative session.

A summary of the proposed rules is as follows:

New §700.451 clarifies that terms and corresponding definitions used within Division 1 of Subchapter E of this chapter (relating to Investigations) augment and further explain existing definitions in Chapter 101 and §261.001 of the Texas Family Code.

New §700.453: (1) reiterates the statutory definitions of emotional abuse from Texas Family Code §261.001(1); (2) defines and clarifies what constitutes "mental and emotional injury" and "observable and material impairment" when CPS investigates reports of emotional abuse; and (3) clarifies when a person's use of a controlled substance will result in a reason to believe finding for emotional abuse due to "mental or emotional injury" to the child caused by the use.

New §700.455: (1) reiterates the statutory definitions of physical abuse from Texas Family Code §261.001(1) and provides definitions and clarifications for terms used in the statutory definitions as well as this rule; (2) further defines and clarifies what constitutes "physical injury that results in substantial harm to the child" and "genuine threat of substantial harm from physical injury" when a child has not necessarily been physically injured; and (3) clarifies when a pregnant woman's use of alcohol or a controlled substance will result in a reason to believe finding for physical abuse of the infant.

New §700.457: (1) reiterates the statutory definitions of sexual abuse from Texas Family Code §261.001(1) and provides definitions and clarification for terms and phrases used in the statutory definitions as well as this rule; and (2) clarifies what constitutes "sexual conduct harmful to a child's mental, emotional or physical welfare" when CPS investigates reports of sexual abuse.

New §700.459: (1) reiterates the statutory definitions of labor trafficking from Texas Family Code §261.001(1); and (2) clarifies what is considered child labor trafficking for purposes of a CPS investigation by expanding upon the core elements of labor trafficking, explaining the factors CPS evaluates to determine if a child is being trafficked for purposes of labor, and elaborating on the types of situations CPS would not consider to be labor trafficking.

New §700.461: (1) reiterates the statutory definitions of sex trafficking from Texas Family Code §261.001(1); and (2) clarifies what is considered child sex trafficking for purposes of a CPS investigation by expanding upon the core elements of sex trafficking and explaining the factors CPS evaluates to determine if a child is being trafficked for purposes of sex.

New §700.463: (1) reiterates the statutory definition of abandonment, a type of neglect, from Texas Family Code §261.001(4); and (2) provides definitions for terms used in this rule as well as in Texas Family Code §261.001(4)(A) to further clarify what constitutes abandonment.

New §700.465: (1) reiterates the statutory definitions of neglectful supervision, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk" to a child when CPS investigates reports of neglectful supervision; and (3) clarifies the factors CPS considers to determine if a pregnant mother's use of alcohol or a controlled substance will result in a reason to believe finding for neglectful supervision because it endangered the physical or emotional well-being of the infant.

New §700.467: (1) reiterates the statutory definition of medical neglect, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk" and "observable and material impairment" to a child when CPS investigates reports of medical neglect; (3) explains the factors CPS considers to determine if a child has been medically ne-

glected; (4) clarifies when CPS does and does not investigate a parent's refusal to administer or consent to psychological or psychiatric treatment or medication for a child; and (5) clarifies that a parent is not responsible for medical neglect if the lack of medical treatment is because of the parent's legitimately held religious belief.

New §700.469: (1) reiterates the statutory definition of physical neglect, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk," "observable and material impairment," and "relief services" when CPS investigates reports of physical neglect; and (3) elaborates on the various factors CPS will consider to determine if a person is responsible for physically neglecting a child.

New §700.471 reiterates the statutory definition of refusal to assume parental responsibility, a type of neglect, from Texas Family Code §261.001(4).

New §700.473: (1) prohibits DFPS from including in the state's central registry a finding of abuse or neglect against a person when DFPS is named managing conservator of the person's child with a severe emotional disturbance only to obtain mental health care for the child, if the person has exhausted all reasonable means available to obtain the needed services; (2) defines "severe emotional disturbance"; both by reference to statute and with guidance for interpreting the definition; (3) outlines the factors DFPS will consider when determining whether a person's refusal to permit a child to remain in or return to the home is based solely on the person's inability to obtain mental health services for the child; and (4) directs DFPS to review records in the central registry and remove the names of persons who were included because DFPS assumed conservatorship of their child solely to provide mental health care to the child.

New §700.475 provides clarification on when victims and perpetrators of domestic violence are investigated as alleged perpetrators of abuse and/or neglect.

New §700.477 defines various terms used in the division that are not already defined elsewhere, as well as terms used in Chapters 101 and 261 of the Texas Family Code. Certain terms and definitions that were previously in rules being repealed have also been incorporated into this new rule.

New §700.479: clarifies (1) the responsibilities of DFPS when reports of child abuse or neglect are received, including when DFPS is able to receive reports; (2) DFPS's role in assisting the public in understanding when to make a report and which protective interventions are available; and (3) how DFPS may respond to reports that do not involve allegations of abuse or neglect or risk of abuse or neglect.

New §700.481 clarifies the types of allegations DFPS *does not* classify as reports of abuse or neglect. Certain terms and definitions that were previously in §700.503 are incorporated into this new rule.

Section 700.501 is repealed. The terms and definitions in this rule have been rewritten and incorporated into new §§700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, and 700.477.

Section 700.502 is repealed. The terms and definitions from this rule have been incorporated into new §700.477, except for terms such as affinity, consanguinity, serious physical abuse, and serious sexual abuse, which have been entirely deleted as they are not used in this division.

Section 700.503 is repealed. The terms and definitions from this rule have been included in new §700.481, except for "reasonable physical discipline" which has been redefined and included in new §700.455. In addition, paragraph (1) of this rule, concerning DFPS's responsibility in assisting the public in understanding what to report and available protective interventions as well as how DFPS handles reports that do not involve child abuse or neglect or risk of abuse or neglect, has been rewritten and incorporated into subsection (b) of new §700.479.

Section 700.504 is repealed and the content is incorporated into subsection (a) of new §700.479.

The amendment to §700.506: (1) deletes the requirement that initial notification of reports of child abuse or neglect be given by DFPS orally or through facsimile and instead allows initial notification to be provided through a manner agreed upon by DFPS and the appropriate law enforcement agency; (2) clarifies that reports submitted electronically are considered written notification for purposes of this rule; and (3) updates the agency name to DFPS.

The amendment to §700.507: (1) reflects that administrative closures are not limited to preliminary investigations; (2) ensures that language used herein concerning who is considered a person responsible for the care of the child as well as language concerning protective actions of a person responsible is consistent with language in policy and safety assessment tools that will be implemented for use by caseworkers to determine when DFPS intervention in the family is necessary; (3) deletes language that is duplicative of other rules within this division; (4) renumbers subsection (c); and (5) updates the agency name.

Section §700.510 is repealed because the information is contained in or has been superseded by §700.507.

The amendment to §700.511 adds new subsection (a) to clarify that DFPS is required to assign a disposition to each allegation and to further clarify the purpose of assigning a disposition to each allegation. As a result, current subsections (a) and (b) have been renumbered. Also, the references to §700.507 have been changed to the correct title. In addition, in new subsection (c), the definition of ruled out was amended to clarify that when allegation dispositions are a mixture of "ruled out" and "administrative closure," the overall disposition will be "ruled out."

The amendment to §700.513: (1) deletes subsection (a)(1)(A) that requires DFPS to notify each alleged victim who was interviewed during an investigation of the results of the investigation. As the rule already requires that notification be given to the person responsible for the care of the child, there is a presumption that the child will be notified of the results through that individual. It would be duplicative to mail a separate notification letter for the child when the child is living with the person responsible for the child; (2) updates the rule to clarify that any person with primary or legal responsibility for the alleged victim, and not just the parent, is entitled to notification of the results of an abuse and neglect investigation; (3) updates the rule to clarify that when an investigation is administratively closed because the report was referred for investigation to another authorized entity, DFPS must not provide notification to anyone; (4) renumbers parts of subsections (a) and (b); and (5) updates the agency name.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules regarding investigations will be updated to reflect current policy and practice, and that the public will gain a better understanding of what constitutes the different types of child abuse and neglect that DFPS investigates, such as emotional abuse, physical abuse, etc., as well as a better understanding of the factors DFPS considers when determining if a child is a victim of a specific type of abuse or neglect. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Sophia Karimjee at (512) 438-4358 in DFPS's Legal Division. Electronic comments may be submitted to *Sophia.Karimjee@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-518, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

40 TAC §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, 700.481, 700.506, 700.507, 700.511, 700.513

The new sections and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendments also implement Texas Family Code §261.001 and §261.002, as amended by SB 1889 in the 84th Texas legislature, and §261.105.

§700.451. What definitions does the Child Protective Services division use in reports and investigations of abuse or neglect?

The Child Protective Services (CPS) division of the Department of Family and Protective Services (DFPS) uses the definitions in the Texas Family Code, including definitions in Chapter 101 and §261.001, Texas Family Code. The definitions in this division augment and clarify CPS's implementation of those definitions in the Texas Family Code. Terms not defined in this division have the meaning given in the Texas Family Code, other law, or their ordinary meaning if not defined in law.

§700.453. What is emotional abuse?

(a) Emotional abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(2) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning; or

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in mental or emotional injury to a child.

(b) In this section, the following terms have the following meanings:

(1) "Mental or emotional injury" means:

(A) That a child of any age experiences significant or serious negative effects on intellectual or psychological development or functioning. The child does not have to experience physical injury or be diagnosed by a medical or mental health professional in order for CPS to determine that the child suffers from a mental or emotional injury.

(B) For purposes of subsection (a)(3) of this section, "mental or emotional injury" resulting from a person's current use of a controlled substance includes a child of any age experiencing interference with normal psychological development, functioning, or emotional or mental stability, as evidenced by an observable and substantial change in behavior, emotional response, or cognition, directly related to the person's current use of a controlled substance.

(2) "Observable and material impairment" means discernible and substantial damage or deterioration to a child's emotional, social, and cognitive development. It may include but is not limited to depression; anxiety; panic attacks; suicide attempts; compulsive and obsessive behaviors; acting out or exhibiting chronic or acute aggressive behavior directed toward self or others; withdrawal from normal routine and relationships; memory lapse; decreased concentration; difficulty or inability to make decisions; or a substantial and observable change in behavior, emotional response, or cognition.

§700.455. What is physical abuse?

(a) Physical abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(2) Failure to make a reasonable effort to prevent an action towards the child by another person that results in physical injury that results in substantial harm to the child;

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical injury to a child; or

(4) Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code.

(b) In this section, the following terms have the following meanings:

(1) "Accident" means an unforeseen, unexpected, or unplanned act or event that occurs unintentionally and causes or threatens physical injury despite exercising the care and diligence that a reasonable and prudent person would exercise under similar circumstances to avoid the risk of injury.

(2) "Genuine threat of substantial harm from physical injury" means declaring or exhibiting the intent or determination to inflict real and significant physical injury or damage to a child. The declaration or exhibition does not require actual physical contact or injury. It includes but is not limited to the following acts or attempt to commit the following acts: choking; suffocating; shaking; hitting a child on the head; hitting, kicking, or punching a child's body parts or organs; throwing a child; throwing an object at a child; stabbing; shooting; or otherwise committing a violent act against a child.

(3) "Guardian" has the same definition as specified in §700.477(d) of this title (relating to What do the following additional terms mean?).

(4) "Managing or possessory conservator" has the same definition as specified in §700.477(f) of this title.

(5) "Parent" has the same definition as specified in §700.477(g) of this title.

(6) "Physical injury that results in substantial harm to the child" means real and significant physical injury or damage to a child that includes but is not limited to:

(A) any of the following, if caused by an action of the alleged perpetrator directed toward the alleged victim: substantial or frequent skin bruising; substantial cuts, welts, lacerations, or pinch marks; skull or other bone fractures; damage to cartilage; brain damage; subdural hematoma; soft tissue swelling; impairment of or injury to any bodily organ or function; any other internal injury otherwise not specified; permanent or temporary disfigurement; burns; scalds; wounds, including puncture wounds; bite marks; causing or permitting a child to consume or inhale a poisonous or noxious substance that has the capacity to interfere with normal physiological functions; exposing a child to dangerous chemicals; starvation; concussions; dislocations; sprains; subjecting a child to Munchausen syndrome by proxy or a fictitious illness by proxy if the incident is confirmed by medical personnel; death; or any other cruel act that causes pain or suffering to the child.

(B) any of the following conditions that occur in an infant under the age of one because of the pregnant mother's use of alcohol or a controlled substance that was not lawfully prescribed by a medical practitioner, was lawfully prescribed as a result of the mother seeking out multiple health care providers as a means of exceeding ordinary dosages, or was not being used in accordance with a lawfully issued prescription, if the mother knew or reasonably should have known she was pregnant:

(i) a physician's written diagnosis of physical manifestations of Fetal Alcohol Syndrome or Fetal Alcohol Effect, which includes Alcohol-Related Birth Defects and Alcohol Related Neurodevelopmental Disorder;

(ii) a physician's written opinion that the newborn was harmed from in utero exposure to alcohol or a controlled substance; or

(iii) a physician's diagnosis of Neonatal Abstinence Syndrome.

(C) any of the following physical injuries to a child of any age caused by a person's use of a controlled substance other than prenatal use: illness; interference with normal physiological functions or motor coordination; or any other physical harm directly related to the person's current use, manufacture, or possession of the controlled substance.

(7) "Reasonable discipline" means discipline that is reasonable in manner and moderate in degree; does not constitute cruelty, reckless behavior, or grossly negligent behavior; and is administered for purposes of restraining or correcting the child. It shall not include an act that is likely to cause or causes injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child; the location of the injury; and the frequency or recurrence of injuries shall be considered when determining whether the discipline is reasonable and moderate.

(8) "...reasonable effort to prevent..." means actions that a person responsible for a child's care, custody, or welfare would have taken to protect a child from abuse the person knew or reasonably should have known was occurring. It is not required for that person to have directly perpetrated the abuse.

(9) "Substantial risk" means a real and significant possibility or likelihood.

§700.457. What is sexual abuse?

(a) Sexual abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under §21.02, Penal Code, indecency with a child under §21.11, Penal Code, sexual assault under §22.011, Penal Code, or aggravated sexual assault under §22.021, Penal Code;

(2) Failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(3) Compelling or encouraging the child to engage in sexual conduct as defined by §43.01, Penal Code, including conduct that constitutes an offense of trafficking of persons under §20A.02(a)(7) or (8), Penal Code, prostitution under §43.02(a)(2), Penal Code, or compelling prostitution under §43.05(a)(2), Penal Code;

(4) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by §43.21, Penal Code, or pornographic;

(5) Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by §43.25, Penal Code.

(b) In this section, the following terms have the following meanings:

(1) "causing, permitting, encouraging, engaging in, or allowing the photographing...." is a condition of the statutory definition of sexual abuse. It is met whether or not the child participates voluntarily.

(2) "compelling or encouraging the child to engage in sexual conduct...." is a condition of the statutory definition of sexual abuse. It is met whether the child actually engages in sexual conduct or simply faces a substantial risk of doing so.

(3) "reasonable effort to prevent...." has the same definition as specified in §700.455(b)(8) of this title (relating to What is physical abuse?).

(4) "Sexual conduct harmful to a child's mental, emotional or physical welfare" includes but is not limited to rape; incest; sodomy; inappropriate touching of the child's anus, breast, or genitals, including touching under or on top of the child's clothing; deliberately exposing one's anus, breast, or any part of the genitals to a child; touching the child in a sexual manner or directing sexual behavior towards the child; showing pornography to a child; encouraging a child to watch or hear sexual acts; compelling, encouraging, or permitting a child to engage in prostitution; watching a child undress, shower, or use the bathroom with the intent to arouse or gratify one's sexual desire; voyeurism; sexually oriented acts, which may or may not include sexual contact or touching with intent to arouse or gratify the sexual desire of any person; and any sexually oriented act or practice that would cause a reasonable child under the same circumstance to feel uncomfortable or intimidated or that results in harm or substantial risk of harm to a child's growth, development, or psychological functioning.

(c) For purposes of subsection (a)(4) of this section, pornographic has the same meaning as specified in §43.26, Penal Code.

§700.459. What is labor trafficking?

(a) Labor trafficking is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under §20A.02(a)(5) or (6), Penal Code; or

(2) The failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under §20A.02(a)(5) or (6), Penal Code.

(b) In this section, the following terms have the following meanings:

(1) "knowingly causing, permitting, encouraging, engaging in, or allowing..." is a condition of the statutory definition of labor trafficking. It is met whether the child actually engages in forced labor or services or simply faces a substantial risk of doing so.

(2) "Labor trafficking" means enticing, recruiting, harboring, transporting, enslaving, or providing to others or obtaining for oneself a child for labor or services through force, fraud, coercion, or exploitation. It involves giving or receiving monetary or nonmonetary remuneration, including the child's services, and a pervasive loss of freedom for the child.

(A) When determining whether a child is a victim of labor trafficking, the Department of Family and Protective Services evaluates the totality of circumstances, including but not limited to evidence that the child is being controlled by threats of deportation or physical or other types of harm to the child or the child's family; evidence of withholding or destroying of the child's legal documents; causing the child or child's family to become indebted to the trafficker; restricting the child's movement, communication, or ability to live a normal life; the detrimental nature of the work to the health, safety, or well-being of the child; or using physical, verbal or sexual intimidation or other types of manipulation to cause the child to feel helpless or in fear of the trafficker.

(B) Labor trafficking does not include normal contribution to family and community life in light of prevailing community standards, such as performing chores inside and outside of the house, being required to work in the family business without pay, working in agriculture or farming as part of the family's business or means of earning a living, or other forms of labor or services specified under §51.003, Labor Code.

(3) "reasonable effort to prevent..." has the same definition as specified in §700.455(b)(8) of this title (relating to What is physical abuse?).

§700.461. What is sex trafficking?

(a) Sex trafficking is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under §20A.02(a)(7) or (8), Penal Code; or

(2) The failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under §20A.02(a)(7) or (8), Penal Code.

(b) In this section, the following terms have the following meanings:

(1) "reasonable effort to prevent..." has the same definition as specified in §700.455(b)(8) of this title (relating to What is physical abuse?).

(2) "Sex trafficking" means enticing, luring, recruiting, harboring, transporting, enslaving, selling, or holding captive a child for sexual conduct specified in §20A.02(a)(7), Penal Code. It involves giving or receiving monetary or nonmonetary remuneration, including the child's sexual services, and a pervasive loss of freedom for the child.

(A) When determining whether a child is a victim of sex trafficking, the Department of Family and Protective Services evaluates the totality of circumstances, including but not limited to evidence that the child is being controlled by threats of deportation or physical or other types of harm to the child or the child's family; evidence of withholding or destroying of the child's legal documents; causing the child or child's family to become indebted to the trafficker; restricting the child's movement, communication, or ability to live a normal life; or using physical, verbal, or other types of intimidation or manipulation to cause the child to feel helpless or in fear of the trafficker.

(B) Sex trafficking does not require force, fraud, or coercion and occurs even if it appears that the child is in agreement with the conduct or the child does not consider herself or himself to be a victim of sex trafficking.

§700.463. What is abandonment?

(a) Abandonment is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes leaving a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child.

(b) In this section, the following terms have the following meanings:

(1) "Guardian" has the same definition as specified in §700.477(d) of this title (relating to What do the following additional terms mean?).

(2) "Managing or possessory conservator" has the same definition as specified in §700.477(f) of this title.

(3) "Parent" has the same definition as specified in §700.477(g) of this title.

(4) "Substantial risk" has the same definition as specified in §700.455(b)(9) of this title (relating to What is physical abuse?).

§700.465. What is neglectful supervision?

(a) Neglectful supervision is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following acts or omissions by a person:

(1) Placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(2) Placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(3) Placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Texas Family Code §261.001(1)(E), (F), (G), (H), or (K) committed against another child.

(b) In this section, the following terms have the following meanings:

(1) Neglectful supervision as defined in subsection (a)(1) of this section excludes an accident. Accident has the same definition as specified in §700.455(b)(1) of this title (relating to What is physical abuse?).

(2) "Substantial risk" has the same definition as specified in §700.455(b)(9) of this title. For purposes of evaluating an allegation of "neglectful supervision", the following factors may be considered when assessing substantial risk:

(A) the child's age;

(B) any arrangements the parents made to ensure the child's safety;

(C) the child's physical condition, psychological functioning, and level of maturity;

(D) any intellectual, physical, or medical disability the child has;

(E) any previous history or patterns of abuse or neglect;

(F) the frequency and duration of similar incidents; and

(G) the overall safety of the child's environment.

(3) In the case of prenatal use of alcohol or a controlled substance that was not lawfully prescribed by a medical practitioner, was lawfully prescribed as a result of the mother seeking out multiple health care providers as a means of exceeding ordinary dosages, or was not being used in accordance with a lawfully issued prescription, the pregnant mother is responsible for neglectful supervision under subsection (a)(1) of this section if:

(A) the mother knew or reasonably should have known she was pregnant; and

(B) it appears that the mother's use endangered the physical and emotional well-being of the infant. It is not necessary that the infant actually suffer injury.

(i) For the limited purpose of this paragraph of this subsection, "endangered" means that the pregnant mother's use exposed the infant to loss or injury or jeopardized the infant's emotional or physical health.

(ii) "Endangered" includes but is not limited to a consideration of the following factors: evidence the mother extensively used alcohol or regularly or extensively used a controlled substance over the course of the pregnancy or in close proximity to the child's expected birth date, evidence that the mother has an alcohol or drug addiction, and evidence that the infant was at a substantial risk of immediate harm from the mother's use of alcohol or a controlled substance.

§700.467. What is medical neglect?

(a) Medical neglect is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child.

(b) In this section, the following terms have the following meanings:

(1) "Substantial risk" has the same definition as specified in §700.455(b)(9) of this title (relating to What is physical abuse?).

(2) For purposes of this section, "observable and material impairment" means discernible and substantial damage or deterioration to the child's health or physical condition, including severe pain or injury, caused by failure to seek medical attention for obvious signs of serious illness, failure to follow the advice of a medical professional, or failure to administer necessary medical care required for a child's specific health condition.

(A) When determining if medical neglect has occurred, the Department of Family and Protective Services will consider the person's pattern of failing or refusing to follow through with medical care, the severity of the condition, any pain the child is experiencing from lack of medical care, the possible impact of non-treatment, and the length of time the condition has persisted.

(B) The mere refusal to administer or consent to the administration of psychotropic medication or consent to any other psychiatric or psychological treatment is not medical neglect if the failure does not result in substantial risk of death, disfigurement, or bodily injury or an observable and material impairment to the child's growth, development, or functioning.

(C) A parent or guardian is not considered negligent for failure to provide a child with specific medical treatment because of a legitimately held religious belief.

§700.469. What is physical neglect?

(a) Physical neglect is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused.

(b) In this section, the following terms have the following meanings:

(1) Evidence of physical neglect may include but is not limited to the following if they endanger the life or health of the child: unsound or decaying walls, ceiling, floors, or stairways; ineffective or faulty heating, cooling, or ventilation systems; inadequate, faulty, or broken plumbing including contaminated water; broken windows, mirrors or other glass; dangerous sleeping arrangements; the existence of dangerous bacteria or germs; nonexistent or ineffective waste disposal; dangerous food storage; fecal contamination or excessive animal feces throughout the house; untreated infestations such as fleas, roaches, or

rodents; significant and uncontrolled mildew and mold; dirt buildup that is likely to cause bacteria and viruses in the dwelling; and hazardous junk material or appliances left unsecured and within easy access to the child.

(2) "...necessary to sustain the life or health of the child...." is a condition of the statutory definition of physical neglect and is met if the failure to provide food, clothing, or shelter results in an observable and material impairment to the child's growth, development, or functioning, or in a substantial risk of such an observable and material impairment. For purposes of this paragraph, the following terms have the following meanings:

(A) "Observable and material impairment" means discernible and substantial damage or deterioration to the child's health or physical condition. It may include but is not limited to malnourishment; sudden or extreme weight loss; serious skin conditions or skin breakdown; serious illness or other serious medical conditions; or any other serious physical harm to the child as a direct result of the physical neglect.

(B) "Substantial risk" has the same definition as specified in §700.455(b)(9) of this title (relating to What is physical abuse?).

(3) "Relief services" means both public and private services, including but not limited to services provided through the government, community agencies, volunteer organizations, relatives, friends, neighbors, etc., that are intended to improve the overall well-being and physical condition of the family. The services must be affordable, reasonable, readily available, and appropriate to meet the needs of the family. Nothing in this subsection shall be interpreted to require that the relief services be provided by Child Protective Services.

§700.471. What is refusal to assume parental responsibility (RAPR)?

RAPR is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

§700.473. How does DFPS disposition cases in which the allegations are based solely on the inability of the person responsible for a child's care, custody, or welfare to obtain mental health services necessary to protect the safety and well-being of the child?

(a) A person responsible for a child's care, custody, or welfare shall not be designated as a perpetrator of abuse or neglect and the person's name shall not be included in the child abuse and neglect central registry described in §702.251 of this title (related to What is the Central Registry?) solely because the person refuses to permit a child to remain in or return to the child's home if:

(1) the child has a severe emotional disturbance;

(2) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(3) the person has exhausted all reasonable means available to the person to obtain the mental health services described above.

(b) In this section, the term severe emotional disturbance means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities as defined in the Texas Family Code §261.001(9). DFPS considers a child to have a severe emotional disturbance when a licensed mental health professional has given the child a mental health diagnosis that:

(1) Is recognized by the current version of the Diagnostic and Statistical Manual of Mental Disorders. Examples of mental health diagnoses that are consistent with severe emotional disturbance include, but are not limited to, Bipolar, Post-Traumatic Stress Disorder, Disruptive Mood Dysregulation Disorder, Conduct Disorder, Depression, Emotionally Disturbed, Mood Disorder, Oppositional Defiant Disorder, Psychotic Disorder, and Reactive Attachment Disorder; and

(2) Results in a severe mental, behavioral, or emotional impairment(s) in functioning such that the child poses a danger to him or herself or others, or a licensed mental health professional has determined the child needs inpatient mental health or residential treatment.

(c) When determining whether the person's refusal to permit a child to remain in or return to the child's home was based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child and whether the person exhausted all reasonable means available to obtain mental health services and prevent the removal of the child, DFPS will consider factors including, but not limited to, the following:

(1) the reasons the person was unable to access appropriate mental health treatment to meet the child's needs, such as the family's financial resources, the lack of appropriate services available in the community, or other reasons.

(2) whether the person followed recommendations of the mental health professionals who have treated the child, including complying with recommendations about actions the person responsible for the care, custody and control of the child needs to take, or, if in disagreement with a professional, whether the person discussed with the professional concerns regarding recommendations, or sought out other mental health professionals for assistance or treatment, to the extent reasonable and practicable.

(3) whether the present need for mental health services is necessary to protect the safety and well-being of the child unrelated to any recent incident of abuse or neglect.

(d) DFPS shall review records in the central registry and remove the names of persons who were included in the central registry when the department was named managing conservator of a child with a severe emotional disturbance solely for those persons to obtain mental health services for the child.

§700.475. When is a person who is responsible for a child's care, custody, or welfare considered an alleged perpetrator of emotional abuse, physical abuse, or neglectful supervision in a case of domestic violence?

(a) A person responsible for a child's care, custody, or welfare who is a victim of domestic violence ("victim of domestic violence") is not considered an alleged perpetrator of abuse or neglect solely because the domestic violence was committed in close physical proximity to the child. If a child is at risk of bodily injury or substantial risk of physical, mental, or emotional harm due solely to the violence committed against the victim of domestic violence, the victim of domestic violence is considered an alleged perpetrator of abuse or neglect for failing to remove the child from that risk of harm only if, after considering the totality of the circumstances, it is determined that the victim of domestic violence failed to take advantage of services or supports that would have protected the child and that were known to the victim and reasonably available in the past or made available during the course of the investigation.

(b) A person responsible for a child's care, custody, or welfare who is a perpetrator of domestic violence will be considered an alleged

perpetrator of abuse or neglect if that individual engages in conduct that is described by any of the definitions of abuse or neglect in this division. In particular, the perpetrator of domestic violence may be an alleged perpetrator of neglect if the alleged perpetrator commits the act in such close physical proximity to the child that the child's location and the alleged perpetrator's level of violence reasonably places the child at risk of bodily injury or substantial risk of immediate harm.

(c) In this section, "substantial risk" has the same definition as specified in §700.455(b)(9) of this title (relating to What is physical abuse?).

§700.477. What do the following additional terms mean?

(a) "Absent parent" or "non-custodial parent" means a parent who is not primarily responsible for the child's care because of a divorce, separation, incarceration, or for some other reason.

(b) "Child safety" means the absence of safety threats or that any identified safety threats to the child are controlled.

(c) "Day" means a calendar day.

(d) "Guardian" means anyone named as "guardian of the person of a child" by a probate court order.

(e) "Household" means:

(1) a unit composed of persons living together in the same dwelling, whether or not they are related to each other, when the dwelling consists of:

(A) the child's family's household;

(B) a household in which the parent has arranged for or authorized placement of the child; or

(C) a household in which the child is legally placed by a parent or a court.

(2) During the receipt and investigation of reports of child abuse and neglect, Child Protective Services treats an unrelated person who resides elsewhere or whose place of residence cannot be determined as a member of the household if the person is at least 10 years old and either:

(A) has regular free access to the household; or

(B) when in the household dwelling, takes care of or assumes responsibility for children in the household.

(f) "Managing or possessory conservator" means a person legally responsible for a child as the result of a court order.

(g) "Parent" means the mother, a man presumed to be the biological father or who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father. The term does not include a parent as to whom the parent-child relationship has been terminated.

(h) "Risk factors" means elements of individual and family functioning that may place a child at risk of abuse or neglect.

(i) "Risk of child abuse or neglect" means a reasonable likelihood that in the foreseeable future there will be an occurrence of child abuse or neglect as defined in the Texas Family Code (TFC), §261.001. Because the type of risk defined here does not appear in TFC, §261.001, it does not constitute abuse or neglect. However, the presence of risk, as defined here, does qualify children and families to receive protective services as specified in §700.311(a)(1) of this title (relating to Eligible Individuals).

(j) "Strengths" means elements of individual and family functioning that enhance the ability of an individual or a family to protect a child from abuse or neglect.

(k) "Substantial harm" means real and significant physical injury or damage to a child.

§700.479. What are the responsibilities of the Department of Family and Protective Services (DFPS) in receiving reports of child abuse or neglect?

(a) DFPS must provide for receipt of reports of child abuse or neglect 24 hours a day, seven days a week.

(b) DFPS must assist the public in understanding what to report and which protective interventions are available in response. If a report clearly does not involve child abuse or neglect or risk of abuse or neglect, DFPS may provide information and refer the reporter to other community services to help the child and family.

§700.481. Are there certain allegations the Department of Family and Protective Services does not classify as reports of abuse or neglect?

(a) Reports about the following types of circumstances are not classified as allegations of abuse or neglect or risk of abuse or neglect:

(1) Truancy. Voluntary absence from school without a valid excuse.

(2) Runaway. A child who is voluntarily absent from the home without the consent of the parent or guardian.

(3) Children in need of supervision (CHINS). Children from ages 10 to 17 who are before a juvenile court for offenses under the Texas Family Code, §51.03(b).

(4) Latch-key children. School-age children left unattended part of the day, whose parents have taken appropriate precautions to assure the children's safety.

(5) Harmful or violent children. Children who harm or commit violent acts against other children, but are not members of the alleged victim's family or household, and who are not themselves abused or neglected.

(b) Notwithstanding subsection (a) of this section, if there are allegations in the report that otherwise meet the definition of "abuse" or "neglect," those allegations may be investigated in accordance with this subchapter.

§700.506. Notification of Law Enforcement Agencies.

The Texas Department of Family and Protective Services (DFPS) [~~The Texas Department of Protective and Regulatory Services (TDPRS)~~] must notify appropriate law enforcement agencies of reports of child abuse or neglect within the following time frames:

(1) DFPS [~~TDPRS~~] must give notice within 24 hours of receiving a priority I report, a sexual abuse report, or a report alleging abuse or neglect in a public or private school. The initial notification may be provided using a method that is mutually agreed upon between DFPS and the law enforcement agency [~~given orally or by facsimile~~]. This deadline applies even if subsequent information shows that the report is unfounded or does not qualify for priority I treatment. DFPS [~~TDPRS~~] must follow up an initial oral notification with written notification within three days after receiving the report.

(2) DFPS [~~TDPRS~~] must send written notification of all other reports within three days of receiving them. [~~Facsimile generated reports are considered written notification.~~]

(3) Reports submitted electronically are considered written notification for purposes of this section.

§700.507. Response to Allegations of Abuse or Neglect.

(a) Response to allegations of abuse or neglect. When the Department of Family and Protective Services (DFPS) receives an intake report of alleged abuse or neglect of a child that initially appears to be subject to investigation by DFPS, DFPS staff may respond with any of the following protective interventions, as further described in this section:

(1) (No change.)

(2) administrative closure [~~following a preliminary investigation~~];

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

(b) (No change.)

(c) Administrative closure [~~Preliminary investigation resulting in administrative closure~~].

[~~(1)~~] Under certain circumstances, a report which was initially assigned for investigation may be closed administratively as a result of additional information, indicating that an investigation by DFPS is no longer warranted. Criteria DFPS considers when deciding to administratively close an investigation case include, but are not limited to, situations in which [~~where a preliminary investigation reveals that~~]:

(1) [~~(A)~~] the allegations have already been investigated by DFPS;

(2) [~~(B)~~] DFPS does not have jurisdiction to conduct the investigation because:

(A) [~~(i)~~] another authorized entity, such as law enforcement or another state agency, has jurisdiction to conduct the investigation;

(B) [~~(ii)~~] the alleged victim is not a child or was not born alive;

(C) [~~(iii)~~] the abuse or neglect, a safety threat, or risk of abuse or neglect is not occurring in Texas; or

(D) [~~(iv)~~] the investigation was initiated on the basis of an anonymous report and after completing any necessary initial tasks, including any required interviews or collateral contacts [~~making initial, credible collateral contacts~~], the investigator determines DFPS lacks corroborating evidence; or

(3) [~~(C)~~] as a result of new or additional information obtained from initial, credible contacts, the investigator determines that:

(A) [~~(i)~~] the allegations of abuse or neglect or risk thereof are refuted; or

(B) [~~(ii)~~] the children in the family appear to be safe from abuse and neglect or the risk thereof.

[~~(2) DFPS staff must give all allegations the disposition of administrative closure if the case will be closed administratively.~~]

(d) Abbreviated investigation with a disposition of "ruled out." Cases assigned for investigation may be handled with an abbreviated investigation with findings of "ruled out," when DFPS staff have determined that no abuse or neglect has occurred and that it is unlikely that any abuse or neglect will occur in the foreseeable future. Before closing an abbreviated investigation, staff must at a minimum perform the following tasks:

(1) (No change.)

(2) interview at least one parent or other person with primary or legal responsibility for the [~~of the~~] victim child; and

(3) complete a safety assessment and document whether any noted safety threats are controlled by [~~the~~] protective actions that have been or will be taken by [~~capacities of~~] the child's parent or other person with primary or legal responsibility for the child [~~parents~~].

(e) Thorough investigation.

(1) (No change.)

(2) Before closing a thorough investigation, staff must at a minimum perform the following tasks:

(A) (No change.)

(B) interview at least one of the parents or other person with primary or legal responsibility for the [~~of the alleged~~] victim child;

(C) - (D) (No change.)

(E) complete a safety assessment and document whether any noted safety threats are controlled by [~~the~~] protective actions that have been or will be taken by [~~capacities of~~] the child's parent [~~parents~~] or other person with primary or legal responsibility for the child, unless the investigation relates to a deceased child and there is no other child in the home; and

(F) (No change.)

(f) - (g) (No change.)

§700.511. Disposition of the Allegations of Abuse or Neglect.

(a) Allegation disposition. At the end of the investigation, staff must assign a disposition to each allegation identified for the investigation in order to:

(1) specify their conclusions about the occurrence of abuse or neglect;

(2) derive the overall disposition for the investigation; and

(3) derive the overall role for each person with respect to the abuse or neglect that was investigated.

(b) Meaning of allegation disposition. The meaning of allegation dispositions are:

[~~(a) Allegation dispositions. An allegation disposition is the finding made in the investigation about each individual allegation of abuse/neglect which was identified at intake or during the investigation.~~]

(1) Reason-to-believe. Based on a preponderance of the evidence, staff conclude that abuse or neglect has occurred.

(2) Ruled-out. Staff determine, based on available information that it is reasonable to conclude that the abuse or neglect has not occurred.

(3) Unable to complete. Staff could not draw a conclusion whether alleged abuse or neglect occurred, because the family:

(A) could not be located to begin the investigation or moved and could not be located to finish the investigation; or

(B) was unwilling to cooperate with the investigation.

(4) Unable-to-determine. Staff conclude that none of the dispositions specified in paragraphs (1) - (3) of this subsection is appropriate.

(5) Administrative closure. Information received after a case was assigned for investigation reveals that continued Child Protective Services intervention is unwarranted as outlined in §700.507 of this title (relating to Response to Allegations of Abuse or Neglect [~~Investigation Interviews~~]).

(c) [~~(b)~~] Overall disposition. The overall investigation disposition is the summary finding about the abuse or neglect that was investigated. The overall disposition is derived from the individual allegation dispositions in the following manner:

(1) Reason-to-believe. If any allegation disposition is "reason-to-believe," the overall case disposition is "reason-to-believe."

(2) Ruled out. If all allegation dispositions are "ruled out[~~,~~]" or are a mixture of "ruled out" and "administrative closure," the overall case disposition is "ruled out."

(3) Unable to complete. If any allegation disposition is "unable to complete" and no allegation disposition is "reason-to-believe" or "unable to determine," the overall investigation disposition is "unable to complete."

(4) Unable to determine. If any allegation disposition is "unable to determine" and no allegation disposition is "reason to believe," the overall case disposition is "unable to determine."

(5) Administrative closure. Decisions with regard to administrative closure are made at the case level as specified in §700.507 of this title [~~(relating to Investigation Interviews)~~]. Therefore, all allegations must be disposed of by indicating that administrative closure has been selected. If any one allegation meets criteria for allegation dispositions as specified in paragraphs (1) - (4) of this subsection, a case is not eligible for administrative closure.

§700.513. Notification about Results.

(a) Required notification in abbreviated ruled out and thorough investigations.

(1) Who must be notified. The Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] must notify the following parties about the findings of an abbreviated ruled out or thorough investigation unless one of the exceptions specified in subsection (d) of this section apply:

[~~(A) each alleged victim who was interviewed during the investigation;~~]

(A) [~~(B)~~] each parent or other person with primary or legal responsibility for each alleged victim or alleged perpetrator who is a minor [~~custodial parent of each alleged victim~~];

[~~(C) each non-custodial parent of each alleged victim;~~]

[~~(D) each legal guardian, if one has been appointed, of each alleged victim;~~]

(B) [~~(E)~~] each person identified as an alleged perpetrator; and

(C) [~~(F)~~] the person who reported the alleged abuse or neglect, if the person's [~~his~~] identity is known.

(2) Time frame for providing notice. DFPS [~~TDPRS~~] must provide notice to the persons specified in paragraph (1) of this subsection within 15 days after the investigation is closed by the supervisor.

(b) Required notification in administratively closed investigations.

(1) Who must be notified. DFPS [~~TDPRS~~] must notify the following parties about the findings of an investigation that was closed administratively, unless one of the exceptions specified in subsection (d) of this section apply:

(A) each parent or other person with primary or legal responsibility for each alleged victim or alleged perpetrator who is a minor; and [~~custodial parent of each alleged victim;~~]

[~~(B) each non-custodial parent of each alleged victim;~~]

[~~(C) each legal guardian, if one has been reported, of each alleged victim;~~]

(B) [~~(D)~~] the person who reported the alleged abuse or neglect, if the person's [~~his~~] identity is known.

(2) Time frame for providing notice. DFPS [~~TDPRS~~] must provide notice to the parents or other person with primary or legal responsibility for each alleged victim or alleged perpetrator who is a minor [~~and guardian specified in paragraph (1) of this subsection~~] no later than 24 hours after the investigation is closed by the supervisor or to the reporter within 15 days.

(c) Optional provision of investigation findings upon request. DFPS [~~TDPRS~~] may provide information about the investigation to each parent or other person with primary or legal responsibility for [~~the custodial and non-custodial parents and legal guardian of~~] any child in the home under investigation, at the [~~parent's or guardian's~~] request of the parent or person with primary or legal responsibility of the child, unless one of the exceptions specified in subsection (d) of this section exists. Staff may provide information from the investigation to the extent deemed necessary by DFPS [~~TDPRS~~] for the protection and care of the child when such information is necessary to meet the child's needs. Exception: Staff may not release information that is subject to redaction under §700.204 of this title (relating to Redaction of Records Prior to Release.)

(d) Exceptions to providing notification.

(1) Unable to locate. During the investigation, DFPS [~~TDPRS~~] was unable to locate the person entitled to notification despite having made reasonable efforts to locate the person.

(2) Safety exception. Notwithstanding requirements to notify certain persons of investigation results, DFPS [~~TDPRS~~] shall not provide the notice when DFPS [~~TDPRS~~] determines that the notice is likely to endanger the safety of any child in the home, the reporter, or any other person who participated in the investigation of the report. This safety exception does not apply to a designated perpetrator [~~or designated victim perpetrator~~] entitled to receive notice under subsection (f) of this section, or to a former alleged perpetrator entitled to receive notice under subsection (g) of this section.

(3) Law enforcement exception. DFPS [~~TDPRS~~] may delay notification of a person entitled to notification under this section if a law enforcement agency requests the delay because timely notification would interfere with an ongoing criminal investigation. DFPS [~~TDPRS~~] may delay notification only in those circumstances in which the law enforcement agency agrees to notify DFPS [~~TDPRS~~] at the earliest time that the delay is no longer needed. DFPS [~~TDPRS~~] must provide the notification within 15 days after the date on which DFPS [~~TDPRS~~] is notified that the law enforcement agency has withdrawn the request to delay the notification.

(4) Administrative closure exception. DFPS [~~TDPRS~~] must not provide required notifications or optional information about findings to anyone [~~parents and the guardian~~] if a Child Protective Services (CPS) investigation is being closed administratively because the report was referred for investigation to another authorized entity [~~entry~~], such as law enforcement or another state agency.

(e) Form of notification. DFPS's [~~TDPRS's~~] notifications about the findings of an investigation may be either written or oral, except the notifications in paragraphs (1) - (2) of this subsection must be provided in writing:

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

(f) Required written notification of the designated perpetrator [~~or designated victim/perpetrator~~]. DFPS [~~TDPRS~~] must give written notice of the findings of the investigation to everyone who has been identified as a designated perpetrator [~~or designated victim/perpetrator~~] as specified in §700.512(b)(1) of this title (relating to Conclusions about Roles). For a designated perpetrator who is a minor [~~victim/perpetrator~~], the notice is sent to the child's parents or other person with primary or legal responsibility for the child.

(g) Required written notification of an alleged perpetrator when all allegations involving the person as an alleged perpetrator have been ruled out. DFPS [~~TDPRS~~] must give written notice of the right to request removal of role information to each person who was identified as an alleged perpetrator when all the allegations in the case involving the person as an alleged perpetrator have been ruled out. For a person fitting this category who is a minor, the notice may be sent to the minor's parents.

(h) Notifying the reporter. If the person who reported the alleged abuse or neglect is not a professional working with the family, DFPS's [~~TDPRS's~~] notification to the reporter discloses only:

(1) that DFPS [~~TDPRS~~] investigated the report; and

(2) whether DFPS [~~TDPRS~~] provided services to the family during the investigation or plans to provide services to the family after the investigation.

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

Filed with the Office of the Secretary of State on October 26, 2015.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 438-4358

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40 TAC §§700.501 - 700.504, 700.510

(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 Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Family Code §261.001 and Texas Government Code §411.114.

§700.501. Terminology Used in Statutory Definitions of Child Abuse and Neglect and Person Responsible for a Child's Care, Custody, or Welfare.
§700.502. Definitions.
§700.503. Response to Reports That Do Not Allege Abuse or Neglect.
§700.504. Availability of Intake Services.
§700.510. Completion of the Investigation and 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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SUBCHAPTER L. PERMANENCY PLANNING

40 TAC §700.1210, §700.1212

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.1210 and §700.1212, concerning what is a permanency planning meeting and when should a permanency planning meeting be held, in Chapter 700, Child Protective Services. Senate Bill (SB) 206, enacted during the 84th Regular Session of the Texas Legislature, made many changes to Texas law in order to improve casework, streamline and clarify DFPS' statute, and give the agency flexibility to implement changes in progress through CPS Transformation. SB 206 repealed certain prescriptive statutes in order to allow DFPS and its external partners to implement best practice amid changing circumstances and current business need. Of relevance to this rule, the Legislature repealed portions of §263.009 of the Texas Family Code, which went into relatively extensive detail regarding the frequency and conduct of permanency planning meetings for children in the conservatorship of the agency. Permanency planning meetings are multi-disciplinary gatherings that target the achievement of a permanent exit from DFPS' conservatorship. Prior to being amended by SB 206, §263.009 repeated verbatim DFPS policy regarding the frequency of permanency planning meetings. Rather than continue at the same level of prescriptiveness, the legislature directed the Executive Commissioner, on DFPS' behalf, to adopt in rule a schedule for the meetings "that is designed to allow the child to exit the managing conservatorship of the department safely and as soon as possible and be placed with an appropriate adult caregiver who will permanently assume legal responsibility for the child."

DFPS worked with stakeholders to develop a rule that reflects events or trigger points that would generally make a permanency planning meeting appropriate. Rather than adopting a schedule that would cause staff to "work to deadline" rather than the ultimate goals of the case, the rule recognizes events that may necessitate a permanency planning meeting--while also recognizing that DFPS must implement the law within existing agency resources.

New §700.1210: (1) defines "permanency planning meeting"; (2) specifies the purposes of the meetings, which is ultimately to

identify the child's permanency goal and determine what is necessary to achieving it; (3) clarifies that except as otherwise permitted in law, a child's goal should involve a permanently responsible person or family; and (4) reiterates that permanency planning meetings are governed by §263.009, Texas Family Code.

New §700.1212 provides that, to the greatest extent possible, permanency planning meetings should be conducted as necessary to achieve safe and timely permanency, including at the following points: (1) to develop the initial family plan of service and initial visitation plan; (2) prior to scheduled permanency hearings; (3) following a significant update to the child's permanency goal; and (4) following a final order and as necessary for a youth who is 16 or over and has a permanency goal of another planned permanent living arrangement (which does not involve a legally responsible person or family).

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that DFPS has clarified the goals and timing of the permanency planning process in a fashion that affords sufficient flexibility to adjust for current understanding of best practice. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Jenny Hinson at (512) 438-3238 in DFPS's Child Protective Services Division. Electronic comments may be submitted to *Marianne.Mcdonald@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-531, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement §263.009 of the Texas Family Code, as amended by SB 206, 84th Texas Legislature.

§700.1210. What is a permanency planning meeting?

(a) A permanency planning meeting is a multi-disciplinary meeting that involves and takes into account the input of the persons and entities involved in a child's case, including those listed in §263.0021(b), Texas Family Code.

(b) The purpose of a permanency planning meeting is to:

(1) identify a child's permanency goal;

(2) identify any barriers to achieving the child's permanency goal; and

(3) develop strategies and determine actions to achieve the child's permanency goal.

(c) Except as otherwise provided in federal and state law, a child's permanency goal should involve the child's timely exit from the managing conservatorship of DFPS to the home of an individual or family who assumes permanent legal, cultural, familial, and other responsibility for the child;

(d) A permanency planning meeting is conducted in accordance with §263.009, Texas Family Code.

§700.1212. When should a permanency planning meeting be held?

Permanency planning meetings should be held, to the greatest extent possible, whenever it is appropriate to achieving the goal of a child's safe and timely exit from DFPS' managing conservatorship in accordance with §700.1201 of this title (relating to What is the permanency planning process?), including:

(1) To develop the initial family plan of service and initial visitation plan;

(2) Prior to scheduled permanency hearings;

(3) Following a significant update to the child's permanency goal; and

(4) As soon as possible after rendition of a final order naming DFPS the permanent managing conservator of a youth over the age of 16 whose permanency goal is another planned permanent living arrangement and as frequently as possible thereafter if it is determined that progress is not being made toward achieving permanency for the youth.

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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Trevor Woodruff
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CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.273, 745.351, 745.8605, 745.8933, and 745.8951; the repeal of §745.8920 and §745.9015; and new §§745.9025 - 745.9029 in Chapter 745, concerning Licensing. The purpose of the amendments, repeals and new sections is to implement Senate Bills (SB) 1307 and 807 and House Bill (HB) 2070 that were passed by the 84th Texas Legislature in 2015.

Licensing is amending Subchapters D, Application Process; L, Remedial Actions; and N, Administrator Licensing, to clarify that a general residential operation that applies to provide trafficking victim services is exempt from any public notice and hearing requirements (in accordance with HB 2070, which added Human Resources Code (HRC), §42.0462), including: (1) requiring a general residential operation that is exempt from the public notice and hearing requirements during the application process to begin providing trafficking victim services during the initial permit period before being eligible for a full permit; and (2) allowing remedial action to be taken against a general residential operation if the operation was exempt from the public notice and hearing requirements during the application process, but the operation never provides or ceases to provide trafficking victim services. (Remedial action would not be necessary if the operation surrendered its permit or withdrew its application, as applicable, so that it could satisfy the public hearing requirements that apply to operations that do not provide trafficking victim services.)

Licensing is repealing definitions in Subchapter A, Precedence and Definitions, and rules in Subchapter N that relate to applicants for an administrator's license who have a military background, which includes military members, military veterans, and military spouses; and proposing a new Division 5 in Subchapter N, Military Members, Military Spouses, and Military Veterans, so that all rules relating to applicants for an administrator's license who have a military background are in one place. The new sections will (in accordance with SB 1307 and SB 807, which amended Chapter 55 of the Occupations Code) do the following: (1) redefine "military member," "military veteran", and "military spouse"; (2) require DFPS to waive examination and application fees for an applicant who is a military member, military veteran, or military spouse whose military service, training, or education generally meets all of the requirements for the license or who presently holds a license in another jurisdiction with requirements that are substantially equivalent to those in Texas; (3) exempt military members, including those living in Texas, from a penalty for failing to renew a license in a timely manner because the individual was serving as a military member; (4) give military members two additional years to complete the renewal requirements for an administrator's license; (5) provide a military member or military veteran an alternative licensing application process for an administrator's license; and (6) provide a military member, military veteran, or military spouse an expedited licensing application process for an administrator's license.

A summary of the changes follows:

Section 745.21 is amended to remove the definitions of persons with a military background so that those definitions can be placed in a new Division 5 in Subchapter N.

Section 745.273 is amended to exempt a general residential operation that applies to provide trafficking victim services from having to comply with public notice and hearing requirements. HRC §42.0462 (added by HB 2070) provides this exemption.

Section 745.351 is amended to require a general residential operation with an exemption from public notice and hearing requirements to provide trafficking victim services during the initial permit period before it is eligible for a full permit.

Section 745.8605 is amended to allow remedial action to be taken against a general residential operation if the operation was exempt from the public notice and hearing requirements during the application process and trafficking victim services were never provided or are no longer being provided.

Section 745.8920 is repealed because the content of the rule is being moved to §745.9026 in new Division 5 in Subchapter N.

Section 745.8933 is amended to delete the content in this rule that pertains to applicants for an administrator's license with a military background and moved to §745.9027 in new Division 5 in Subchapter N.

Section 745.8951 is amended to delete the content in this rule that pertains to applicants for an administrator's license with a military background because the content is being moved to §745.9028 in new Division 5 in Subchapter N.

§745.9015 is repealed because the content of the rule is being moved to §745.9029 in new Division 5 in Subchapter N.

New §745.9025 defines a "military member," "military spouse," and "military veteran" to be consistent with Occupations Code §55.001 as amended by SB 1307.

New §745.9026 incorporates content from §745.8920, which is being repealed. In accordance with Occupations Code §55.004 and §55.009 (as amended by SB 807), this rule also: (1) provides a military member or military veteran an alternative licensing application process for an administrator's license; and (2) waives examination and application fees for an applicant who is a military member, military veteran, or military spouse whose military service, training, or education generally meets all of the requirements for the license or who presently holds a license in another jurisdiction with requirements that are substantially equivalent to those in Texas.

New §745.9027 incorporates and slightly modifies the content from current §745.8933 to provide consistency in the type of documentation a military member, military veteran, or military spouse would need to submit in order to receive special consideration during the application process.

New §745.9028 incorporates content from current §745.8951 that expedites the application process for military spouses. This rule also expedites the application process for all military members and military veterans to be consistent with Occupations Code §55.005 as amended by SB 1307.

New §745.9029 incorporates content from §745.9015, which is being repealed. In accordance with Occupations Code §55.002 and §55.003 (as amended by SB 1307), this rule also: (1) exempts military members, including those living in Texas, from a penalty for failing to renew an administrator's license in a timely manner because the individual was serving as a military member; and (2) gives military members two additional years of time to complete the renewal requirements for an administrator's license.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments, new section, and repeals will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the amendments, new sections, and repeals are in effect the public benefit anticipated as a result of enforcing the amendments, new section, and repeals will be that DFPS will be in compliance with Occupation Code, Chapter 55 and HRC, §42.0462. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to com-

ply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments, new sections, and repeals.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to *Marianne.Mcdonald@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-530, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

§745.21. What do the following words and terms mean when used in this chapter?

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

(1) - (24) (No change.)

[~~(25) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.~~]

[~~(26) Military spouse--A person married to a military service member who is currently on active duty.~~]

[~~(27) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.~~]

(25) [~~(28)~~] Minimum standards--The rules contained in Chapter 743 of this title (relating to Minimum Standards for Shelter Care), Chapter 744 of this title (relating to Minimum Standards for School-Age and Before or After-School Programs), Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers), Chapter 747 of this title (relating to Minimum Standards for Child-Care Homes), Chapter 748 of this title (relating to Minimum Standards for General Residential Operations), Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies), Chapter 750 of this title (relating to Minimum Standards for Independent Foster Homes), and Subchapter D, Division 11 of this chapter (relating to Employer-Based Child Care), which are minimum requirements for permit holders that are enforced by DFPS to protect the health, safety and well-being of children.

(26) [~~(29)~~] Neglect--As defined in the Texas Family Code, §261.401(3) (relating to Agency Investigation) and §745.8559 of this title (relating to What is neglect?).

(27) [~~(30)~~] Operation--A person or entity offering a program that may be subject to Licensing's regulation. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, or employer-based child care.

(28) [~~(31)~~] Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(29) [~~(32)~~] Permit--A license, certification, registration, listing, compliance certificate, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, or employer-based child care. This also includes an administrator's license.

(30) [~~(33)~~] Permit holder--The person or entity granted the permit.

(31) [~~(34)~~] Pre-kindergarten age--As defined in §745.101(2) of this title (relating to What words must I know to understand this subchapter?).

(32) [~~(35)~~] Program--Activities and services provided by an operation.

(33) [~~(36)~~] Regulation--The enforcement of statutes and the development and enforcement of rules, including minimum standards. Regulation includes the licensing, certifying (both state run and employer-based operations), registering, and listing of an operation or the licensing of an administrator.

(34) [~~(37)~~] Report--An expression of dissatisfaction or concern about an operation, made known to DFPS staff, that alleges a possible violation of minimum standards or the law and involves risk to a child/children in care.

(35) [~~(38)~~] Residential child care--As defined in §745.35 of this title (relating to What is residential child care?).

(36) [~~(39)~~] State Office of Administrative Hearings (SOAH)--See §745.8831 and §745.8833 of this title (relating to What is a due process hearing? and What is the purpose of a due process hearing?).

(37) [~~(40)~~] Sustained perpetrator--See §745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

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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Trevor Woodruff
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SUBCHAPTER D. APPLICATION PROCESS
DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD-CARE OPERATIONS

40 TAC §745.273

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rulemaking authority for Chapter 42, HRC.

§745.273. Which residential child-care operations must meet the public notice and hearing requirements?

(a) (No change.)

(b) Except as specified in subsection (c) of this section, all general [~~All other~~] residential [~~child-care~~] operations applying for a permit to operate or requesting to amend their license to increase capacity must meet the public notice and hearing requirements if they are located in a county with a population of less than 300,000.

(c) A general residential operation that applies to provide services under Chapter 748, Subchapter V of this title (relating to Additional Requirements for Operations that Provide Trafficking Victim Services) is exempt from any public notice and hearing requirements in subsection (b) of this section. Notwithstanding the exemption provided in this subsection, if the operation never provides or ceases to provide trafficking victim services, then the operation must meet the public notice and hearing requirements. In order to meet public notice and hearing requirements, the operation may need to surrender its permit or withdraw its application, as applicable, and reapply.

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

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DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §745.351

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rulemaking authority for Chapter 42, HRC.

§745.351. If I have an initial permit, when will I be eligible for a non-expiring permit?

You will be eligible for a non-expiring permit when:

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

(3) A general residential operation that is exempt from the hearing and notice requirements at §745.273(c) of this title (relating to Which residential child-care operations must meet the public notice and hearing requirements?) begins providing trafficking victim services;

(4) [~~(3)~~] The Licensing staff has made three inspections, unless supervisory approval is obtained to make fewer visits; and

(5) [~~(4)~~] You have paid your non-expiring license fee.

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 L. REMEDIAL ACTIONS
DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

40 TAC §745.8605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rulemaking authority for Chapter 42, HRC.

§745.8605. When can Licensing take remedial action against me?

We can impose a remedial action any time we find one of the following:

(1) - (23) (No change.)

(24) A failure to pay an administrative penalty under Human Resources Code, §42.078; [~~or~~]

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation; or[~~.~~]

(26) During the application process you were exempt from the public notice and hearing requirements by §745.273(c) of this title (relating to Which residential child-care operations must meet the public notice and hearing requirements?), but you never provide or cease to provide trafficking victim services and do not meet the public notice and hearing requirements.

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

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SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

40 TAC §745.8920

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

§745.8920. What special considerations can Licensing give to a military spouse, military service member, or military veteran who applies for an administrator's license?

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

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DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §745.8933

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

§745.8933. What must a complete application to become a licensed administrator include?

(a) (No change.)

(b) A complete application submitted [~~by a military spouse requesting expedited licensure under §745.8951(b) of this title (relating to What happens after Licensing receives my application materials and fees?) or~~] by any applicant who applies for an administrator's license under §745.8913(a) of this title (relating to Can my licensure in another state qualify me for an administrator's license?) must also include, as applicable:

[~~(1) Documentation demonstrating status as a military spouse;~~]

(1) [~~(2)~~] Documentation related to each administrator's license currently held outside of Texas; and

(2) [~~(3)~~] A copy of the regulations pertaining to the current out-of-state administrator's license.

[~~(c) A complete application from a military spouse, military service member, or military veteran requesting special consideration as~~

provided under §745.8920 of this title (relating to What special considerations can Licensing give to a military spouse, military service member, or military veteran who applies for an administrator's license?) must also include, as applicable:]

[(1) Documentation demonstrating status as a military spouse, military service member, or military veteran;]

[(2) Documentation related to an administrator's license or any other professional or occupational license currently held outside of Texas; and]

[(3) Any additional documentation requested by us to determine whether you:]

[(A) Meet a licensing requirement through some alternative method; or]

[(B) Have prior military service, training, or education that may be credited towards a licensing requirement.]

(c) [(d)] Your application is incomplete if you fail to complete any requirement of this section, as applicable, including inadequate documentation of your qualifications.

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

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DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §745.8951

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

§745.8951. What happens after Licensing receives my application materials and fees?

[(a)] Within 21 days of our receipt of your application materials and fees, we will notify you in writing of one of the following:

(1) We have received a complete set of application materials and fees and determined that you meet the initial qualifications and are eligible to take the licensing examination;

(2) We have received a complete set of application materials and fees and determined that you do not meet the initial qualifications and are not eligible to take the licensing examination; or

(3) Your application is pending because it is incomplete and/or the materials submitted do not show compliance with relevant statutes and rules. The notification letter will explain what is needed to complete the application and/or why your materials do not show compliance. If your application remains pending, you will receive reminder letters regarding the status of your application at three months and six months after the first notification letter is sent. If your application remains pending for 12 months from the date we first receive any part of your application, then your application will expire. If your application expires, then you may not apply again for one year from the date your application expired.

[(b) If you are a military spouse applying for an administrator's license under §745.8913(a) of this title (relating to Can my licensure in another state qualify me for an administrator's license?), or requesting special consideration under §745.8920 of this title (relating to What special considerations can Licensing give to a military spouse, military service member, or military veteran who applies for an administrator's license?), we will notify you as specified under subsection (a) of this section as soon as practicable, but not later than 21 days after we receive your completed application and fees.]

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

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DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §745.9015

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

§745.9015. What happens if I am not able to renew my administrator's license due to active military 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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TRD-201504590
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 438-5559

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DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

40 TAC §§745.9025 - 745.9029

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

§745.9025. What terms must I know to understand this division?

These terms have the following meanings when used in this division:

(1) Military member--A person who is currently serving full-time in the armed forces (army, navy, air force, coast guard, and marine corps) of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state (such as the Texas National Guard or the Texas State Guard).

(2) Military spouse--A person married to a military member.

(3) Military veteran--A person who has served as a military member and was discharged or released from service.

§745.9026. What special considerations can Licensing give to a military member, military spouse, or military veteran that applies for an administrator's license?

(a) The following special considerations are applicable to a military member, military spouse, or military veteran that applies for an administrator's license:

(1) In addition to Licensing's authority to waive prerequisites for an administrator's license in §745.8913 of this title (relating to Can my licensure in another state qualify me for an administrator's license?), the Assistant Commissioner for Licensing or a designee may waive any prerequisite to get an administrator's license if you held an administrator's license in Texas within five years preceding the application date and your credentials provide compelling justification that your experience and education qualifies you to act as a licensed administrator;

(2) In place of the experience or educational qualifications described in this subchapter, the Assistant Commissioner for Licensing or a designee may:

(A) Credit a military member or military veteran for verified military service, training, or education; or

(B) Substitute any demonstrated competency a military member, military spouse, or military veteran has that in the opinion of the Assistant Commissioner or a designee meets the qualifications;

(3) Licensing will waive the application and examination fees for:

(A) A military member or military veteran whose military service, training, or education substantially meets all of the qualifications for an administrator's license; or

(B) A military member, military spouse, or military veteran who holds a current license issued by another state whose license requirements are substantially equivalent to those in Texas.

(b) If Licensing issues you an administrator's license under subsection (a)(1) or (2) of this section, the license will be a full license and not a provisional license.

(c) To be eligible for any special consideration under subsection (a)(1) or (2) of this section, you may not have criminal history or central registry history that would prohibit you from obtaining an administrator's license, as provided by §745.696 of this title (relating to Does having a criminal history or Central Registry finding prohibit me from becoming a licensed administrator?).

§745.9027. What must a military member, military spouse, or military veteran submit to Licensing in order to receive special consideration during the application process?

To receive special consideration as a military member, military spouse, or military veteran during the application process, you must submit:

(1) A complete application as required under §745.8933 of this title (relating to What must a complete application to become a licensed administrator include?); and

(2) The following information as it relates to the special consideration requested:

(A) Documentation demonstrating status as a military member, military spouse, or military veteran;

(B) Documentation related to an administrator's license or any other professional or occupational license issued by another state;

(C) A copy of the regulations pertaining to the current out-of-state administrator's license; or

(D) Any additional documentation that we request to determine whether you meet the experience or educational qualifications, or whether one or both of those qualifications should be waived.

§745.9028. Will Licensing expedite the review of an application of a military member, military spouse, or military veteran?

We will expedite the application process when the applicant for an administrator's license under this section is a military member, military spouse, or military veteran.

§745.9029. What special considerations may apply to the renewal of a military member's administrator's license?

(a) The following special considerations are applicable to the renewal of a military member's administrator's license:

(1) Your administrator's license will no longer be valid after two years, but the license will be considered dormant until you request Licensing to renew it or for two additional years, whichever comes first;

(2) No continuing education will be required prior to renewal; and

(3) Licensing will waive late renewal fees required under §745.9003(a)(2) and (3) of this title (relating to How much is the renewal fee?) if you establish that your failure to renew the license in a timely manner was due to your service as a military member.

(b) To be eligible for any special consideration as provided under this section, you may not have criminal history or central registry history that would prohibit you from obtaining an administrator's license, as provided by §745.696 of this title (relating to Does having a criminal history or Central Registry finding prohibit me from becoming a licensed administrator?).

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 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of the current version of Subchapter O, Independent Court-Ordered Social Studies, consisting of §§745.9060, 745.9061, 745.9063, 745.9065, 745.9067, 745.9068, 745.9069 - 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9090, 745.9091 - 745.9097, and 745.9100; and new Subchapter O, Independent Court-Ordered Adoption Evaluations, consisting of §§745.9041, 745.9043, 745.9045, 745.9047, 745.9049, 745.9051, 745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097, and 745.9098, in Chapter 745, Licensing. The purpose of the revision is to implement portions of House Bill (HB) 1449 that was passed by the 84th Texas Legislature in 2015. The changes to the law overhaul the current statutes regarding "social studies" in Chapter 107 of the Texas Family Code (TFC). The new statutory language divides "social studies" into two sections: Child Custody Evaluations and Adoption Evaluations. TFC, Chapter 107, Subchapter E, Adoption Evaluations, requires DFPS to establish minimum requirements for what is now called "pre-placement and post-placement portions of an adoption evaluation." No rules are mandated for Child Custody Evaluations.

These rules do not apply to adoption evaluations conducted by DFPS, contractors of DFPS, or child placing agencies (CPAs), which are governed by other laws and standards. These rules will only apply in independent adoption situations where a court orders an adoption evaluator to conduct an adoption evaluation. Child Care Licensing (CCL) has no authority over or enforcement powers regarding the adoption evaluators. CCL's only role is to propose and adopt rules. The courts who appoint the evaluators will be responsible for enforcing these rules once they are adopted.

The new version of Subchapter O implements the new language of the statute, clarifies the new law, and updates the minimum requirements for the pre-placement and post-placement portions of an adoption evaluation.

A summary of the changes follows:

New §745.9041 defines the words to be used in this subchapter, including the new terms "adoption evaluation" and "adoption evaluator."

New §745.9043 states that the purpose of this subchapter is to establish minimum requirements for the pre-placement and post-placement portions of an adoption evaluation.

New §745.9045 clarifies that the rules in this subchapter only apply to independent adoptions and do not apply to adoption evaluations conducted by DFPS employees, DFPS contractors, or CPAs.

New §745.9047 specifies the requirements for an adoption evaluator to make assessments, conclusions, and recommendations when conducting an adoption evaluation.

New §745.9049 clarifies that an adoption evaluator may not consider an adoptive parent's membership in the armed forces as a negative factor in an adoption evaluation.

New §745.9051 requires an adoption evaluator to report suspicious illegal adoptive placements to DFPS.

New §745.9053 clarifies that usually the pre-placement portion of an adoption evaluation is conducted before the child begins living in the adoptive parents' home.

New §745.9055 specifies the information about the child that is required in the pre-placement portion of an adoption evaluation.

New §745.9057 specifies the information about the adoptive parents that is required in the pre-placement portion of an adoption evaluation.

New §745.9059 specifies who must be interviewed during the pre-placement portion of an adoption evaluation.

New §745.9061 clarifies the interview documentation requirements for the pre-placement portion of an adoption evaluation.

New §745.9063 clarifies the requirements for visiting the adoptive parents' home when conducting the pre-placement portion of an adoption evaluation.

New §745.9065 clarifies the requirements for assessing the adoptive parents' home and grounds when conducting the pre-placement portion of an adoption evaluation.

New §745.9067 requires additional screening of the adoptive parents when they have previously been screened to be adoptive parents or foster parents by another CPA.

New §745.9069 specifies the information about the child's birth parents that is required in the pre-placement portion of an adoption evaluation.

New §745.9071 clarifies that updates are recommended if the adoptive child is not placed with the adoptive parents within six months of the completion of the pre-placement portion of an adoption evaluation.

New §745.9073 clarifies that an update is required if the adoptive parents plan to adopt another child, either in addition to or instead of the child for whom the pre-placement portion of an adoption evaluation was completed.

New §745.9075 clarifies the requirements for an update of the pre-placement portion of an adoption evaluation.

New §745.9077 specifies the written information that must be included in the pre-placement portion of an adoption evaluation report.

New §745.9079 clarifies that the pre-placement and post-placement portions of an adoption evaluation and reports may be combined and a single report completed when the suit for adoption is filed after the child began living in the adoptive parents' home.

New §745.9081 clarifies that the interviews for the post-placement portion of an adoption evaluation must be conducted after the child has resided in the adoptive parents' home for at least five months. However, the gathering of written information for the post-placement portion of an adoption evaluation may start after the child begins living in the adoptive parents' home.

New §745.9083 specifies who must be interviewed during the post-placement portion of an adoption evaluation.

New §745.9085 clarifies what issues must be addressed in the interviews for the post-placement portion of an adoption evaluation.

New §745.9087 clarifies the interview documentation requirements for the post-placement portion of an adoption evaluation.

New §745.9089 clarifies the requirements for visiting the adoptive parents' home when conducting the post-placement portion of an adoption evaluation.

New §745.9091 specifies the written information that must be included in the post-placement portion of an adoption evaluation report.

New §745.9093 clarifies that the adoptive parents, adoptive parents' attorney, or the adoption evaluator must request: (1) a fingerprint based criminal history background check from the Department of Public Safety and the Federal Bureau of Investigations; and (2) a central registry background check from DFPS.

New §745.9095 clarifies that the adoption evaluator may also request from DFPS a complete, unredacted copy of any investigative record regarding abuse or neglect that relates to any person residing in the adoptive parents' home.

New §745.9097 clarifies that the adoptive parents are entitled to receive a copy of the pre-placement and post-placement portions of the adoption evaluation reports before the court issues a final order regarding the adoption.

New §745.9098 explains to the adoptive parents who they or their attorney may contact regarding a complaint on how the adoption evaluation was conducted, including: (1) the court that ordered the adoption evaluation; and/or (2) the board that licenses the person who primarily conducted the adoption evaluation, if applicable.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. It is assumed that any costs related to statutory changes in the adoption evaluation process or modifications made to strengthen the adoption evaluation process will be paid for by the adoptive parents that filed the suit for adoption and no additional costs will be required of the local courts.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with Texas Family Code, §107.159(a) and §107.160(a); and strengthening the adoption evaluation process. While CCL has no regulatory function over the adoption evaluators covered by these rules, CCL does not anticipate any effect on large, small, or micro-businesses. CCL also does not anticipate any economic cost to persons who are required to comply with the proposed sections because (1) the rules do not require the purchase of any new equipment; (2) the necessity of any new requirements are ultimately subject to the discretion of the court presiding over an individual case; and (3) it is assumed that any costs related to statutory changes in the adoption evaluation process or modifications made to strengthen the adoption evaluation process will be passed on to the adoptive parents that filed the suit for adoption and no additional costs will be required of the adoption evaluators.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-529, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER O. INDEPENDENT COURT-ORDERED ADOPTION EVALUATIONS

DIVISION 1. DEFINITIONS, PURPOSE, AND SCOPE

40 TAC §§745.9041, 745.9043, 745.9045

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations, to Chapter 107 of the Texas Family Code. More specifically, these modifications primarily implement §§107.151, 107.152, 107.159(a), and 107.160(a).

§745.9041. What do certain words and terms mean in this subchapter?

These words have the following meaning in this subchapter:

(1) Adoption evaluation--A pre-placement or post-placement evaluative process regarding the adoption of a child. There is a written report for each pre-placement and post-placement portion of the adoption evaluation that summarizes the information obtained during the evaluation, the assessments and conclusions drawn during the evaluation process, and recommendations made. These reports are provided to the court, the parties to the suit for adoption, and the parties' attorneys. An adoption evaluation must include an evaluation of the circumstances and the condition of the home and social environment of any person requesting to adopt a child.

(2) Adoption evaluator--A person court-ordered to conduct an adoption evaluation under Chapter 107, Texas Family Code.

(3) Adoptive parents--The prospective adoptive parent or parents who have filed a petition to adopt a child.

(4) Child--A specific child whom the adoptive parents petitioned the court to adopt, unless otherwise stated or the context clearly indicates otherwise.

(5) Department--The Department of Family and Protective Services.

(6) "I" or "You"--The adoption evaluator.

§745.9043. What is the purpose of this subchapter?

This subchapter establishes the minimum requirements for the pre-placement and post-placement portions of an independent court-ordered adoption evaluation and the respective reports. Unless otherwise agreed to by the court, the pre-placement and post-placement portions of an independent court-ordered adoption evaluation and the reports must comply with these minimum requirements.

§745.9045. Who is responsible for complying with the rules of this subchapter?

An adoption evaluator who is court-ordered to conduct an adoption evaluation must comply with these rules unless:

(1) The court orders otherwise;

(2) The adoption evaluator is an employee of a licensed child-placing agency or the department or a contractor for the department; or

(3) Services are being provided in accordance with the Interstate Compact on the Placement of Children adopted under Chapter 162, Texas Family 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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Trevor Woodruff
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Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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DIVISION 2. MAKING ASSESSMENTS, CONCLUSIONS, AND RECOMMENDATIONS

40 TAC §§745.9047, 745.9049, 745.9051

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations, to Chapter 107 of the Texas Family Code (TFC). More specifically, these modifications primarily implement §§107.151, 107.158, 107.159(a), and 107.160(a) and TFC, §162.0025.

§745.9047. How does an adoption evaluator make assessments, conclusions, and recommendations when conducting an adoption evaluation?

An adoption evaluator:

(1) Must conform the evaluator's actions to the professional standards of care applicable to the evaluator's licensure and any administrative rules, ethical standards, or guidelines adopted by the state agency that licenses the evaluator, unless otherwise directed by a court or prescribed by a rule in this subchapter;

(2) Shall follow evidence-based practice methods and make use of current best evidence in making assessments, conclusions, and recommendations;

(3) Shall verify, to the extent possible, each statement of fact pertinent to an adoption evaluation and shall note the sources of verification and information in any report prepared on the evaluation; and

(4) Shall state the basis for the evaluator's conclusions or recommendations in any report prepared on the evaluation.

§745.9049. May I consider the adoptive parent's membership in a military organization as a factor in an adoption evaluation?

Texas Family Code §162.0025 prohibits any person conducting an adoption evaluation from considering membership in the armed forces of the United States, Texas National Guard, National Guard in another

state, or in a reserve component of the armed forces of the United States as a negative factor in determining whether the adoptive parents would be suitable or whether an adoption is in the best interest of the child.

§745.9051. Does an adoption evaluator have to report an illegal adoptive placement?

Yes, an adoption evaluator must report to the department any placement of a child in an adoptive home that appears to have been made by someone other than a licensed child-placing agency or a child's parent or managing conservator.

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

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DIVISION 3. MINIMUM REQUIREMENTS FOR THE PRE-PLACEMENT PORTION OF AN ADOPTION EVALUATION AND REPORT

40 TAC §§745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9079

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations, to Chapter 107 of the Texas Family Code. More specifically, these modifications primarily implement §107.151 and §107.159(a).

§745.9053. When is the pre-placement portion of an adoption evaluation conducted?

A pre-placement portion of an adoption evaluation is usually conducted before the child begins living in the home of the adoptive parents.

§745.9055. What requirements are there for obtaining information about the child in the pre-placement portion of an adoption evaluation?

(a) If the child is at least four years old, you must interview the child in a developmentally appropriate manner.

(b) If the child is younger than four years old, you must observe the child.

(c) You must include a summary of all assessments and available information about the child, including the child's:

(1) Health, Social, Educational, and Genetic History Report (HSEGH), if completed. Family Code §162.005 requires the HSEGH to be prepared by the person or entity placing the child for adoption, but does not require a HSEGH if the petitioner for adoption is the child's grandparent, stepparent, aunt, or uncle by birth, marriage or prior adoption;

(2) History of physical, sexual, or emotional abuse, including substance abuse history;

(3) Current physical, mental, and emotional status, including any special needs;

(4) History of any previous placements, including the date and reason for placement;

(5) Understanding of adoptive placement; and

(6) Legal status.

§745.9057. What information about the adoptive parents must be included in the pre-placement portion of an adoption evaluation?

(a) You must discuss, obtain, assess, and document the following information about the adoptive parents and their home:
Figure: 40 TAC §745.9057(a)

(b) The discussion and assessment of the information about adoptive parents and their home in subsection (a) of this section should be framed in relation to the specific physical, mental, and emotional state of the child, including any special needs of the child.

§745.9059. Whom must I interview during the pre-placement portion of an adoption evaluation?

Interviews during the pre-placement portion of an adoption evaluation must include at least:

(1) One individual interview with each adoptive parent;

(2) One individual interview with each child four years or older who is living in the home either full- or part-time;

(3) One individual interview with any other person who is living in the home either full- or part-time;

(4) One joint interview with the adoptive parents;

(5) One family group interview with family members who are living in the home;

(6) One interview, by telephone, in person or by letter, with every:

(A) Minor child of each adoptive parent that is 12 years old or older and is not living in the home; and

(B) Adult child of each adoptive parent that is not living in the home;

(7) One interview, by telephone, in person, or by letter with a family member not living in the home and not already interviewed; and

(8) Two interviews, by telephone, in person, or by letter with neighbors, school personnel if the adoptive parents have school age children, clergy, or any other member of the adoptive parents' community who are unrelated to the adoptive parents and can provide a description of the adoptive parents' suitability to provide care for children.

§745.9061. What must I document regarding interviews for the pre-placement portion of an adoption evaluation?

(a) You must document all interviews and attempts to complete interviews. The documentation must include:

(1) The date and method used to contact each required person;

(2) The date of each interview;

(3) Who was present at each interview and their relationship to the adoptive parents; and

(4) A summary of each interview.

(b) If you were unable to interview a minor child 12 years old or older or an adult child who is not living in the home, your documentation must include a description of your diligent efforts to contact and interview that child. Your description must include each phone number, address, email address, or other methods used for contacting the child; the times and dates you attempted to contact the child; any response you got from the child; and your reason(s) for concluding that you were unable to interview the child.

§745.9063. What are the requirements for visiting the adoptive parents' home during the pre-placement portion of an adoption evaluation?

(a) You must visit the home at least once.

(b) All members of the household must be present for the visit.

(c) You must document in the record the date of the visit, persons present, their relationship to the prospective adoptive family, and observations regarding health and safety issues in the home.

§745.9065. What information regarding the adoptive parents' home and grounds must be assessed?

(a) You must obtain a sketch of the floor plan of the home showing dimensions and purposes of all rooms in the home.

(b) You must obtain a sketch or photo of the outside areas showing areas of the grounds to be used by the child.

(c) You must determine, through your visit to the home and a review of the sketches and/or photos, whether there:

(1) Are any potential safety or health issues. The home must be clean, safe, and free of obvious fire and other hazards. You must document whether the home is equipped with smoke detectors; and

(2) Is sufficient space to accommodate the members of the household and the child.

§745.9067. What are the additional requirements for the pre-placement portion of an adoption evaluation if the adoptive parents previously adopted a child through a child-placing agency or were previously foster parents for a child-placing agency?

(a) You must request and assess the following background information from any child-placing agency that previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report:

(1) The screening, report, and related documentation;

(2) The most current fire and health inspections; and

(3) For previous foster homes:

(A) Documentation of supervisory visits and evaluations for the past year;

(B) Any record of deficiencies and their resolutions for the past year;

(C) The transfer/closing summary;

(D) Copies of any current or previous annual development plans for the past two years, if applicable; and

(E) Copies of any current or previous corrective action plans for the past two years, if applicable.

(b) You must address why a home was previously closed or any identified risk indicators, as applicable, with the adoptive parents before recommending approval of the adoptive home if the background information indicates that:

(1) The adoptive home, prior to consummation, or the foster home was previously closed by a child-placing agency; or

(2) There was one or more potential risk indicators that the child-placing agency did not adequately address with the foster or adoptive parents.

(c) You must use the information to assess the family's ability to work with the child's specific behaviors and background.

(d) If you are unable to obtain any of the information in subsection (a) of this section, you must document your diligent efforts to obtain this information, including:

(1) Whether the adoptive parents were willing to sign a release for the information; and if the adoptive parents would not sign a release, an explanation of why the adoptive parents would not sign a release; and

(2) How you tried to contact the child-placing agency (CPA); the name of each person at the CPA you attempted to contact in order to obtain the information; each phone number, address, e-mail address, or other method used for contacting the CPA or a person at the CPA; the times and dates you attempted to contact the CPA; any response you got from the CPA; and your reason(s) for concluding you would not be able to obtain this information from the CPA.

§745.9069. What requirements are there about obtaining information about birth parents for the pre-placement portion of an adoption evaluation?

(a) You must obtain the following information about the birth parents, unless their parental rights have been terminated:

(1) The degree and type of involvement they desire with the adoptive family; and

(2) Their expectations for adoptive placement, if they chose the placement with the adoptive parents.

(b) Document as appropriate:

(1) That the birth's parents parental rights have been terminated; or

(2) A description of your diligent efforts to contact and interview the birth parents. Your description must include each phone number, address, email address, or other methods used for contacting the birth parents; the times and dates you attempted to contact the birth parents; any response you got from the parents; and your reason(s) for concluding that you were unable to interview either or both of the birth parents.

§745.9071. What step does the department recommend if a child does not begin living with the adoptive parents within six months after the pre-placement portion of an adoption evaluation has been completed?

For a child that does not begin living with the adoptive parents within six months after the completion of the pre-placement portion of an adoption evaluation, the department recommends that you update the

pre-placement portion of an adoption evaluation within the 30-day period before the child begins living in the home. But the court responsible for finalizing the adoption must make the final decision on whether the update is necessary.

§745.9073. Must I complete the pre-placement portion of an adoption evaluation update if the adoptive parents plan to adopt another child?

Yes. If the adoptive parents plan to adopt another child, either in addition to or instead of the child for whom the pre-placement portion of an adoption evaluation was completed, you must complete a written update to the pre-placement portion of an adoption evaluation.

§745.9075. What information must an update of the pre-placement portion of an adoption evaluation include?

It must include:

(1) Completing information about the new child as required by §745.9055 of this title (relating to What requirements are there for obtaining information about the child in the pre-placement portion of an adoption evaluation?);

(2) A review and any necessary updates relating to the requirements in §745.9057 of this title (relating to What information about the adoptive parents must be included in the pre-placement portion of an adoption evaluation?); and

(3) Documentation of at least one additional visit to the adoptive parents' home, including who was present during the visit. This visit should be within the 30-day period before the child begins living in the home.

§745.9077. What information must the pre-placement portion of an adoption evaluation report include?

(a) The report must contain:

(1) Documentation of the requirements in Divisions 2, 3, and 5 of this subchapter, including documentation of:

(A) Information that was obtained through the review of documents, reports, and inspections; and

(B) Interviews with the adoptive parents and their family, collateral contacts, and the child;

(2) Documentation of the criminal history and central registry background check results and an assessment of the results, including whether the results should bar placement of the child with the adoptive parents, or the subsequent adoption of the child by the adoptive parents;

(3) Assessments of the:

(A) Adoptive parents and their family's interaction with each other; and

(B) Relationship between the child and each adoptive parent, if a relationship currently exists;

(4) An assessment of the child's present and prospective physical, intellectual, social, and psychological functioning;

(5) An assessment of the basic care and safety issues, including the safety of the physical environment of the adoptive home;

(6) An assessment of the adoptive parents' individual strengths and weaknesses;

(7) Conclusions and recommendations to the court as to whether the:

(A) Adoptive parents' home environment will meet the child's needs once the child begins living in the adoptive parents' home; and

(B) Adoptive parents appear to have the ability to accept the child, assume parenting responsibilities, and adopt the child in the next six months to a year;

(8) For each adoption evaluator that conducted any part of the pre-placement portion of an adoption evaluation, including interviewing participants; making home visits; making assessments, conclusions, or recommendations; or writing the report:

(A) Their names, license numbers, if applicable, and role in conducting the pre-placement portion of an adoption evaluation; and

(B) A statement that each adoption evaluator:

(i) Has read and meets the qualification requirements of Texas Family Code §107.154; or

(ii) Was appointed by the court under Texas Family Code §107.155; and

(9) Telephone numbers for entities where it is appropriate for the adoptive parents to file complaints about how the pre-placement portion of an adoption evaluation was conducted, including phone numbers for:

(A) The court that ordered the adoption evaluation; and

(B) The board or agency that licenses the adoption evaluator who is primarily responsible for the pre-placement portion of an adoption evaluation, if applicable.

(b) The adoption evaluator primarily responsible for the pre-placement portion of an adoption evaluation must sign the report.

§745.9079. Can the pre-placement and post-placement portions of an adoption evaluation be combined?

In a suit filed after the date the child began living in the adoptive parents' home, the pre-placement and post-placement portions of an adoption evaluation and reports may be combined and a single report completed. But the adoption evaluation and the combined report must:

(1) Be completed after the child begins living in the home; and

(2) Meet all of the minimum requirements of this subchapter for both the pre-placement and post-placement portions of an adoption evaluation and reports.

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

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DIVISION 4. MINIMUM REQUIREMENTS FOR THE POST-PLACEMENT PORTION OF AN ADOPTION EVALUATION AND REPORT

40 TAC §§745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations, to Chapter 107 of the Texas Family Code. More specifically, these modifications primarily implement §107.151 and §107.160(a).

§745.9081. When must I conduct the post-placement portion of an adoption evaluation and report?

You must conduct the interviews for the post-placement portion of an adoption evaluation after the child has resided in the adoptive parents' home for at least five months, unless otherwise directed by the court. However, you may start the post-placement portion of an adoption evaluation and report, such as the gathering of written information, after the child begins living in the adoptive parents' home.

§745.9083. Whom must I interview during the post-placement portion of an adoption evaluation?

Interviews during the post-placement portion of an adoption evaluation must include at least one:

(1) Individual interview with each adoptive parent;

(2) Individual interview with each child four years or older living full- or part-time in the home, including the child placed for adoption;

(3) Individual interview with any other person living full- or part-time in the home;

(4) Joint interview with the adoptive parents; and

(5) Family group interview with family members living in the home.

§745.9085. What issues must an interview for the post-placement portion of an adoption evaluation address?

Each interview must focus on the adjustment of the family and the child living together in the adoptive parents' home. You must also address the:

(1) Requirements in §745.9057 of this title (relating to What information about the adoptive parents must be included in the pre-placement portion of an adoption evaluation?) that have not been adequately addressed; and

(2) Assessments that are mandated in §745.9091 of this title (relating to What information must be included in the post-placement portion of an adoption evaluation report?).

§745.9087. What must I document regarding interviews that I conduct for the post-placement portion of an adoption evaluation?

You must document all interviews and attempts to complete interviews. The documentation must include:

(1) The date and method used to contact each required person;

(2) The date of each interview;

(3) Who was present at each interview and their relationship to the adoptive parents; and

(4) A summary of each interview.

§745.9089. What are the requirements for visiting the adoptive parents' home during the post-placement portion of an adoption evaluation?

(a) You must visit the home at least once.

(b) All members of the household, including the child, must be present for at least one home visit.

(c) You must document in the record the date of the visit, persons present, their relationship to the adoptive parents, and observations regarding health and safety issues in the home.

§745.9091. What information must be included in the post-placement portion of an adoption evaluation report?

(a) The report must contain:

(1) Any previously incomplete or supplemental information regarding the adoptive parents and the child that was required to be obtained for the pre-placement portion of an adoption evaluation, including any updates relating to:

(A) A newly completed Health, Social, Educational, and Genetic History Report (HSEGH), or supplemental information;

(B) Any updates to the child's current physical, mental, and emotional status, including any special needs;

(C) An update regarding the child's legal status; and

(D) Any new information obtained regarding the adoptive parents in relation to §745.9057 of this title (relating to What information about the adoptive parents must be included in the pre-placement portion of an adoption evaluation?);

(2) Documentation of the requirements in Divisions 2, 4, and 5 of this subchapter, including documentation of:

(A) Information that was obtained through the review of documents, reports, and inspections; and

(B) Interviews with the adoptive parents, their family, and the child;

(3) A summary of the adjustment of the adoptive parents, other family members, others persons living in the adoptive home, and the child during the last five to six months the child was living with the adoptive parents;

(4) An updated assessment of the child's present and prospective physical, intellectual, social, and psychological functioning, including an assessment of how the adoptive parents responded to any special needs the child had;

(5) An updated assessment of basic care and safety issues, including the physical safety of the environment of the adoptive home and how the child has responded to living in the adoptive home;

(6) An updated assessment of the adoptive parents' individual strengths and weaknesses;

(7) Conclusions and recommendations to the court as to whether the adoptive parents have accepted the child and have the ability to parent and adopt the child;

(8) For each adoption evaluator that conducted any part of the post-placement portion of an adoption evaluation, including interviewing participants; making home visits; making assessments, conclusions, or recommendations; or writing the report:

(A) Their names, license numbers, if applicable, and role in conducting the post-placement portion of an adoption evaluation; and

(B) A statement that each adoption evaluator:

(i) Has read and meets the qualification requirements of Texas Family Code §107.154; or

(ii) Was appointed by the court under Texas Family Code §107.155; and

(9) Telephone numbers for entities where it is appropriate for the adoptive parents to file complaints about how the post-placement portion of an adoption evaluation was conducted, including phone numbers for:

(A) The court that ordered the adoption evaluation; and

(B) The board or agency that licenses the adoption evaluator who is primarily responsible for the post-placement portion of an adoption evaluation, if applicable.

(b) The adoption evaluator primarily responsible for the post-placement portion of an adoption evaluation must sign the report.

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

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DIVISION 5. BACKGROUND CHECK INFORMATION

40 TAC §745.9093, §745.9095

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations, to Chapter 107 of the Texas Family Code. More specifically, these modifications primarily implement §§107.151,107.159(a), and §107.163.

§745.9093. How do I obtain the results of a fingerprint-based criminal history background check and a central registry background check for the pre-placement portion of an adoption evaluation?

(a) To obtain the results of a fingerprint-based criminal history background check or a central registry background check for the pre-placement portion of an adoption evaluation, the adoptive parents, the adoptive parents' attorney, or you must request them.

(b) A fingerprint-based criminal history background check must include a criminal history check from the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). This check must be requested from DPS.

(c) A central registry background check must be requested from the department by completing the appropriate Centralized Background Check Unit (CBCU) form that is available on the department's website.

§745.9095. How do I request an investigative record regarding abuse or neglect for the pre-placement portion of an adoption evaluation?

You may request, as needed, a complete, unredacted copy of any investigative record regarding abuse or neglect that relates to any person residing in the adoptive parents' home by completing the appropriate Records Management Group (RMG) form that is available on the department's public website. If you obtain these investigative records from the department, Texas Family Code §107.163 states:

(1) Records obtained by you from the department are not subject to the Public Information Act or to disclosure in response to a subpoena or a discovery request.

(2) You may disclose information obtained from the department only to the extent you determine the information is relevant to the adoption evaluation.

(3) You commit a Class A misdemeanor if you recklessly disclose confidential information received from the department.

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

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DIVISION 6. COPIES OF ADOPTION EVALUATION REPORTS AND COMPLAINTS

40 TAC §745.9097, §745.9098

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations, to Chapter 107 of the

Texas Family Code. More specifically, these modifications primarily implement §§107.151, 107.159(d), and 107.160(d).

§745.9097. Are the adoptive parents entitled to a copy of the adoption evaluation report?

A copy of the pre-placement and post-placement portions of the adoption evaluation reports must be made available to the adoptive parents before the court issues a final order regarding the adoption.

§745.9098. Whom must the adoptive parents contact with a complaint about how an adoption evaluation was conducted?

The adoptive parents or, if applicable, the adoptive parents' attorney, may contact the court that ordered the adoption evaluation. The adoptive parents or their attorney may also contact the board or agency that licenses the person who primarily conducted the adoption evaluation, if applicable. The pre-placement and post-placement portions of the adoption evaluation reports are required to have telephone numbers for entities where it is appropriate to file a complaint.

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 O. INDEPENDENT COURT-ORDERED SOCIAL STUDIES
DIVISION 1. DEFINITIONS

40 TAC §§745.9060, 745.9061, 745.9063

(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 Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations to Chapter 107 of the Texas Family Code.

§745.9060. What is a social study?

§745.9061. What is a pre-adoptive social study?

§745.9063. What is a post-placement adoptive social study and report?

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

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DIVISION 2. MINIMUM QUALIFICATIONS AND OTHER REQUIREMENTS

40 TAC §§745.9065, 745.9067, 745.9068

(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 Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations to Chapter 107 of the Texas Family Code.

§745.9065. What qualifications must I meet to conduct a social study?
§745.9067. How does a person conducting a social study assess situations, reach conclusions, and make recommendations for the social study?
§745.9068. What ethical requirements must I follow when conducting a social study?
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 3. PRE-ADOPTIVE SOCIAL STUDIES

40 TAC §§745.9069 - 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9090

(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 Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations to Chapter 107 of the Texas Family Code.

§745.9069. What information must be included in the pre-adoptive social study?

§745.9070. May I consider a prospective adoptive parent's membership in a military organization as a factor in recommending an adoptive placement?

§745.9071. How do I obtain a criminal history background check, a central registry background check, or an investigative report regarding abuse and neglect for an independent pre-adoptive social study?

§745.9073. Whom must I interview when conducting a pre-adoptive social study?

§745.9075. What must I document regarding interviews that I conduct for a pre-adoptive social study?

§745.9077. What are the requirements for visiting the home during a pre-adoptive social study?

§745.9079. What are the additional requirements for a pre-adoptive social study if adoptive applicants previously adopted a child from a child-placing agency or were previously foster parents for a child-placing agency?

§745.9081. Must the pre-adoptive social study include information about birth parents?

§745.9083. How do I obtain information about the birth parents?

§745.9085. What happens if a child is not placed with the adoptive applicants within six months after the pre-adoptive social study has been completed?

§745.9087. Must I complete a pre-adoptive social study update if the prospective adoptive parents plan to adopt another child?

§745.9089. What information must an update of the pre-adoptive social study include?

§745.9090. Can the pre-adoptive social study and post-placement adoptive social study and report be combined?

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

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DIVISION 4. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT

40 TAC §§745.9091 - 745.9097

(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 Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations to Chapter 107 of the Texas Family Code.

§745.9091. When must I conduct a post-placement adoptive social study and report?

§745.9092. What issues must an interview for a post-placement adoptive social study and report address?

§745.9093. How do I obtain a criminal history background check, a central registry background check, or an investigative report regarding abuse and neglect for an independent post-placement adoptive social study and report?

§745.9094. Whom must I interview when conducting a post-placement adoptive social study and report?

§745.9095. What must I document regarding interviews that I conduct for a post-placement adoptive social study and report?

§745.9096. What are the requirements for visiting the home during a post-placement adoptive social study and report?

§745.9097. What information must the post-placement adoptive social study and report include?

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

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DIVISION 5. COMPLAINTS

40 TAC §745.9100

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements portions of HB 1449, which adds Subchapter E, Adoption Evaluations to Chapter 107 of the Texas Family Code.

§745.9100. Whom must I contact with a complaint about how an independent social study was conducted?

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 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §748.7

On behalf of the Department of Family and Protective Services (DFPS), the Health and Human Services Commission proposes new §748.7, concerning the applicability of Chapter 42, Human Resources Code, and licensing rules and statutes in general to residential family centers operated by contractors of U.S. Immigration and Customs Enforcement (ICE), in its chapter concerning Minimum Standards for General Residential Operations.

On July 24, 2015, a federal district court determined that ICE's policy of detaining female-headed families in family residential centers, which are unlicensed and secure, violated the terms of a 1997 settlement agreement requiring, *inter alia,* that minors in custody be released without unnecessary delay and that, while they are detained, they be housed in non-secured, state-licensed facilities. *Flores v. Johnson,* CV 85-4544 DMG (C.D. Cal. July 24, 2015). The court noted that the purpose of the licensing provision in the settlement agreement "is to provide class members the essential protection of regular and comprehensive oversight by an independent child welfare agency."

The court's ruling highlighted a gap in the oversight of the children housed in facilities covered by the settlement agreement. There are two such facilities in Texas: the South Texas Family Residential Center in Dilley, Texas and the Karnes County Residential Center in Karnes City, Texas. Both are family residential facilities designed for detention of adults with children. Prior to September 2, 2015, neither facility was licensed by the Child-Care Licensing Division of DFPS (CCL). Because there was no regular and comprehensive oversight of the care of children housed in the facilities by an independent agency, DFPS determined there was an imminent peril to the public's health, safety, or welfare and adopted a temporary, emergency rule with the same content as this proposed rule in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6229).

This proposal ensures the continued protection of children housed in the facilities by making the facilities subject to the regulatory authority of CCL along with its associated requirements, with limited exception.

Section 748.7 defines the term "family residential center" and makes family residential centers subject to regulation as General Residential Operations (GROs), requiring them to comply with all associated requirements unless a waiver or variance is granted by CCL or an exception is specifically provided in the rule. The section clarifies that CCL's authority extends only to certain enabling Texas laws, sets out specific exceptions for Minimum Standards with which family residential centers are not required to comply, and reserves to CCL the authority to place conditions or limits on any exceptions granted by the rule. Finally, the section requires family residential centers to submit materials to clarify the supervisory and caretaking responsibilities of the center staff and the parents or other adult family members housed with the children.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the quality of care for children housed in family residential centers will be enhanced.

There will be costs to persons required to comply with this section. For each of the first five years the section is in effect, the costs to Facility 1 will be: Fiscal Year (FY) 2016 $5,294,256; FY 2017 $5,280,350; FY 2018 $5,280,350; FY 2019 $5,280,350; and FY 2020 $5,280,350. For each of the first five years the section is in effect, the costs to Facility 2 will be: FY 2016 $27,620,807; FY 2017 $27,553,351; FY 2018 $27,553,351; FY 2019 $27,553,351; and FY 2020 $27,553,351.

In order to gauge the fiscal impact of becoming licensed as a general residential operation (GRO), CCL sought analyses and estimates from the two affected facilities. The costs related to (1) increased staff to meet child-to-caregiver ratios under Minimum Standards (MS) for GROs; (2) hiring and retaining a Child-Care Administrator, separate from the staff costs related to child-to-caregiver ratios; (3) compliance with square footage standards; and (4) ancillary expenses for the required public hearing, CPR certification, and background checks. The estimated costs varied considerably, partly based on the varied size of the facilities.

Facility 1 cost estimates: (1) This facility had 532 residents, of which 372 are estimated to be children. Given its current population, this facility stated 107 new employees would be required

to meet the 1:8 ratio during the first two shifts and 1:24 ratio during the night time shift, including the application of a relief factor 1.62% to insure coverage while staff are on leave. The facility estimated the annual cost for the 107 new employees to be $5,200,000. This appears to be a logical cost for the new employees with an average total annual cost (including benefits) for each employee to be $48,598. (2) Facility 1 estimated $95,700 for a Child-Care Administrator's salary, taxes, and benefits. Facility 2 estimated $65,000 for a Child-Care Administrator's salary, taxes, and benefits, including initial recruitment costs. For purposes of this cost estimate, the two facilities costs have been averaged for a total annual cost for each facility for a Child-Care Administrator of $80,350. (3) No additional costs were required to comply with the square footage requirements. (4) This facility only supplied estimated costs of $5,080 for the public hearing requirements. Since no costs were provided for CPR certifications and background checks, CCL is making the following assumptions for these costs: CCL is assuming a 25% of similar costs to facility 2 (facility 1 is approximately 25% the size of facility 2) for CPR certifications of $5,512 ($22,050/4). CCL is assuming the costs for background checks is $3,314, which is the cost for the current 79 caregivers times the cost per individual background check ($41.95). It is assumed that new employees will be responsible for obtaining their own background checks. The total ancillary costs for this facility is $13,906, which are one-time costs. TOTAL FACILITY 1 COSTS For First Year: $5,294,256.

Facility 2 cost estimates: (1) Facility 2 has 2400 residents, of which it is estimated that 1,344 are children (600 children under 5 years of age, and 744 children from 6 - 17 years of age). Facility 2 stated they calculated the child/caregiver ratio of 1:8 during waking hours and 1:24 during sleeping hours to reach an estimated increase in caregiver salaries and benefits of $82,160,387 per year. A current number of caregivers was not provided by the facility, but this cost appears to be too high for this required change in ratios even though it is unclear what this facility's current staff ratio is. If you only look at the number of children involved, Facility 2 is approximately 3.61 times larger than Facility 1 (1344/372). If you look at the total number of residents facility 2 is approximately 4.51 times larger than facility 1 (2400/532). Taking the larger number (4.51), the increase in caregiver costs is estimated to be $24,453,001 (the facility 1 costs of $ 5,200,000 X 4.51), which should cover the costs for an additional 482 caregivers at a total annual cost per caregiver of $48,598. (2) Facility 2 estimated $65,000 for a Child-Care Administrator's salary, taxes, and benefits, including initial recruitment costs. Facility 1 estimated $95,700 for a Child-Care Administrator's salary, taxes, and benefits. For purposes of these cost estimates, the two costs have been averaged for a total annual cost for each facility for a Child-Care Administrator of $80,350. (3) The facility estimated that it would incur a minimum of $44,863,398 in costs to comply with square footage standards that would require the demolition and relocation of bedroom walls, building two additional "neighborhoods", and acquiring additional land. It is not clear at this time whether these changes are required to meet the square footage requirements. However, assuming these costs are accurate an amortization of this amount over 30 years with a 5.25% interest rate, the annual payments would be approximately $3,000,000 per year. (4) This facility's estimated one-time ancillary costs were $87,456 ($22,050 to obtain CPR certifications; $45,362 to obtain the appropriate background checks; and $20,044 for preparations for the public hearing). TOTAL FACILITY 2 COSTS For First Year: $27,620,807.

Ms. Henderson has determined that the proposed new section 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, Government Code.

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in the DFPS Office of General Counsel. Electronic comments may be submitted to *Audrey.Carmical@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-537, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under §40.0505, Human Resources Code, and §531.0055, Government Code, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new section implements §42.042(a), Human Resources Code.

§748.7. How are these regulations applied to family residential centers?

(a) Definition. A family residential center is one that meets all of the following requirements:

(1) The center is operated by or under a contract with United States Immigration and Customs Enforcement;

(2) The center is operated to enforce federal immigration laws;

(3) Each child at the center is detained with a parent or other adult family member, who remains with the child at the center; and

(4) A parent or family member with a child provides the direct care for the child except for specific circumstances when the child is cared for directly by the center or another adult in the custody of the center.

(b) Classification. A family residential center is a general residential operation (GRO) and must comply with all associated requirements for GROs, unless the family residential center is approved for an individual waiver or variance or an exception is provided in this section. The department is responsible for regulating the provision of childcare as authorized by Chapters 40 and 42, Texas Human Resources Code and Chapter 261, Texas Human Resources Code. The department does not oversee requirements that pertain to other law, including whether the facilities are classified as secure or in compliance with any operable settlement agreements or other state or federal restrictions.

(c) Exceptions. A family residential center is not required to comply with all terms of the following Minimum Standards:

(1) the limitation of room occupants to four in §748.3357 of this title (relating to What are the requirements for floor space in a bedroom used by a child?);

(2) the limitation on a child sharing a bedroom with an adult in §748.3361 of this title (relating to May a child in care share a bedroom with an adult?); and

(3) the limitations on children of the opposite gender sharing a room in §748.3363 of this title (relating to May children of opposite genders share a bedroom?).

(d) Limitation of exception. Notwithstanding subsection (c) of this section, the department retains the authority for placing conditions on the scope of the exceptions authorized for a family residential center, including conditions related to limiting occupancy in accordance with fire safety standards, limitations related to allowing children and adults of the opposite gender to occupy the same room only if they are part of the same family, and any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care.

(e) Division of responsibility. In addition to the application materials described in §745.243(6) of this title (relating to What does a completed application for a permit include?), an applicant for a license under this section must submit the policies, procedures, and any other documentation that the department deems necessary to clarify the division of supervisory and caretaking responsibility between employees of the facility and the parents and other adult family members who are housed with the children. The department must approve the documentation during the application process and any subsequent amendments to the policies and procedures.

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

Filed with the Office of the Secretary of State on November 2, 2015.

TRD-201504663
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 438-3854

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

43 TAC §§9.81, 9.83, 9.85, 9.87, 9.89

The Texas Department of Transportation (department) proposes amendments to §9.81, Definitions, §9.83, Notice and Letter of Interest, §9.85, Evaluation, §9.87, Selection, and §9.89, Qualification Requirements for Appraisers, concerning Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services.

EXPLANATION OF PROPOSED AMENDMENTS

The department proposes changes to the rules for real estate appraisal service and right of way acquisition service providers to address the increasing need for professionalism, timeliness, cost effectiveness, and transparency in the department's contracting with professional real estate appraisers and right of way acquisition service providers.

Amendments to §9.81, Definitions, modify and clarify the definition of a professional real estate appraiser by deleting the term "licensed" and adding "certified by the Texas Appraiser Licensing and Certification Board." Real estate appraisers are regulated in Texas under the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103. A state certification carries a higher level of appraisal authority than a state license. A definition of "department-certified appraiser" has been added to clarify that in addition to carrying a state certification, an appraiser must also qualify for a department certification which requires additional experience beyond the issuance of the state certification. Definitions have also been added to distinguish the appraisal authority of a state-certified general appraiser and a state-certified residential appraiser. The general appraisal state certification carries the authority to appraise all types of real property, while the residential appraisal state certification carries the authority to appraise only 1-4 unit residential properties.

Amendments to §9.83, Notice and Letter of Intent, and §9.85, Evaluation, replace the language referencing a "precertified" appraiser with "department-certified" appraiser. This provides clarity in the difference in a state certification and department certification. Section 9.85(c) expressly provides that to be selected for a contract an appraiser must be a department-certified appraiser.

Amendments to §9.87, Selection, increase the total right of way acquisition service provider contract amount from $2 million to $4 million for a contract issued to provide services in a single district of the department. Contracts for right of way acquisition service providers do not carry a guarantee of work, but the artificial $2 million cap does not provide the capacity for providers to complete work authorizations on complex right of way projects, particularly with the increasing construction letting schedule throughout the state. The increase will provide a more timely and efficient business process as opposed to having to use multiple service providers on a single project in order to meet the constraints of the obsolete $2 million contract cap. The amendments also reflect the current style of expressing dollar amounts of more than $1 million.

Amendments to §9.89, Qualification Requirements for Appraisers, delete, add, and clarify language for requirements that must be met by eligible individual real estate appraisers. Language was deleted that specified types of properties that demonstrate experience as it is not a comprehensive list and creates ambiguity. New language has been added that provides flexibility in the list of property types that can be used for qualifying experience. Again, the language referencing a "precertified" appraiser has been replaced by "department-certified" appraiser. The term "licensed" appraiser was deleted as it is a level of appraisal authority substantially below the state certification that is needed to perform complex appraisal assignment for parcels subject to eminent domain. Additional clarifying language has been added that specifies that an appraiser's experience for department certification must be demonstrated in a period after state certification is awarded. Language has been added that specifically states that a copy of the appraiser's state certification must be included in the application for department certification. Language was deleted in reference to a precertification being required every five years and has been replaced with language that will make the termination of the department certification the same date as the termination of the appraiser's individual state certification. Hav-

ing the same date for the state certification and the department certification will eliminate confusion and provide administrative efficiency to both the regulated appraisal industry and the department.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. John P. Campbell, P.E., Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years in which the sections are in effect, the public benefits anticipated as a result of enforcing or administering the amendments will include increased efficiency, greater transparency and enhanced contracting opportunities for both real estate appraisal services and right of way acquisition service providers. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effects on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89 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 "§9.81, 9.83, 9.85, 9.87, and 9.89." The deadline for receipt of comments is 5:00 p.m. on December 14, 2015. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, and Occupations Code, Chapter 1103.

§9.81. Definitions.

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

(1) Appraiser--An individual certified by the Texas Appraiser Licensing and Certification Board [~~licensed~~] to provide real estate appraisal services in Texas.

(2) Competitive sealed proposals--A procurement method in which offers are solicited from a number of sources, and selection is made using criteria other than cost, although reasonableness of cost is a selection criterion.

(3) Department--The Texas Department of Transportation.

(4) Department-certified appraiser--An appraiser who has been certified by the department in accordance with §9.89 of this subchapter to perform real estate appraisal services.

(5) [~~(4)~~] Indefinite delivery contract--A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution, and work is authorized as needed.

(6) [~~(5)~~] Landscape architect--An individual licensed to practice landscape architecture in the state or states that he or she performs professional services.

(7) [~~(6)~~] Mandatory/minimum qualifications--Those qualifications listed in the request for proposals that the provider must demonstrate it meets in order for the proposal to be considered responsive.

(8) [~~(7)~~] Provider--An individual or entity that provides scientific, appraisal, right of way acquisition, or landscape architectural services.

(9) [~~(8)~~] Request for proposals (RFP)--A request for submittal of a proposal that demonstrates competence and qualifications of the provider to perform the requested services and shows an understanding of the specific project.

(10) [~~(9)~~] Right of way acquisition provider (ROW provider)--A firm performing right of way acquisition, including appraisal services, but excluding surveying, engineering, or architectural services.

(11) State-certified general appraiser--An appraiser authorized to appraise all types of real property without regard to complexity or transaction value.

(12) State-certified residential appraiser--An appraiser authorized to appraise 1-4 unit residential properties without regard to transaction value or complexity of the appraisal.

(13) [~~(10)~~] Subprovider--A provider proposing to perform work through a contractual agreement with the provider.

(14) [~~(11)~~] Scientific services--Environmental or cultural studies, analyses, and document preparation services required by state or federal law, for a transportation project within the authority or jurisdiction of the department, and performed by an archeologist, biologist, geologist, historian, architectural historian, or other technical expert.

(15) [~~(12)~~] Technical expert--An archeologist, biologist, geologist, historian, architectural historian, or other non-engineering expert in a natural, social, historical, or environmental science qualified to conduct an environmental or cultural study required by state or federal law for a transportation project. This definition includes a firm or institution employing one or more technical experts.

§9.83. Notice and Letter of Interest.

(a) Notice. When the department elects to use competitive sealed proposals to procure appraisal, right of way acquisition, landscape architectural, and scientific services, notice will be given as follows.

(1) Electronic notice. Not less than 21 days before the proposal due date, the department will post a notice on an electronic bulletin board. The notice will contain the:

(A) proposed contract or RFP number;

(B) type of selection in accordance with §9.87 of this subchapter (relating to Selection);

(C) general description of the project and work to be done;

(D) due date for providers to send letters of interest to the department;

(E) contact person;

(F) date and location of the proposal meeting, if applicable; and

(G) if the notice is for an appraiser, a statement that the appraiser must be a department-certified appraiser [~~precertified in accordance with §9.89 of this subchapter (relating to Qualification Requirements for Appraisers~~].

(2) Organizations. The department will publish a quarterly statewide list of projected contracts to be issued under this subchapter and will provide upon request, or make available on the department's Web site, a copy of the list to community, business, and professional organizations for dissemination to their membership.

(b) Letter of interest.

(1) The provider may obtain an RFP packet by:

(A) sending a letter of interest to the department notifying the department of the provider's interest in the contract;

(B) downloading it from the department's Web site; or

(C) obtaining it at the proposal meeting, if applicable.

(2) The department will accept a letter of interest by electronic facsimile.

(c) Requests for proposals. The RFP packet will include:

(1) the requirements for a responsive proposal including:

(A) date, time, and location for submittal of the proposal;

(B) an outline of the required proposal format and content; and

(C) mandatory/minimum provider qualifications;

(2) scope of services to be provided by the department;

(3) scope of services to be provided by the provider;

(4) proposed contract duration;

(5) proposed method of payment;

(6) any constraints directly relating to the performance of the contract, if applicable;

(7) description of the evaluation criteria including numerical weighting values;

(8) a copy of the evaluation matrices;

(9) type of contract selection;

(10) a copy of the proposed contract, with all attachments;

(11) criteria for breaking ties, if criteria are different from that outlined in §9.85(e) of this subchapter (relating to Evaluation);

(12) any special contract requirements.

(d) Proposal meeting. The meeting may be either mandatory or optional at the discretion of the department. If the meeting is mandatory, the department will only accept proposals from providers represented at the meeting. The proposal meeting provides an opportunity for the provider to seek clarification or ask questions concerning the contract.

§9.85. Evaluation.

(a) Technical expert and ROW provider evaluation criteria. The department will evaluate a technical expert's or ROW provider's responsive proposal based on the following criteria, if applicable:

(1) professional qualifications;

(2) experience of the firm and the team or individuals;

(3) merits of the proposal, including unique or innovative methods for performing the work;

(4) ability to commit personnel, time, and other resources to the project (technical experts cannot be removed from association with the contract without prior consent by the department);

(5) demonstrated understanding of the scope of services to be provided, including identifying which type of work will be performed by a subprovider, if any;

(6) demonstrated understanding of applicable rules, regulations, policies, and other requirements associated with the environmental or cultural studies, analyses, or document preparation to be performed;

(7) ability to meet department scheduling requirements;

(8) past performance of the provider, specific provider staff, or subproviders on similar contracts; and

(9) reasonableness of fee.

(b) Landscape architect evaluation. The department will evaluate a landscape architect's responsive proposal based on the following criteria:

(1) experience of the project manager and project team;

(2) demonstrated understanding of the scope of services to be provided, including identifying which type of work will be performed by a subprovider, if any;

(3) references including the ability to meet deadlines over the past three years;

(4) ability to meet department scheduling requirements; and

(5) reasonableness of fee.

(c) Appraiser evaluation. An appraiser must be a department-certified appraiser [~~precertified in accordance with §9.89 of this section (relating to Qualification Requirements for Appraisers)~~]. The department will evaluate a department-certified [~~precertified~~] appraiser's responsive proposal based on the following criteria:

(1) experience of the individual;

(2) demonstrated understanding of the scope of services to be provided;

(3) references including the ability to meet deadlines over the past three years;

(4) ability to meet department scheduling requirements; and

(5) reasonableness of fee.

(d) Evaluation scale. The department will assign a numerical weighting value to each evaluation criterion and then score each criterion based upon a numerical scale.

(e) Evaluation matrix. The department will evaluate each responsive proposal using an individual proposal evaluation matrix.

(f) Tie scores. In the event of a tie, the managing officer will break the tie using the following method unless different criteria have been listed in the RFP.

(1) The first tie breaker, if needed, will be references/past performances.

(2) The second tie breaker, if needed, will be ability to meet department scheduling requirements.

(3) If there is still a tie, the provider will be chosen by random selection.

§9.87. Selection.

The department will perform three types of contract selections.

(1) Individual contract selection. One contract will result from the contract notice.

(2) Multiple contract selection. More than one contract, of similar work types and estimated amounts will result from the contract notice. The notice will indicate the number and type of contracts to result from the advertisement, and specify a range of scores for providers that will be considered qualified to perform the work.

(3) Indefinite delivery contract selection.

(A) This contract selection may be for award of contracts to single or multiple providers to perform work under a general scope of services.

(B) The typical type of work will be described in the contract. Specific services shall be authorized by individual work authorizations on an as-needed basis. The maximum contract amount shall be specified in the contract. The total contract amount shall not exceed $4 million [$2,000,000] for a contract issued to provide services in a single district of the department. The total of the contract work authorizations shall not exceed $5 million [$5,000,000] in a contract issued to provide services in two or more districts of the department.

(C) All work authorizations under an indefinite delivery contract shall be issued within two years of the effective date of the contract, except for scientific services. For scientific services, the initial work authorization for any specific project must be issued within two years. The work authorization for tasks or subtasks, within the specific project, may be issued after the initial two years provided that the task or subtask does not initiate a new project.

§9.89. Qualification Requirements for Department-Certified Appraisers.

(a) Eligible individuals. To become a department-certified appraiser, [be precertified] an applicant [appraiser] must:

[(1) have demonstrated experience after licensure in the performance of appraisals associated with one or more of the following types of properties: residences, apartments, commercial, industrial, farms, or other special purpose;]

(1) [(2)] be a state-certified general appraiser or state-certified residential appraiser; [currently licensed to practice in the state of Texas by the Texas Appraiser Licensing and Certification Board; and]

(2) have demonstrated experience after state certification in the performance of appraisal types required by the department; and

(3) submit to the Right of Way Division of the Texas Department of Transportation in Austin a complete and correct application for department certification [precertification] on a form prescribed by the department, including, but not limited to, a copy of the applicant's state certification issued by the state of Texas Appraiser Licensing and Certification Board [information regarding education, training, experience, and copies of licenses and certifications].

(b) Certification as a department-certified [The precertification of an] appraiser does not guarantee that work will be awarded to the appraiser.

(c) An applicant [appraiser] will be notified, [precertified] within 60 days after the day of the Right of Way Division's [of] receipt of a complete and correct application form, that the applicant has been certified as a department-certified appraiser, that the applicant [or notified in writing within the same time period that they] did not meet the requirements for department certification, [precertification] or that additional information or documentation will be required for review.

(d) If the application is incomplete, the applicant [appraiser applying for precertification] will be requested to submit additional information or documentation for review. The applicant [appraiser] shall submit such information or documentation within 30 days of receipt of the department's request for such information or documentation. If the information is not provided within 30 days after receipt of the request, the application for department certification [precertification] will be processed with the information available. The department will make a determination on department certification [precertification] status within 60 days of receipt of the additional information.

(e) Renewal of department certification [precertification] will be required within 60 days after the issuance of the appraiser's renewal of the state certification issued by the Texas Appraiser Licensing and Certification Board. Department certification terminates on the date that state certification expires or is surrendered, suspended, or revoked. [every five years. Precertified appraisers will be assigned a renewal date by the department and must apply for renewal of precertification on an application form prescribed by the department between 90 and 30 days prior to their renewal date. The precertification of a appraiser who fails to submit an application for renewal at least 30 days prior to its renewal date will expire, and the appraiser would then be ineligible to submit a letter of interest for new contracts until having first been precertified.]

(f) Appeal. An applicant [appraiser] may appeal denial of department certification [precertification] by submitting additional information within 30 days of receipt of written notification of denial to the Director of the Right of Way Division in Austin. This information shall justify why the applicant [appraiser] meets the requirements for a department-certified appraiser [precertification]. The Director of the Right of Way Division will review the information and make a determination regarding department certification [precertification]. An applicant [appraiser] may appeal that determination by filing a written complaint regarding denial of department certification [selection for precertification] with the executive director or his or her designee.

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

Filed with the Office of the Secretary of State on October 30, 2015.

TRD-201504633
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 463-8630

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CHAPTER 30. AVIATION
SUBCHAPTER F. METEOROLOGICAL EVALUATION TOWERS

43 TAC §§30.501 - 30.503

The Texas Department of Transportation (department) proposes new §§30.501 - 30.503, concerning Meteorological Evaluation Towers.

EXPLANATION OF PROPOSED NEW SECTIONS

The increasing prevalence of meteorological evaluation towers (METs), which are used to measure wind speed and direction to identify locations for future wind turbines, has caused concern for the National Transportation Safety Board and the Federal Aviation Administration. Senate Bill 505, 84th Legislature, Regular Session, added new Transportation Code, §21.071, which establishes painting and marking requirements for certain METs, and requires the department to adopt rules requiring a person who owns, operates, or erects a MET to provide notice to the department of the existence of or intent to erect a tower and to register the tower with the department. The department is developing a web-based notice, registration, and reporting tool that will be available to owners and operators of METs, as well as other interested parties that need to know the location of such towers.

New Subchapter F is titled "Meteorological Evaluation Towers" to accurately reflect the subject matter of the subchapter.

New §30.501, Purpose, describes the purpose of the subchapter, which is to set out the procedures for notice and registration of METs in accordance with Transportation Code, §21.071.

New §30.502, Definitions, defines various terms used in the new subchapter, which are consistent with Transportation Code, §21.071.

New §30.503, Notice and Registration, describes the method, timeframe, and type of information required for providing notice of the intent to erect a MET, as well as registration of such a tower.

New subsection (a) provides that a person who intends to erect a MET shall provide notice of that intention to the department by submitting the appropriate form through the department's Internet website. The notice must be submitted no later than the 30th day before the day that erection of the tower begins. This notification deadline will allow the department to disseminate pertinent information through the web-based tool prior to the construction of the tower.

New subsection (b) sets out the information required to complete the notice form, including: the name, address, and contact information of the owner or operator of the MET; the proposed location of the MET; the proposed date of construction; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (c) provides that a person who owns or operates a MET shall register the tower with the department by submitting the appropriate form through the department's Internet website. The registration must be completed before the 30th day after the day that erection of the tower begins or February 29, 2016, whichever is later. These registration deadlines will allow the department to disseminate pertinent information related to existing towers through the web-based tool in a timely manner.

New subsection (d) sets out the information required to complete the registration form, including: the name, address, and contact information of the owner or operator of the MET; the location of the MET; for certain METs, an affirmation that the tower complies with the painting and marking requirements of Transportation Code, §21.071; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (e) provides that a person who is responsible for filing a form required by Subsection (a) or (c) shall amend the filed information as necessary to maintain accuracy of that information.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the proposed new sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the proposed new sections. There will be no fiscal implications for local governments.

David S. Fulton, Director, Aviation Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new rules.

PUBLIC BENEFIT AND COST

Mr. Fulton 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 new rules will be improved public safety through enhanced awareness of obstacles by pilots operating aircraft at low altitudes. There are no anticipated economic costs for persons required to comply with the new sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on proposed new §§30.501 - 30.503 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 "Aviation Rules." The deadline for receipt of comments is 5:00 p.m. on December 14, 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 new rules, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §21.071, which requires the department to adopt rules related to the notice and registration of METs.

CROSS REFERENCE TO STATUTE

Transportation Code, §21.071.

§30.501. Purpose.

The purpose of this subchapter is to prescribe the procedures for notice and registration of meteorological evaluation towers in accordance with Transportation Code, §21.071.

§30.502. Definitions.

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

(1) Department--The Texas Department of Transportation.

(2) Meteorological Evaluation Tower--A structure that is self-standing or supported by guy wires and anchors, is not more than six feet in diameter at the base of the structure, and has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted for the purpose of documenting whether a site has sufficient wind resources for the operation of a wind turbine generator. For purposes of this subchapter, the term does not include a structure that is located adjacent to a building, including a barn, or an electric utility substation, or in the curtilage of a residence.

§30.503. Notice and Registration.

(a) A person who intends to erect a meteorological evaluation tower shall provide notice of that intention to the department by submitting the appropriate form through the department's Internet website. The notice required by this subsection must be submitted no later than the 30th day before the day that erection of the tower begins.

(b) The following information is required to complete the notice form required by subsection (a) of this section:

(1) the name, address, and contact information of the owner or operator of the meteorological evaluation tower;

(2) the proposed location of the meteorological evaluation tower, including latitude, longitude, ground elevation at the site and height above ground level of the tower;

(3) the proposed date of construction; and

(4) any other information the department considers necessary to assist in determining ownership, physical characteristics, or location of the meteorological evaluation tower.

(c) A person who owns or operates a meteorological evaluation tower shall register the tower with the department by submitting the appropriate form through the department's Internet website. The registration required by this subsection must be completed before the 30th day after the day that erection of the tower begins or February 29, 2016, whichever is later.

(d) The following information is required to complete the registration form required by subsection (c) of this section:

(1) the name, address, and contact information of the owner or operator of the meteorological evaluation tower;

(2) the location of the meteorological evaluation tower, including latitude, longitude, ground elevation at the site and height above ground level of the tower;

(3) if the meteorological evaluation tower is at least 50 feet but not more than 200 feet in height above ground level, an affirmation that the tower complies with the requirements applicable to the tower under Transportation Code, §21.071; and

(4) any other information the department considers necessary to assist in determining ownership, physical characteristics, or location of the meteorological evaluation tower.

(e) The person who is responsible for filing a form required by subsection (a) or (c) of this section shall amend the filed information as necessary to maintain the accuracy of that information.

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

Filed with the Office of the Secretary of State on October 30, 2015.

TRD-201504634
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 463-8630

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PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §§57.9, 57.14, 57.18, 57.48, 57.51

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes amendments to §57.9, Nonsupplanting Requirement; §57.14, Approval of Grant Projects; §57.18, Grand Projects; §57.48, Motor Vehicle Years of Insurance Calculations; and §57.51, Refund Determinations.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §57.9, Nonsupplanting Requirement, are proposed to add language which defines and clarifies "supplanting."

An amendment to §57.14, Approval of Grant Projects, is proposed to remove the category, Public Awareness, Crime Prevention, and Education; and add Educational Programs and Marketing as stated in statute to the program categories eligible for consideration for funding.

Amendments to §57.18, Grant Adjustments, are proposed to clarify grant adjustments for overtime, job positions, and out-of-state travel and to add that notification is to be provided to the ABTPA director of changes of designated officials.

Amendments to §57.48, Motor Vehicle Years of Insurance Calculations, are proposed to update and clarify the rule with current statute.

Amendments are proposed to §57.51, Refund Determinations, to change the time period a claim can be filed for determination or a refund from six-months to four years and amendments to clarify the section.

Proposed amendments are made throughout the sections to revise terminology for consistency with Texas Department of Motor Vehicle (TxDMV) rules and with current ABTPA practice. In addition, nonsubstantive amendments are proposed to correct punctuation, grammar, capitalization, and references throughout the proposed amended sections.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments 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.

Bryan Wilson, Director of ABTPA, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Wilson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be simplification and clarification of the agency's rules. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

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

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David Richards, General Counsel, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on December 14, 2015.

STATUTORY AUTHORITY

The amendments are proposed under Texas Civil Statutes, Article 4413(37), Section 6(a), which provides the Board of the Automobile Burglary and Theft Prevention Authority with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the authority.

CROSS REFERENCE TO STATUTE

Texas Civil Statutes, Article 4413(37).

§57.9. Nonsupplanting Requirement.

(a) State [~~Texas Civil Statutes, Article 4413(32a), §6(a)(7), requires that state~~] funds provided by this Act shall not be used to supplant state or local funds.

(b) Supplanting means the replacement of other funds with ABTPA grant funds or using existing resources as cash match.

(c) Positions which existed prior to new grant award approval and were funded from any source other than ABTPA grant funds are not eligible for grant funding or to be used as cash match.

(d) If a grant program is reduced by 20% or more from the previous year, and as a result, grant funded or match positions are transferred to other duties for the grant year, they may be returned to grant funding in the subsequent grant year. This exception is not available for any positions that have not been grant funded or used as match for more than one grant year.

(e) [~~(b)~~] Each grantee shall certify that ABTPA funds have not been used to replace state or local funds that would have been available in the absence of ABTPA funds. The certification shall be incorporated in each grantee's [~~report of~~] expenditure report [~~and status of funds referred to under §57.3(6) of this title (relating to Compliance Adoption by Reference)~~].

§57.14. Approval of Grant Projects.

(a) The ABTPA board will approve funding for projects on an annual basis, subject to continuation of funding through state appropriations and availability of funds.

(b) To be eligible for consideration for funding, a project must be designed to support one of the following ABTPA program categories:

(1) Law Enforcement, Detection and Apprehension;

(2) Prosecution, Adjudication and Conviction;

(3) Prevention, Anti-Theft Devices and Automobile Registration;

(4) Reduction of the Sale of Stolen Vehicles or Parts; and

(5) Educational Programs and Marketing [~~Public Awareness, Crime Prevention, and Education~~].

(c) Grant award decisions by the ABTPA are final and not subject to judicial review.

§57.18. Grant Adjustments.

(a) The grantee must secure prior written approval from the ABTPA director for any of the following:

(1) changes in the need, objectives, approach, or geographical location of the grant;

(2) transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;

(3) changes in overtime, confidential funds, the number of positions or job descriptions of personnel specified in the grant agreement;

(4) changes in equipment amounts, types, or methods of acquisition;

(5) out-of-state travel not specified in the grant agreement [~~changes in the grant or liquidation periods~~]; or

(6) other changes for which the grant agreement or uniform grant and contract management standards require prior approval. [~~The grantee must provide written notification to the ABTPA director within five days from the date of any change in the project director, financial officer, or authorized official.~~]

(b) The grantee must provide written notification to the ABTPA director within five days from the date of any change in the project director, financial officer, or authorized official.

§57.48. Motor Vehicle Years of Insurance Calculations.

(a) Each insurer, in calculating the fees established by Texas Civil Statutes, Article 4413(37), §10, shall comply with the following guidelines:

(1) The single statutory fee of $2 [~~$2.00~~] is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle" as referred to in Texas Civil Statutes, Article 4413(37), §1(5), [~~§10(2),~~] means motor vehicle as defined by

the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the $2 [~~$2.00~~] fee except mechanical breakdown policies, garage liability policies, nonresident policies and policies providing only non-ownership or hired auto coverages.

(b) The Texas Automobile Burglary and Theft Prevention Authority Assessment Report form and Instructions for the Computation of the Automobile Burglary and Theft Prevention Authority Assessment of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, P.O. Box 149356, Austin, Texas 78714-9356. Each insurer shall use this form and follow these instructions when reporting assessment information to the Comptroller.

§57.51. Refund Determinations.

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must file amended reports for each period and a written claim for a determination or a refund not later than four years [~~six months~~] after the date the semi-annual payment was made to the state comptroller.

(b) The director or the ABTPA board designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the ABTPA determination. If an insurer refuses to provide the requested information, the refund shall [~~may~~] be denied in whole or in part.

(c) The director or the ABTPA board designee is authorized to employ or retain the services of financial advisors to assist in the determination. The director or the designee shall prepare a written report to the ABTPA based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The ABTPA shall base its determination on the documentary evidence considered by the director or the board designee. The ABTPA decision shall be based on a majority vote of the board. The ABTPA decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ABTPA shall notify the comptroller and request the comptroller to draw warrants [~~on the funds available to the ABTPA for the purpose of refunding monies overpaid~~].

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

Filed with the Office of the Secretary of State on October 29, 2015.

TRD-201504625
David Richards
General Counsel
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: December 13, 2015
For further information, please call: (512) 465-5665

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER G. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board withdraws the proposed repeal 19 TAC §§21.171 - 21.176 which appeared in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7350).

Filed with the Office of the Secretary of State on November 2, 2015.

TRD-201504645
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 2, 2015
For further information, please call: (512) 427-6114

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19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board withdraws proposed new 19 TAC §§21.171 - 21.176 which appeared in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7351).

Filed with the Office of the Secretary of State on November 2, 2015.

TRD-201504644
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 2, 2015
For further information, please call: (512) 427-6114

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10th Grade

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.13

The Texas State Library and Archives Commission adopts the repeal of 13 TAC §§3.1 - 3.13, regarding the State Publications Depository Program, without changes to the proposal as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5128).

The repeal will allow the adoption of new rules to formalize current practices implemented as a result of previous legislative budget cuts.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Texas Government Code §441.102, which authorizes the commission to adopt rules for the distribution of state publications to depository libraries and for the retention of those publications, and to establish and maintain a system, named the "Texas Records and Information Locator," or "TRAIL," to allow electronic access, including access through the Internet, at the Texas State Library and other depository libraries to state publications that have been made available to the public through the Internet by or on behalf of a state agency.

The repeal affects the Texas Government Code §§441.010, 441.102 - 441.106.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2015.

TRD-201504626
Donna Osborne
Chief Operations and Fiscal Officer
Texas State Library and Archives Commission
Effective date: November 18, 2015
Proposal publication date: August 14, 2015
For further information, please call: (512) 463-5440

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13 TAC §§3.1 - 3.8

The Texas State Library and Archives Commission adopts 13 TAC §§3.1 - 3.8, regarding the State Publications Depository Program, without changes to the proposed text as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5129). The rules will not be republished.

The adopted rules will formalize current practices implemented as a result of previous legislative budget cuts. The public benefit of adopting the new rules will be the continued access to state government publications and information.

No comments were received regarding the adoption of the new rules.

The new rules are adopted under Government Code §441.102 which authorizes the commission to adopt rules for the distribution of state publications to depository libraries and for the retention of those publications, and to establish and maintain a system, named the "Texas Records and Information Locator," or "TRAIL," to allow electronic access, including access through the Internet, at the Texas State Library and other depository libraries to state publications that have been made available to the public through the Internet by or on behalf of a state agency.

The new sections affect Government Code §§441.010, 441.102 - 441.106.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2015.

TRD-201504627
Donna Osborne
Chief Operations and Fiscal Officer
Texas State Library and Archives Commission
Effective date: November 18, 2015
Proposal publication date: August 14, 2015
For further information, please call: (512) 463-5440

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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 adopts an amendment to §571.1, regarding Definitions, adding a new term to the Board's rules for "renewal year" to specifically define the renewal year to be from the first day of the month after a licensee's birth month to the last day of the licensee's birth month the following year. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6016) and will not be republished.

The amendment defines renewal year in order to move all licensees to a renewal deadline of the end of their respective birth month. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period, creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year.

No comments were received regarding the adoption.

The amendment to §571.1 is adopted 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, as well as §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504646
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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22 TAC §571.9

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.9, regarding Special Veterinary Licenses, specifically tying the renewal period to a licensee's birth month. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6017) and will not be republished.

The amendment removes the calendar year renewal reference for special licenses and changes it to a renewal year reference. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year. The reference to a renewal certificate is also removed as this Board previously voted to remove the requirement for the Board to issue a tangible renewal certificate.

No comments were received regarding the adoption.

The amendment to §571.9 is adopted 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, as well as §801.256(c) which states that the Board may adopt rules relating to the issuance of a special license.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504647
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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22 TAC §571.17

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.17, regarding Expedited License Procedure for Military. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6018) and will not be republished.

The amendment is in response to legislation passed this last legislative session. Specifically, Senate Bill 1307 requires agencies that issue licenses to pass rules allowing for alternative and expedited licensing for military service members, military veterans, and military spouses. The current rule provides such expedited and alternative licensing for military spouses. This amendment expands that to include military service members and military veterans as required by legislation.

No comments were received regarding the adoption.

The amendment to §571.17 is adopted 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, §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504648

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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SUBCHAPTER D. LICENSE RENEWALS

22 TAC §571.55

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.55, regarding Delinquent Letters. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6019) and will not be republished.

The amendment is in furtherance of tying the renewal period to a licensee's birth month. It provides that for the purposes of Board staff sending delinquency letters, a licensee is considered delinquent on the 10th day after the last day of his or her birth month. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year. The amendment also further clarifies that once a licensee is delinquent (or expired) for a year, his or her license is cancelled. This is not a new policy but a clarification of language.

No comments were received regarding the adoption.

The amendment to §571.55 is adopted 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, as well as §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504649
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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22 TAC §571.56

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.56, regarding the Military Service Fee Waiver. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6020) and will not be republished.

The amendment is in response to legislation passed this last legislative session. Specifically, Senate Bill 807 requires that licensing and examination fees be waived for military service members, military veterans, and military spouses and this amendment sets that waiver out in rule.

No comments were received regarding the adoption.

The amendment to §571.56 is adopted 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, as well as §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504650
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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22 TAC §571.59

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.59, regarding Expired Veterinary Licenses. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6021) and will not be republished.

The amendment is in furtherance of tying the renewal period to a licensee's birth month. It provides that a veterinarian license is considered expired on the 10th day after the last day of his or her birth month and that licensees have 90 days prior to the end of their birth month to renew their license. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year. The amendment also clarifies that once a veterinarian license is expired for a year, his or her license is cancelled. This is not a new policy but a clarification of language. Further, under the amendment, in accordance with Senate Bill 1307, a military spouse or military service member who failed to renew his or her license for a period of one year or more, may still receive a license if the other requirements for licensing are met.

No comments were received regarding the adoption.

The amendment to §571.59 is adopted 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.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504651
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.60, regarding Expired Licenses for Equine Dental Providers and Licensed Veterinary Technicians. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6021) and will not be republished.

The amendment is in furtherance of tying the renewal period to a licensee's birth month. It deletes a reference to calendar year and replaces it with language regarding a licensee's birth month as the renewal period. The amendment also states that licensees have 90 days prior to the end of their birth month to renew their license. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year. The amendment also clarifies that once an equine dental provider's or licensed veterinary technician's license is expired for a year, his or her license is cancelled. This is not a new policy but a clarification of language.

No comments were received regarding the adoption.

The amendment to §571.60 is adopted 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, as well as §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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 November 2, 2015.

TRD-201504652
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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22 TAC §571.61

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.61, regarding Inactive License Status. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6022) and will not be republished.

The amendment is in furtherance of tying the renewal period to a licensee's birth month. It deletes a reference to the set January and February renewal period. It provides that a licensee may request to be placed in an inactive status three months prior to the first day of the licensee's birth month. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year.

No comments were received regarding the adoption.

The amendment to §571.61 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §801.151(a) which states that the Board may adopt rules as necessary to administer this chapter, §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians, as well as §801.306 which states the Board may adopt rules to provide for the placement of a license holder on inactive status.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7555

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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 adopts an amendment to §573.4, regarding Adherence to the Law. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6023) and will not be republished.

The amendment is to simply correct a typo within the rule as it was referencing the incorrect portion of another rule.

No comments were received regarding the adoption.

The amendment to §573.4 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, as well as §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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22 TAC §573.7

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.7, regarding No Abuse of Position or Trust. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6024) and will not be republished.

The amendment will add as an abuse of a licensee's position or trust the scenario where a licensee asks or requires a client to waive his or her right to file a complaint with the Board. The Board is concerned with a licensee using their position or abusing the trust the client has in them, in the encouragement of not filing complaints with the Board. If a valid complaint is not filed with the Board due to this abuse, the public is potentially harmed by not being aware of a violation of Board rules by the licensee.

A comment was received from the Texas Veterinary Medical Association (TVMA) as well as another comment from a private individual agreeing with TVMA's comments regarding the adoption of the amendment to the rule. TVMA stated that they agree that a veterinarian should not request or require a client to waive their right to file a complaint with the Board. They also stated that if such a waiver was requested it would be invalid and would not prevent the Board from pursuing a case. However, TVMA is concerned that the proposed amendment would discourage private settlement of claims between parties. TVMA references when a billing dispute arises, or other type of dispute, the matter may be settled with a settlement agreement that may include a confidentiality or non-disparagement agreement. The Board disagrees with the comments. The Board does not review complaints over simple billing disagreements and will dismiss those cases. As for confidentiality or non-disparagement agreements, the rule only restricts a licensee from requesting or requiring a client to waive their right to complain with the Board. Any other confidentiality or non-disparagement agreement would not be prohibited, such as statements on social media, websites, or any other public statements.

The amendment to §573.7 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, §801.151(c)(1) which states the Board may adopt rules to protect the public, as well as §801.151(c)(4) which states that the Board may adopt rules to provide for the licensing and regulation of veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.43

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.43, regarding Controlled Substances Registration. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6024) and will not be republished.

The amendment requires all practitioners to have a Drug Enforcement Administration (DEA) federal controlled substance registration if the practitioner administers, prescribes, dispenses, delivers, or orders delivered controlled substances. SB 195 provided that to manufacture, distribute, prescribe, analyze or dispense a controlled substance, a person must have a DEA federal registration. Dispensing includes prescribing and administering. Under SB 195, the practitioner is allowed to only possess without a DEA controlled substances registration. DEA

has informed Board staff that it has never considered other practitioners within a clinic an "agent" for purposes of the agent exemption from DEA registration. DEA has stated that their definition of agent is someone who works on behalf of or at the direction of the practitioner. Another practitioner examining his or her own patients and not acting under the specific direction of another practitioner must be registered. No other health profession agency in Texas is permitting other practitioners to serve as agents under another practitioner's DEA registration. The idea is that a practitioner is acting independently and should therefore be responsible for their own controlled substances and any potential diversion of such controlled substances. Under the previous rule, every practitioner was required to have a Department of Public Safety (DPS) controlled substance registration. Under SB 195, the DPS controlled substances registration is discontinued as of August 31, 2016. With the DPS controlled substances registration going away, the Board was also concerned that there would be certain number of practitioners that would now have no controlled substance registration. There is a large and growing problem of diversion of controlled substances in society and this is becoming a larger problem in the veterinary community.

The rule is going into effect on September 1, 2016 in order to allow licensees plenty of time to get their DEA controlled substances registration and because the law on DPS controlled substances registration does not expire until August 31, 2016.

Two comments were received agreeing with the proposed amendments. One commenter noted that the DPS controlled substances registration was redundant so everyone should have a DEA controlled substances registration now that the DPS controlled substances registration is going away. Another commenter noted that each practitioner, whether working in a group practice or as a sole practitioner, is an independent entity and should possess all of the credentials for said practice. This commenter is concerned about blurring the lines as to who would be responsible for actions of individual practitioners. The Board agrees and believes this is the policy behind the recent legislation, SB 195.

Twenty comments were received against the adoption of the amendments to the rule, including from the Texas Veterinary Medical Association (TVMA). The comments were mostly concerned with the increased cost to practitioners. The Board believes that while this is a significant expense for approximately 2200 licensees, this is required by SB 195 which passed in the last legislative session. There is a large and growing problem of diversion of controlled substances and this legislations and the amendments to this rule are in an effort to address this societal problem. Board staff also spoke with DPS staff and DPS stated that the new statutory language was replacing DPS controlled substance registration with the DEA controlled substances registration. TVMA and a few other commenters also commented that the Board staff is incorrectly interpreting the language set out in SB 195. The Board disagrees as SB 195 was passed by the Texas Legislature replacing the term for DPS registrant with the term for DEA registrant throughout the statutory language. TVMA highlights that there is language added in SB 195 stating that "except as otherwise provided by this chapter, a person who is not registered with or exempt from registration with the federal DEA [a registrant], may not manufacture, distribute, prescribe, possess, analyze or dispense a controlled substance in this state". This, however, does not change that there is a later clear statement that only possession of controlled substances is allowed without a DEA registration. The Board also notes the systemic replacement of DPS registrant with DEA registrant throughout SB 195 as proof of legislative intent as well as the testimony at the legislative hearings on SB 195. The legislative sponsors for the bill testified that the DPS registration was completely duplicative of the DEA registration. The Texas Association of Business testified in favor of the bill stating millions of dollars are spent by businesses in the state on lost time from employees using diverted drugs and on health insurance costs due to the increasing number of employees using diverted drugs and their potential addictions from such use. One witness in favor of the bill testified that the DEA license process is efficient and that the DPS process would take months to cancel a license. No representative from the veterinary profession testified at the legislative hearings on this legislation. DEA has stated to Board staff that a person may not work under another person's registration and if DEA were to inspect a veterinarian's office they would require a veterinarian, which used controlled substances but was working under another licensee's DEA controlled substances registration, to get their own DEA registration. DEA has also provided guidance on the term agent or employee and they state that this is meant for individuals who could not otherwise get their own DEA registration. There were a few comments that are concerned that relief veterinarians have to change their address with DEA every time their practice address changes that this will be burdensome and require a new registration with DEA. The Board disagrees as DEA has stated that while a new registration is needed with a change of practice address, there is no additional fee and the process is expedited. There was also a commenter that stated every licensee would be required to have a DEA license. The Board disagrees as the DEA registration is only required if the practitioner is using controlled substances. SB 195 is clear that only possession of controlled substances is allowed without a DEA registration. There were also a few commenters who believe the cost is $731 per year is the cost of the DEA registration. According to DEA, the cost is $731 every 3 years, or about $244 per year. There were also a few commenters who stated that the increase in cost would mean that they as a licensee would then not prescribe pain medications or do surgeries when necessary due to the increase in cost. The Board disagrees as there is still a standard of care and if pain medications or surgeries are required then the animal would need to be referred to a licensee with a DEA registration so as to receive appropriate medical care.

The rule goes into effect September 1, 2016.

The amendment to §573.43 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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Loris Jones
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Texas Board of Veterinary Medical Examiners
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SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.50

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.50, regarding Controlled Substances Record Keeping for Drugs on Hand. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6025) and will not be republished.

The amendment adds the same language that appears in the patient recordkeeping rule, requiring drug logs to be complete, contemporaneous, and legible, so that they may be properly reviewed.

No comments were received regarding the adoption.

The amendment to §573.50 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states that the Board may adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7555

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22 TAC §573.54

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.54, regarding Patient Records Release and Charges. The amendment is adopted with changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6026) and will be republished.

The amendment provides for extenuating circumstances that may come up during a time when a client is requesting copies of patient records. Specifically, a veterinarian would be allowed greater than 15 days to provide records if he or she notifies the requestor in writing prior to the 15-day deadline and explains why the delay is necessary and how long it will take to produce the records. The records still must be produced within 30 days of the request. However, if the records are requested for emergency or acute purposes, the vet must supply the records within one business day.

A comment was received by the Texas Veterinary Medical Association (TVMA) and another commenter agreed with all of TVMA's comments. TVMA is concerned about solo practitioners who are away from their practice or unreachable by phone. TVMA believed that more than 24 hours may be necessary and supported language that stated records be provided "immediately or as soon as reasonably practicable." Another individual commented as well concerned about veterinarians who are unavailable or out of town and being able to comply with the rule. The commenter suggested 72 hours or "24 hours if humanly possible." The Board agreed but was concerned with the vagueness of the suggested language and made a change to address this issue to "one business day". There is also flexibility in the rule as Board staff reviews complaints and has discretion on finding violations. A licensee has the ability to appeal any violation found to Board members serving on the Enforcement committee. If the licensee still disagrees with any violation found then they have the right to a contested case hearing at the State Office of Administrative Hearings and due process ensues there.

The amendment to §573.54 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states the Board may adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by the adoption.

§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 one business day.

(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 adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.64, regarding Continuing Education Requirements. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6027) and will not be republished.

The amendment is in furtherance of tying the renewal period to a licensee's birth month. It provides that continuing education (CE) must be completed during the newly defined renewal year. It also replaces the previous deadline for a CE hardship of December 15th to the 15th day of the month three months prior to the last day of the licensee's birth month. This rule is in line with the policy of the Board approved earlier this year to change the renewal period from a set two-month period for every licensee to a rolling birth month renewal period. The overall policy will also align continuing education deadlines for licensees with the renewal birth month period creating an easier way for licensees to remember when their continuing education is due. This also allows revenue and the work load for agency staff to be spread out throughout the year. Further, under the amendment, in accordance with Senate Bill 1307, military service members are provided two years to complete requisite CE.

No comments were received regarding the adoption.

The amendment to §573.64 is adopted 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, and §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states the Board may adopt rules to protect the public and §801.151(c)(4) which states the Board may adopt rules to provide for the licensing and regulation of licensed veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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22 TAC §573.71

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.71, regarding operation of Temporary Limited-Service Veterinary Services. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6028) and will not be republished.

The amendment permits up to 90 days of notice of a temporary clinic occurring. However, notice of a cancellation of a temporary limited-service veterinary clinic must be provided within 48 hours. Board staff has seen an increase in temporary clinic notices that extend for long periods of time or even indefinitely, such as a clinic will be held every Saturday. These are very difficult to track by Board staff and there is no requirement for informing the Board of when those clinics are cancelled. The purposes of requiring notice of temporary limited-service veterinary clinics is to allow Board staff to be able to inspect those clinics.

A comment was received by the Texas Veterinary Medical Association (TVMA) and another commenter agreed with all of TVMA's comments. TVMA supported that notice be provided no more than 90 days prior to the operation of the clinic. However, TVMA opposed the portion of the amendment that requires cancellations be reported to the Board 48 hours before the clinic is scheduled. TVMA is concerned the timeframe is inflexible if the veterinarian becomes ill or weather requires a closure. TVMA suggested language that states notice is to be provided 48 hours or "as soon as reasonably practicable." The Board is concerned that the vagueness of the suggested language could create a large loophole in the rule. The Board believes there is already a process that builds flexibility in the rule as Board staff reviews complaints and has discretion on finding violations. A licensee has the ability to appeal any violation found to Board members serving on the Enforcement committee. If the licensee still disagrees with any violation found, they have the right to

a contested case hearing at the State Office of Administrative Hearings and due process ensues there.

The amendment to §573.71 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states the Board may adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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22 TAC §573.72

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.72, regarding Employment by Nonprofit or Municipal Corporations. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6029) and will not be republished.

The amendment clarifies current interpretation of this rule. If an individual is exempt from the Act and rules of the Board, then, clearly, this rule would not apply to that individual. However, many nonprofit and municipal corporations care for and treat animals that are owned by the public. This amendment clarifies the long held interpretation that this rule only applies if the exemption does not otherwise apply.

No comments were received regarding the adoption.

The amendment to §573.72 is adopted 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, and §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states the Board may adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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22 TAC §573.80

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.80, regarding Definitions. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6030) and will not be republished.

The amendment revises the two definitions regarding supervision as the Board now has more licensees, not just veterinarians, who may be providing the supervision discussed through the rules. This amendment simply changes the reference from a veterinarian's supervision to a licensee's supervision.

No comments were received regarding the adoption.

The amendment to §573.80 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states the Board may adopt rules to protect the public and §801.151(c)(4) which states the Board may adopt rules regarding the licensure and regulation of licensed veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.22

The Texas Board of Veterinary Medical Examiners adopts an amendment to §575.22, regarding Reinstatement of Licenses. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6031) and will not be republished.

The amendment deletes the reference to a license cancelled and changes the term to surrendered in order to address confusion regarding terminology within the rules. This rule is only dis-

cussing licenses that are surrendered not cancelled. The term "cancelled" was in reference to a license that is not renewed; whereas, surrendered is in reference to a license that is relinquished. This amendment further clarifies current practice that a petitioner requesting a license reinstatement may appear before the Board or the Board's enforcement committee.

No comments were received regarding the adoption.

The amendment to §575.22 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §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 in the veterinary medicine profession, as well as §801.151(c)(1) which states the Board may adopt rules to protect the public and §801.151(c)(4) which states the Board may adopt rules regarding the licensure and regulation of licensed veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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22 TAC §575.27

The Texas Board of Veterinary Medical Examiners adopts an amendment to §575.27, regarding Complaints--Receipt. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6032) and will not be republished.

The amendment provides the correct website address for the Board's new website. The amendment also provides for procedures to address situations where the Board receives multiple complaints regarding the same licensee and the same alleged facts. The amendment allows those complaints to be combined into one investigation and one file. The director of enforcement would also be allowed to divide multiple complaints into more than one case file based upon timing of the receipt of such complaints. The amendment is to improve the efficiency of the Board in handling these types of investigations and to speed up the investigative process. This amendment will not create a situation where the Board would take the same fact scenario to the State Office of Administrative Hearings multiple times but is simply to provide a breaking point so that cases where there are a large number of complaints can go forward without having to wait for there to be a cessation of complaints before the Board could move forward in the investigative process. This is the current practice of the Board in recent cases involving large numbers of complaints.

No comments were received regarding the adoption.

The amendment to §575.27 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §801.151(a) which states that the Board may adopt rules to administer the Veterinary Licensing Act.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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22 TAC §575.28

The Texas Board of Veterinary Medical Examiners adopts an amendment to §575.28, regarding Complaints--Investigations. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6033) and will not be republished.

The amendment allows the director of enforcement to determine that a complaint has already been addressed as part of a previously filed complaint and related investigation regarding the same licensee and the same alleged facts. The director of enforcement is allowed to close such case if the general counsel concurs. Currently, the director of enforcement may close a complaint if it is not within the Board's jurisdiction or resulted from a misunderstanding. Currently, the director of enforcement must bring such a recommendation to the general counsel and executive director for concurrence. This amendment allows the director of enforcement to bring the recommendation just to the general counsel for concurrence. This amendment increases efficiency and timing of responses to complaints.

No comments were received regarding the adoption.

The amendment to §575.28 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §801.151(a) which states that the Board may adopt rules to administer the Veterinary Licensing Act.

Texas Occupations Code, Chapter 801, is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts an amendment to §577.15, regarding the Fee Schedule. The amendment is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6035) and will not be republished.

The amendment makes several changes to the fee schedule. Specifically, in accordance with House Bill 7, it removes the $200 professional fee. Further, the Board is able to decrease the Board fees this year, except for special licenses, where Board fees are slightly increased but the total fee is decreased. The amendment also adds new fees due to the amount of resources the Board staff in increasingly applying to these issues. Under the amendments, letters of good standing have a fee of $25, reviews of continuing education (CE) programs have a $25 fee and reviews of CE programs submitted late within 30 days of the event have a $50 fee.

No comments were received regarding the adoption.

The amendment to §577.15 is adopted under the authority of the Veterinary Licensing Act, Occupations Code §801.151(a) which states that the Board may adopt rules to administer the Veterinary Licensing Act.

Texas Occupations Code, Chapter 801, is affected by the adoption.

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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Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2015
Proposal publication date: September 11, 2015
For further information, please call: (512) 305-7555

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING

SUBCHAPTER I. LICENSING FEES

28 TAC §19.802

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §19.802, establishing licensing fees for applicants seeking a provisional permit. The amendments to §19.802 are necessary to implement HB 2145, 84th Legislature, Regular Session, effective September 1, 2015, which authorizes the provisional permit. Section 19.802 is adopted without changes to the proposed text published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5719).

REASONED JUSTIFICATION. HB 2145 enacted Insurance Code Chapter 4001, Subchapter H, §§4001.351 - 4001.359. The provisional permit is available to individual applicants under Insurance Code Chapter 4051, Subchapters B and E, and Chapter 4054, Subchapters B, D, and E. The applicants must have passed the required licensing examination, met the requirements described in Insurance Code §4001.353, including submitting a completed application and fingerprints for criminal history, and paid the required licensing application fee and provisional permit fee.

Insurance Code §4001.353 requires TDI to set a nonrefundable fee in an amount that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, but that does not exceed the amount of the fee required for an application for a permanent license. To implement the subchapter, TDI anticipates that processing provisional permit applications will cause changes to TDI's processes and activities resulting in additional costs.

These additional activities and costs are similar to those TDI experiences with the issuance of a temporary license under Insurance Code §4001.151. Specifically, processing the applications will cause TDI to revise workflow within the Agent and Adjuster Licensing Office to maintain the level of consumer and industry protection that is currently available, including designating staff to process applications and review responses to background screening questions and prior criminal history activity. Staff will be assigned new duties related to communicating with applicants and appointing agents, insurers, and HMOs. TDI also expects increased enforcement activity and costs will result from the provisional permit process.

The reasonable and necessary cost for these activities would be similar to those for a temporary license. The current temporary license fee is $100 per application. The license application fee for each license under Insurance Code Chapter 4051, Subchapters B and E and Chapter 4054, Subchapters B, D, and E is $50. Because the provisional permit application fee may not exceed the license application fee, TDI has set the nonrefundable permit application fee at $50.

A license applicant is not required to obtain a permit. Whether an applicant chooses to incur the nonrefundable permit application fee is a business decision of the applicant.

TDI amends §19.802(b)(21) to establish the provisional permit application fee in the amount of $50. The amendment replaces the fee for a temporary public insurance adjuster certificate. The authority to issue a temporary public insurance adjuster certificate was withdrawn under SB 1060, 84th Legislature, Regular Session, effective September 1, 2015. TDI has also made a nonsubstantive change in §19.802(a) to reflect TDI style guidelines.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI received no public comments on the proposed amendments.

STATUTORY AUTHORITY. TDI adopts the amendments under Insurance Code §4001.353 and §36.001. Section 4001.353 requires TDI to establish a nonrefundable fee in an amount that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, and that it does not exceed the amount of the fee required for an application for a permanent license. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The amendments to §19.802 affects Insurance Code §4001.353.

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 November 2, 2015.

TRD-201504638
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: November 22, 2015
Proposal publication date: September 4, 2015
For further information, please call: (512) 676-6584

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §10.6

The Texas Department of Transportation (department) adopts amendments to §10.6, concerning Conflict of Interest, to expand the definition of conflict of interest to include new restrictions on hiring certain former department employees. The amendments to §10.6 are adopted without changes to the proposed text as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5140) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 20, 84th Legislature, Regular Session, added new restrictions on the employment of certain former state employees. Amendments to §10.6 expand the definition of conflict of interest to include restrictions on hiring a former department employee who participated on behalf of the department in an awarded procurement or contract negotiation involving their new employer when the new employer was acting as the prime contractor or an equity partner of the prime contractor. The prohibition applies for two years after the employee leaves the department. The amendments to §10.6 are needed in order to provide a fair and unbiased contracting system and to ensure high standards of ethics and fairness in the administration of the department's programs.

The amendments to §10.6 apply only to department employees whose participation in a procurement or negotiation of a contract is significant and occurs on or after September 1, 2015. A for-profit entity that is awarded a contract, whether as the prime contractor or as an equity partner of the prime contractor, would have a conflict of interest under the rule if it hires a former department employee within two years after the employee leaves the department. The amendments do not apply to contracts that are awarded solely on the basis of lowest bid. Appeals would be handled through existing appeals processes. A disqualification could be appealed by the filing of a protest, denial of payment could be appealed by the filing of a contract claim, and regular sanctions will be handled through the sanction appeal process.

SUBMITTAL OF COMMENTS

The department received several written comments from an individual.

Comment: The commenter maintained that including equity partners in the rule makes the rule more onerous than the statute on which it is based.

Response: The department disagrees with this comment. The statute on which the rule is based applies to "a procurement or contract involving a person." "Person" is defined as "an individual or a business entity." An equity partner is considered to be involved in a procurement or contract due to its substantial financial interest in the contract.

Comment: The commenter asserts that there will be economic costs to persons required to comply with these rules, namely, employees.

Response: These rules do not impose any requirements on employees; they are written to apply to contractors.

Comment: The commenter questioned whether the rules apply after contract award and execution.

Response: Section 10.6(g) states that the rule only applies to the original procurement or contract negotiation.

Comment: The commenter suggested that preparing the scope and participating in the procurement process are not "materially relevant" and should not preclude a contractor from hiring the former employee before the second anniversary of the date his or her service with the department ceased.

Response: The department disagrees with this comment. Section 10.6(g) states that any action that provides an opportunity to steer a contract toward a particular vendor is materially relevant. While there may be some administrative or ministerial duties involved in scope preparation or procurement, most of the duties associated with those functions would fall into the category of activities that could steer a contract toward a particular entity.

Comment: The commenter observed that the rule departs from the statute on which it is based by applying the prohibition to contractors rather than former employees. The commenter warns that contractors may unknowingly violate the rule if they have large operations located in various states, but notes that the appeals process can take this into account.

Response: The department agrees with this comment.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §572.069, as added by Senate Bill 20, 84th Legislature, Regular Session.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2015.

TRD-201504632
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: November 19, 2015
Proposal publication date: August 14, 2015
For further information, please call: (512) 463-8630

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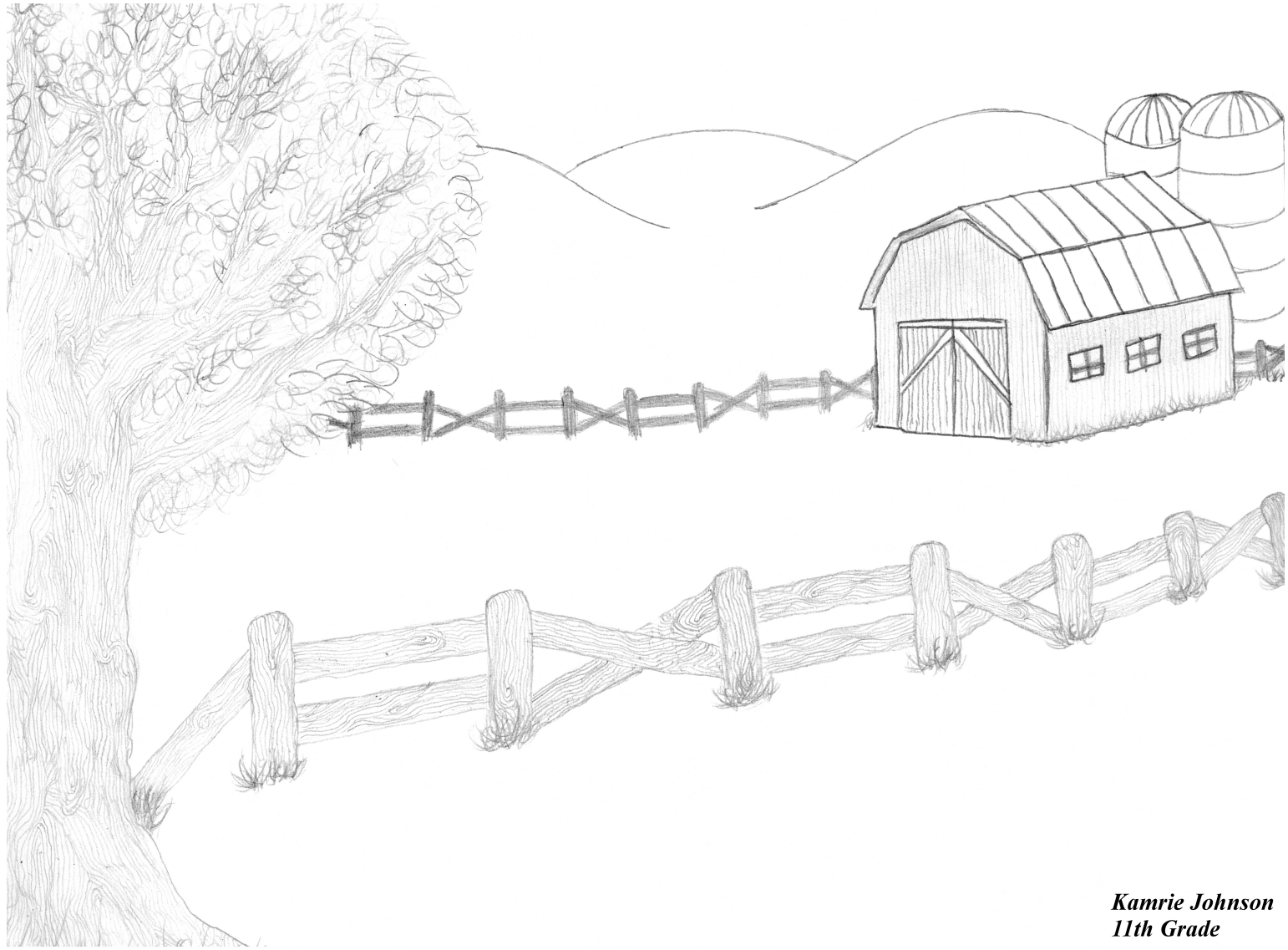

Kamrie Johnson
11th Grade

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 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers. Subchapter B of Chapter 85 contains Division 1, concerning Registration Procedures; and Division 2, concerning Operational Requirements.

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-201504721
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 4, 2015

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Texas Veterans Land Board

Title 40, Part 5

In accordance with §2001.039, Government Code, the Texas Veterans Land Board (VLB) is serving notice of its intent to review rules under Title 40, Part 5 of the Texas Administrative Code. This revised rule review plan is amended to replace all previous published review plans.

The rule review will be conducted on a chapter-by-chapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register.* Review of the rules under each chapter listed in this plan will determine whether the reasons for adoption of the rules continues to exist. During the review process, the VLB may also determine that a rule may need to be amended to further refine the directives and goals of the VLB, or that no changes to a rule as currently in effect are necessary as that rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter 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 30-day public comment period prior to final adoption or repeal.

The VLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas General Land Office, 1700 North Congress, Room 910, Austin, Texas 78701-1495, (512) 475-1859, walter.talley@glo.texas.gov

The VLB will initiate the review of rules within each of the following chapters that have not already been reviewed in accordance with §2001.039, Government Code. The review will begin in November 13, 2015 and be concluded by no later than November 13, 2016.

Chapter 175. General Rules of the Veterans Land Board;

Chapter 176. Veterans Homes;

Chapter 177. Veterans Housing Assistance Program;

Chapter 178. Texas State Veterans Cemeteries.

TRD-201504725
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner, General Land Office
Texas Veterans Land Board
Filed: November 4, 2015

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Thomas Huizar

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: 40 TAC §109.217(g)

Prerequisite Certificate	**BEI Performance Test**
BEI--Level I, Basic, Level II, Level III, Level IV, Level V RID--Comprehensive Skills Certificate (CSC), Certificate of Interpreting (CI), Certificate of Transliteration (CT), National Interpreter Certification (NIC), NIC Advanced, NIC Master	Advanced
BEI--Level III, Level IV, Level V, OC:C, or Advanced RID--CSC, CI/CT, NIC Advanced or NIC Master	Master
~~[Level III Intermediary]~~	~~[Level V Intermediary]~~
Level I Oral or OC:B	Oral Certificate: Comprehensive (OC:C)

Figure: 40 TAC §745.9057(a)

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(1) The age of the adoptive parents, and the ages of all other members of the household.	All adoptive parents must be at least 21 years old. You must document the ages of all household members and include documentation verifying the age of the adoptive parents.
(2) History of current and previous interpersonal relationships, including common-law marriages, and other relationships between people who share or have shared a domestic life without being married.	You must document information regarding the marital status of the adoptive parents, including present marital status, as well as a history of previous marriages or significant interpersonal relationships. You must include a description of the marriage or relationship, including reasons why any previous marriages or significant interpersonal relationships ended. If the adoptive parents are married, you must review the marriage license or declaration of marriage record.
(3) A history of the adoptive parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the adoptive parents.
(4) The financial status of the adoptive parents.	Adoptive parents must be able to meet the child's basic material needs. You must document the family's employment history, income, and expenses. You must assess the family's ability to manage money, support their current family, and support the addition of a child. You must verify income and prospective medical insurance for the child.
(5) The results of the criminal history and central registry background checks conducted on the adoptive parents and any person 14 years of age or older that regularly or frequently stays or works in the home.	Adoptive parents and any person 14 years of age or older (excluding foster children or children in adoptive placement) who regularly or frequently stays or works in the adoptive home must request a fingerprint-based criminal history and central registry background check. The results of those checks must be documented.
(6) Health status of the adoptive parents.	Document information about the physical, mental, and emotional status (including substance abuse history) of all persons living in the home in relation to the family's ability to adopt the child and to assume parenting responsibilities. You must discuss whether any health-related issues noted may affect the adoptive parents' ability to care for the child. You must also observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations and, if applicable, professional evaluations. Consideration must be given to the health and age of the adoptive parents. There must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.
(7) Any disabilities of the adoptive parents.	An adoptive parent who has a disability may not be prohibited from adopting the child solely based on the parent having a disability. You must evaluate the parent's adjustment to the disability and any limits the disability imposes on the adoptive parents' ability to care for the child.
(8) The adoptive parents' motivation for adoption.	Discuss and assess the adoptive parents' motivation for adoption. You must assess the adoptive parents' motivation and its effect on their ability to accept and parent the child.

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(9) The fertility of the adoptive parents.	Discuss and assess information about the couple's fertility. The adoptive parents' fertility is important only in relation to any unresolved feelings about their infertility and their ability to accept and parent the child.
(10) The quality of the adoptive parents' current interpersonal relationship, including marriage, common-law marriage, or a relationship between people who share a domestic life without being married, and family relationships.	Discuss and assess the quality of any current interpersonal and family relationships in relation to the family's ability to adopt and parent the child. You must discuss and assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to the child. You must discuss and assess the quality of the relationships between the adoptive parents and their biological and/or previously adopted children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to the child.
(11) The adoptive parents' feelings about their childhood and parents.	Discuss and assess the adoptive parents' feelings about their childhood and parents, including any history of abuse or neglect and their resolution of the experiences.
(12) The adoptive parents' attitude about the child's religion.	Assess the adoptive parents on: (A) Their willingness to respect and encourage the child's religious affiliation, if any; (B) Their willingness to provide the child the opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give the child if an adoptive parent's religious beliefs prohibit certain medical treatment.
(13) The adoptive parents' values, feelings, and practices in regard to child care and discipline.	Discuss and assess the adoptive parents' knowledge of child development and their child-care experience. Discuss and assess the ways the adoptive parents were disciplined as children and their reactions to the discipline they received. Discuss and assess the adoptive parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If the adoptive parents' current discipline methods are different than those that you believe are appropriate for the child, discuss and assess whether the adoptive parents' would change child care practices to conform to more appropriate discipline methods.
(14) The adoptive parents' sensitivity to and feelings about children who may have been subjected to abuse or neglect.	Discuss and assess the adoptive parents' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences affect them, their families, and the child. Assess the adoptive parents' ability to help the child who may have been abused or neglected. If an adoptive parent experienced abuse or neglect as a child, assess the handling of those experiences and assess the impact of those experiences on the adoptive parents' ability to help the child deal with their own experiences. Assess the availability of family and community resources to meet the needs of the child.

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(15) The adoptive parents' sensitivity to and feelings for the child's experiences of separation from and loss of their biological families.	Discuss and assess the adoptive parents' understanding of the dynamics of separation and loss and the effects of these experiences on the child. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the adoptive parents' acceptance of the process of grief and loss for children and assess their ability to help the child through the grieving process.
(16) The adoptive parents' sensitivity to and feelings about the child's biological family.	Discuss the adoptive parents' feelings about the child's biological family, including the issue of abuse or neglect of the child by the child's biological parents or other family members. Discuss and assess their sensitivity and reactions to the child's biological parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about the child's biological parents and assess their ability to help the child deal with those feelings. Discuss and assess the adoptive parents' sensitivity to and acceptance of the child's relationships with the child's siblings. Discuss and assess their reactions to the possibility of contacts between the child and the child's biological family in the future.
(17) The attitude of other family and household members regarding adoption.	Discuss and assess the attitudes of other family and household members toward the plan of adoption. Discuss and assess their involvement in the care of the child, their attitudes toward the child, and their acceptance of the adoption plan.
(18) The attitude of the adoptive parents' extended family regarding adoption.	Discuss the extended family's attitude toward adoption and the involvement the family will have with the child. Discuss and assess their involvement in the care of the child, their attitudes toward adoption, and the child.
(19) Support systems available to adoptive parents and the child.	Discuss and assess the support systems available to the adoptive parents and the support they may receive from these resources.
(20) The adoptive parents' expectations of and plans for the child.	Discuss and assess the adoptive parent's expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) Adoptive parents' ability to work with the child's specific behaviors and background.	Discuss and assess the adoptive parents' ability to work with and/or willingness to accept the child's specific behaviors, background, special needs, disabilities, and other characteristics.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Utilization of Technologies for Virtual Farm Tours Request for Applications

Statement of Purpose

The Texas Department of Agriculture (TDA) is requesting applications related to Utilization of Technologies for Virtual Farm Tours funding opportunity. Funding for this opportunity is through TDA's partnership with Sam Houston State University and the federally funded National Institute of Food and Agriculture award.

The purpose of this grant is to conduct virtual tours, determine feasibility and affordability for producers to utilize new technologies for accessing fields for marketing, promotion and evaluation of fresh produce, and share results with others.

Eligibility

Subject to available funds, an organization is eligible to receive a grant under this opportunity if the organization demonstrates understanding of the deliverables and illustrates an outreach plan to reach prospective producers and buyers with the results of the funded project.

Funding Parameters

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, Applicants will be informed accordingly.

Selected Applicants (Grantees) will be responsible for conducting a project supported by this funding opportunity and for achieving the results described in the application. Each Grantee shall monitor the day-to-day performance of the grant project to assure adherence to statutes, regulations, and grant terms and conditions. The Grantee must carry out the activities described in the approved scope of work.

Each Grantee must ensure they have an adequate accounting system in place and good internal controls to ensure expenditures and reimbursements are properly reported to TDA. Complete records relating to the project, including accounting records, financial records, progress reports and other documentation, must be maintained for three (3) years after the conclusion of the project or longer if required by TDA.

Application Requirements

Application and information can be downloaded from the Grants Office section under the Grants and Services tab at *www.TexasAgriculture.gov.*

Submission Information

Only materials actually received by **TDA by 5:00 p.m. on Monday, November 23, 2015,** will be reviewed as part of the proposal.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6695, or by email at *Grants@TexasAgriculture.gov.*

TRD-201504669

Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: November 3, 2015

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Department of Assistive and Rehabilitative Services

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Department of Assistive and Rehabilitative Services (DARS) announces the award of contract 538-16-0086-0000000000001 to Public Consulting Group, Inc., an entity with a principal place of business at 816 Congress Avenue, Suite 550, Austin, Texas 78701. The contractor will assist with the evaluation of Independent Living Services for outsourcing. The contractor will inventory and document the services and goods provided through the DARS Independent Living Services programs (Title VII, Rehabilitation Act of 1973, 29 USC, Sec. 796, et seq) that are to be outsourced to Centers for Independent Living and other service providers in accordance with House Bill 2463, 84th Texas Legislature, R.S. (2015) or that are to be transitioned to the Texas Workforce Commission in accordance with Senate Bill 208, 84th Texas Legislature, R.S. (2015) to include Independent Living Services for Older Individuals who are Blind. This inventory will include the level of staffing, training, certification and other resource capabilities used by DARS to deliver IL services and goods.

The total value of the contract with Public Consulting Group, Inc., is $312,431.00. The contract was executed on October 14, 2015, and will expire on August 31, 2016, unless extended or terminated sooner by the parties.

TRD-201504709
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: November 4, 2015

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - September 2015

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period September 2015 is $38.95 per barrel for the three-month period beginning on June 1, 2015, and ending August 31, 2015. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2015 from a qualified low-producing oil lease is not eligible for a credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required

by Tax Code, §201.059, that the average taxable price of gas for reporting period September 2015 is $1.71 per mcf for the three-month period beginning on June 1, 2015, and ending August 31, 2015. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2015 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of September 2015 is $45.47 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of September 2015 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of September 2015 is $2.64 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of September 2015 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201504617
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: October 28, 2015

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Correction of Error

The Comptroller of Public Accounts adopted an amendment to 34 TAC §3.430, concerning records required, information required, in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3192). The rule was adopted with changes and was republished. Due to a Texas Register staff error, §3.430(a)(3)(F)(i) - (iii) was omitted from the rule text on page 3194. The text of the subparagraph reads as follows:

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin; and

TRD-201504628

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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 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/09/15 - 11/15/15 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 11/09/15 - 11/15/15 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 11/01/15 - 11/30/15 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/15 - 11/30/15 is 18% 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.

TRD-201504673
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 3, 2015

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Texas County and District Retirement System

Correction of Error

The Texas County and District Retirement System ("TCDRS") proposed an amendment to 34 TAC §103.1, concerning actuarial tables used to calculate annuity purchase rates, in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7575). A typographic error appears in the last sentence of the first paragraph of the second column on page 7575. The word "denied" should be "defined". The corrected sentence reads as follows:

"...Subsection (b)(4) provides that service credit has the meaning as defined in §841.001(16) of the Texas Government Code."

TRD-201504629

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 14, 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 December 14, 2015. Written comments may also be sent by facsimile machine to the en-

forcement 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: 14146 IH 35 South Real Estate Company, LLC; DOCKET NUMBER: 2015-0762-MWD-E; IDENTIFIER: RN105208946; LOCATION: Von Ormy, Bexar County; TYPE OF FACILITY: mobile home park; RULES VIOLATED: 30 TAC §305.42(a) and TWC, §26.121(a), by failing to obtain authorization for the treatment and disposal of domestic wastewater; and TWC, §26.121(a)(1), by failing to prevent the discharge of wastewater into or adjacent to any water in the state; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Aahil's Investment Incorporated dba Highland Food Store; DOCKET NUMBER: 2015-0975-PST-E; IDENTIFIER: RN102031853; LOCATION: Wylie, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.606, by failing to maintain required training certification documentation on-site and to provide it upon request to a TCEQ-authorized investigator; and 30 TAC §334.50(b)(1)(A), (2), and (d)(1)(B) 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 and failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; PENALTY: $5,226; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2015-1086-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Numbers 41945, PSD-TX-950, and N-018, Special Conditions Number 1, and Federal Operating Permit Number O2629, Special Terms and Conditions Number 14, by failing to comply with the maximum allowable emission rate for the Low-Pressure Flare, Emission Point Number P-6; PENALTY: $32,813; Supplemental Environmental Project offset amount of $13,125; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Basic Industries, LLC and Brace Integrated Services, Incorporated; DOCKET NUMBER: 2015-1185-AIR-E; IDENTIFIER: RN108363334; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: sandblasting and surface coating site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: $938; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: BSC Management, Limited; DOCKET NUMBER: 2015-1193-AIR-E; IDENTIFIER: RN104334628; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: sand pit/quarry; RULES VIOLATED: 30 TAC §106.146(2), Permit By Rules (PBR) Registration Number 99764, and Texas Health and Safety Code (THSC), §382.085(b), by failing to have top covers on conveyor belts transferring dry material to the pug mill; 30 TAC §106.146(5), PBR Registration Number 99764, and THSC, §382.085(b), by failing to install an audible or visible mechanism on the storage silo to indicate that the silo is full; 30 TAC §106.146(6), PBR Registration Number 99764, and THSC, §382.085(b), by failing to sprinkle stockpiles with water and/or chemicals as necessary to achieve maximum control of dust emissions; 30 TAC §106.146(4), PBR Registration Number 99764, and THSC, §382.085(b), by failing to water, oil, or pave roads sufficiently to control dust emissions; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $6,062; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Edna; DOCKET NUMBER: 2014-1759-MWD-E; IDENTIFIER: RN100525328; LOCATION: Edna, Jackson County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.039(b), 30 TAC §305.125(9)(A), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010164001, Monitoring and Reporting Requirements Number 7.a, by failing to report any noncompliance to the TCEQ which may endanger human health or safety, or the environment within 24 hours of becoming aware of the noncompliance and provide a written submission within five days of becoming aware of the noncompliance; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010164001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010164001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and TWC, §26.039(b), 30 TAC §305.125(9)(A), and TPDES Permit Number WQ0010164001, Monitoring and Reporting Requirements Number 7.a, by failing to report any noncompliance to the TCEQ which may endanger human health or safety, or the environment within 24 hours of becoming aware of the noncompliance; PENALTY: $134,002; Supplemental Environmental Project offset amount of $134,002; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-254; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: City of Lewisville; DOCKET NUMBER: 2015-1371-WQ-E; IDENTIFIER: RN101212090; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: surface water treatment facility; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge into or adjacent to any water in the state; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Compass Well Services, LLC; DOCKET NUMBER: 2015-1135-MLM-E; IDENTIFIER: RN106041379; LOCATION: George West, Live Oak County; TYPE OF FACILITY: public water supply, vehicle maintenance facility, and cement and fly ash storage facility; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR), §122.26(c), and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR05AC10, Part II Section C.4. and Part III Sections A.1. through A.5., by failing to develop and implement a Stormwater Pollution Prevention Plan; 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES GP Number TXR05AC10, Part III Sections B.3., C.1.(b), and E.1., by failing to monitor, sample, examine, and inspect stormwater discharges at a minimum frequency of once per year at the final outfall or a designated sampling location, and failing to visually examine stormwater discharges on a quarterly basis; 30 TAC §290.39(e)(1),

(h)(1) and (m) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply and failing to notify the executive director of the startup of a new public water system; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: $5,166; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2015-0828-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1553, General Terms and Conditions, by failing to report all instances of deviations; and 30 TAC §122.210(a) and THSC, §382.085(b), by failing to submit an application to revise FOP Number O1553; PENALTY: $7,975; Supplemental Environmental Project offset amount of $3,190; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Frank A. Powell, R.S.; DOCKET NUMBER: 2015-1518-WOC-E; IDENTIFIER: RN103240180; LOCATION: Copeville, Collin County; TYPE OF FACILITY: on site sewage (OSS) facility; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license for OSS; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 622 South Oaks, Suite K, San Angelo, Texas 76903, (325) 655-9479.

(11) COMPANY: JEFFY'S EXXON #2, INCORPORATED dba Jeffy's Exxon Mobil 2; DOCKET NUMBER: 2015-1054-PST-E; IDENTIFIER: RN100564327; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $6,750; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: John M. Brown dba Brown Scrap Tires; DOCKET NUMBER: 2015-0264-MSW-E; IDENTIFIER: RN104345350; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: scrap tire generator and transporter facility; RULES VIOLATED: 30 TAC §§328.56, 328.59(a) and 328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; 30 TAC §328.57(c)(3), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized facility; and 30 TAC §328.57(e), by failing to submit to the executive director an annual activity report each calendar year showing the number and type of used or scrap tires collected listed by generator name and address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility; PENALTY: $16,875; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: LNM CORPORATION dba Allison Food Mart; DOCKET NUMBER: 2015-1296-PST-E; IDENTIFIER: RN102216066; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,438; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Magruder Homes, LP; DOCKET NUMBER: 2015-1601-WQ-E; IDENTIFIER: RN108792219; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25 (a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Red Rock Recycling, LLC; DOCKET NUMBER: 2015-1294-MSW-E; IDENTIFIER: RN101493393; LOCATION: Austin, Travis County; TYPE OF FACILITY: plastics recycling facility; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: Regency Field Services LLC; DOCKET NUMBER: 2015-1014-AIR-E; IDENTIFIER: RN102643327; LOCATION: Karnes City, Atascosa County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§122.143(4), 122.146(1), and (2), Federal Operating Permit (FOP) Number O855/Oil and Gas General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to certify compliance for at least each 12-month period following permit issuance; 30 TAC §101.201(b)(2) and §122.143(4), FOP Number O855/Oil and Gas GOP Number 514, Site-wide Requirements (b)(28)(F), and THSC, §382.085(b), by failing to maintain complete records of non-reportable emissions events; PENALTY: $9,890; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Rentech Nitrogen Pasadena, LLC; DOCKET NUMBER: 2015-1144-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: fertilizer manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 4209A, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $14,250; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Richards Independent School District; DOCKET NUMBER: 2015-0615-MWD-E; IDENTIFIER: RN101513489; LOCATION: Richards, Grimes County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TAC §305.125(1) and TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013527001, Effluent Limitations and Monitoring Requirements Number 2, by failing to maintain compliance with permitted effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number WQ0013527001, Operational Requirements Number 1, by failing to maintain process control records; 30 TAC §305.125(1) and TPDES Permit Number WQ0013527001, Other Requirements Number 9, by failing to monitor the food to microorganism ratio; 30 TAC §§305.125(1), 319.6 and 319.9(d), and TPDES Permit Number WQ0013527001, Monitoring and Reporting Requirements Number 3.c., by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes; and 30 TAC §30.350(d) and (j), and §305.125(1), and TPDES Permit

Number WQ0013527001, Other Requirements Number 1, by failing to employ or contract one or more licensed wastewater treatment facility operators holding the appropriate level of license to operate a wastewater treatment facility a minimum of five days per week; PENALTY: $9,489; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Samuel T. Jordan; DOCKET NUMBER: 2015-1126-MSW-E; IDENTIFIER: RN106644651; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow or permit the unauthorized disposal of MSW; PENALTY: $1,337; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2015-0905-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Numbers O1943, O1945, and O1946, General Terms and Conditions (GTC), by failing to submit a deviation report no later than 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Numbers O1943, O1945, O1946, O1947, O1948 and O2108, GTC, by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $59,067; Supplemental Environmental Project offset amount of $23,627; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Shelly S. Hattan; DOCKET NUMBER: 2015-1517-WOC-E; IDENTIFIER: RN103475521; LOCATION: Southlake, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: ST Feed Mill, LLC; DOCKET NUMBER: 2015-0531-MLM-E; IDENTIFIER: RN107147076; LOCATION: Navasota, Brazos County; TYPE OF FACILITY: grain milling and animal feed manufacturing; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial wastewater and waste into or adjacent to any water in the state, as documented during a record review on March 19, 2015; and 30 TAC §335.4, by failing to not cause, suffer, allow or permit the unauthorized disposal of industrial solid waste; PENALTY: $7,163; Supplemental Environmental Project offset amount of $2,865; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Town of Hickory Creek; DOCKET NUMBER: 2015-0889-WQ-E; IDENTIFIER: RN105611545; LOCATION: Town of Hickory Creek, Denton County; TYPE OF FACILITY: municipal storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with a Small Municipal Separate Storm Sewer System Texas Pollutant Discharge Elimination System (TPDES) General Permit; 30 TAC §281.25(b)(5), 40 CFR §122.34(g)(3), and TPDES General Permit Number TXR040000 Part IV. Section B.2, by failing to submit a complete annual report for the reporting period ending June 11, 2014; 30 TAC §281.25(b)(5), and 40 CFR §122.34(g)(2), and TPDES General Permit Number TXR040000 Part III. Sections B.3(b)(5) and B.5(b)(5)a, b, c, and d, by failing to maintain records of stormwater inspections and assessments, and make them readily available for review by a TCEQ representative upon request; PENALTY: $7,700; Supplemental Environmental Project offset amount of $6,160; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel, Drive Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Town of Ponder; DOCKET NUMBER: 2015-0805-MWD-E; IDENTIFIER: RN102739349; LOCATION: Ponder, Denton 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 WQ0011287003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: TRIPLE S REALTY LLC dba Texas Food Mart; DOCKET NUMBER: 2015-1069-PST-E; IDENTIFIER: RN105306716; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.48(a) and TWC, §26.3475(a), by failing to maintain the UST system to ensure it was operated, maintained, and managed in a manner that will prevent releases of regulated substances; and 30 TAC §115.241(b)(1)(A), (2) and (4), by failing to perform and complete all Stage II decommissioning activities; PENALTY: $5,086; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: VENABLE'S WELDING AND ROUSTABOUT, INCORPORATED; DOCKET NUMBER: 2015-1186-WQ-E; IDENTIFIER: RN106681638; LOCATION: Dumas, Moore County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the registration of an APO annually as regulated activities continued; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27) COMPANY: West Wise Special Utility District; DOCKET NUMBER: 2015-1121-PWS-E; IDENTIFIER: RN101190270; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: $1,500; Supplemental Environmental Project offset amount of $1,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: WILLIAM MARSH RICE UNIVERSITY; DOCKET NUMBER: 2015-1228-PST-E; IDENTIFIER: RN100245968; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at lease once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $1,463; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201504670
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 3, 2015

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Enforcement Orders

An agreed order was entered regarding MAIN STREET PETROLEUM, INC. dba New Kwik Pantry, Docket No. 2014-0742-PST-E on October 28, 2015 assessing $4,816 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marisa Daugherty, Trustee of Frank A. Daugherty Family Trust dba Indian Spring Water, Docket No. 2015-0036-PWS-E on October 28, 2015 assessing $279 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sheetdeep, LLC dba Tony's Express Mart, Docket No. 2015-0176-PST-E on October 28, 2015 assessing $6,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audrey Liter, 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 Vishnu Priya, LLC dba Bruton Road Mobil, Docket No. 2015-0217-PST-E on October 28, 2015 assessing $4,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Patel, 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 Brookshire Farms, LLC, Docket No. 2015-0424-WR-E on October 28, 2015 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201504711
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 4, 2015

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Notice of Correction to Agreed Order Number 12

In the June 20, 2014, issue of the *Texas Register* (39 TexReg 4784), the Texas Commission on Environmental Quality published notice of an Agreed Order, specifically item Number 12, for Enterprise Products Operating LLC. The reference to Supplemental Environmental Project offset amount of $3,200 applied to the Conservation Fund should be corrected to: Supplemental Environmental Project offset amount of $3,200.

For questions concerning this error, please contact Candy Garrett at (512) 239-1456.

TRD-201504671
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 3, 2015

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Notice of Hearing

TXI OPERATIONS, LP

SOAH Docket No. 582-16-0966

TCEQ Docket No. 2015-1269-IWD

Proposed Permit No. WQ0005092000

APPLICATION.

TXI Operations, LP, 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234, proposes to operate a sand and gravel quarry located within one mile of a water body within a water quality protection area in the John Graves Scenic Riverway. TXI Operations, LP has applied to the Texas Commission on Environmental Quality (TCEQ) for new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No.WQ0005092000, to authorize the discharge of stormwater associated with an industrial activity, construction stormwater and certain non-stormwater discharges on an intermittent and flow variable rate via Outfall 001. This application was submitted to the TCEQ on July 11, 2013. On June 11, 2014 the applicant requested a revision of its address from TXI Operations, LP, 1341 West Mockingbird Lane, Suite #700W, Dallas, Texas 75247 to TXI Operations, LP, 1503 LBJ Freeway Suite 400, Dallas, Texas 75234 and a revision to change Old Tin Top Road and I-20 near the City of Weatherford to Tin Top Road and I-20 near the City of Weatherford.

The facility is located on New Tin Top Road, west of the intersection of Old Tin Top Road and New Tin Top Road and approximately 10 miles south of the intersection of Tin Top Road and I-20 near the City of Weatherford, in Parker County, Texas 76087. The discharge route is via Outfall 001 to a man-made tributary of Spring Creek; thence to farm pond 1; thence to a manmade tributary of Spring Creek; thence to farm pond 2; thence to Spring Creek; thence to Lake Granbury in Segment No. 1205 of the Brazos River Basin. The designated uses for the unclassified receiving waters are: minimal aquatic life use for the man-made tributary of Spring Creek; limited aquatic life use for the farm ponds; and high aquatic life use for Spring Creek. The designated uses for Segment No. 1205 are primary contact recreation, public water supply, and high aquatic life use.

In accordance with Title 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures for the Texas Surface Water Quality Standards, it has been preliminarily determined that where permit requirements, which may include best management practices and/or technology-based effluent limitations, are properly implemented, no significant degradation is expected and existing uses will be maintained and protected.

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 City of Weatherford Public Library, 1014 Charles Street, Weatherford, 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 exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.587755&lng=-97.820861&zoom=13&type=r

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m., December 15, 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 October 16, 2015. In addition to these issues, the judge may consider additional issues if certain factors are met.

The purpose of the preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge.

The contested case 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 preliminary hearing and contested case hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the preliminary 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 preliminary hearing and request to be a party. Only persons named as parties may participate at the contested case 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 TXI Operations, LP at the address stated above or by calling Mr. Curt Campbell, with Westward Environmental, Inc., at (830) 249-8284.

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: November 3, 2015.

TRD-201504705
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 3, 2015

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Notice of Minor Amendment Radioactive Material License Number R04100

APPLICATION: Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for minor amendments to Radioactive Material License R04100 received on August 14, 2015 to provide what they requested, general, not LC by LC. Some license modifications have also been initiated by the Executive Director.

Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste and storage and processing of radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Disposal Facility (CWF) and Federal Facility Waste Facility (FWF) for commercial and federal low-level radioactive waste disposal. The land disposal facility for low-level radioactive waste disposal is located at 9998 State Highway 176 West in Andrews County, Texas.

The Executive Director has determined that a minor amendment to the license is appropriate because not only does it not pose a detrimental impact but also is in consideration of public health and safety, worker safety, or environmental health with regard to storage and disposal of low-level radioactive waste. The license will be amended to make clarifying additions, changes and general updates to the license including minor changes intended to improve operational effectiveness and incorporate the U.S. Nuclear Regulatory Commission's current Concentration Averaging and Encapsulation Branch Technical Position. This amendment also includes modifications due to decision by the Executive Director to some of the license conditions which will clarify the use of temporary covers for empty canisters and precast concrete lids between grout pours and after canisters are filled.

The following website which provides an electronic map of the facility's general location is provided as a public courtesy and is not part of the notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type=. For an exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the amendment and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility must operate with regard to existing authorized receipt of wastes and does not change the type or concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews Public Library in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING: The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the amendment. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications/amendments or if requested by a local legislator. A public meeting is not a contested case hearing. After the

deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant material or significant public comments.

EXECUTIVE DIRECTOR ACTION: The amendment is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST: If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license or permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register,* whichever is later.

AGENCY CONTACTS AND INFORMATION: If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov.

Further information may also be obtained from WCS at the address stated above or by calling Mr. Jay B. Cartwright at (432) 525-8500.

TRD-201504710
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 4, 2015

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Texas Facilities Commission

Request for Proposals #303-6-20524

The Texas Facilities Commission (TFC), on behalf of the Department of Banking (DOB), announces the issuance of Request for Proposals (RFP) #303-6-20524. TFC seeks a five (5) or ten (10) year lease of approximately 4,988 square feet of office space in Houston, Harris County, Texas.

The deadline for questions is November 23, 2015 and the deadline for proposals is December 7, 2015 at 3:00 p.m. The award date is January 20, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=121004.*

TRD-201504708
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 3, 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 September 21, 2015 through November 2, 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, November 6, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, December 7, 2015.

FEDERAL AGENCY ACTIONS:

Applicant: Mosin Rasheed

Location: The project is located on Padre Island in wetlands adjacent to the Gulf of Mexico, at 15429 Park Road 22, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Islands SW, Texas.

LATITUDE & LONGITUDE (NAD 83):

Project Site: Latitude: 27.598347 North; Longitude: 97.223131 West

Mitigation Site: Latitude: 27.727018 North; Longitude: 97.147114 West

Project Description: The applicant proposes to fill in approximately 1.99 acres of wetlands to develop a business center which will include paving, buildings, lighting, parking, infrastructure, and landscaping. The applicant is proposing to conduct mitigation offsite on Mustang Island and will establish 3.57 acres of wetlands to offset the impacts to the wetlands on the project site.

CMP Project No: 16-1084-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00270. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

Applicant: Harley Marine Services

Location: The project site is located along the Old River, on Lakeside Drive, in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.77775° North; Longitude: 095.1023° West

Project Description: The applicant proposes to mechanically dredge approximately 22,000 cubic yards of material for the construction of a barge dock and boat slip. This project entails the construction of 448 linear feet of bulkhead, a 200-foot-long revetment, 3 new mooring dolphins, mooring piles, and a covered boat slip. The applicant

proposes to discharge the 22,000 cubic yards of material into the Lost Lake Dredged Material Placement Area.

CMP Project No: 15-1586-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00392. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at *federal.consistency@glo.texas.gov.* Comments should be sent to Mr. Newby at the above address or by email.

TRD-201504718
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: November 4, 2015

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid
Fee-for-Service Payment Rates for Pharmaceutical Providers

HEARING. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, November 23, 2015, at 8:45 a.m. to receive comment on proposed Medicaid fee-for-service (FFS) payment rates for pharmaceutical providers.

The public hearing will be held in the HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Entry is through security at the main entrance of the building, which faces the North Lamar Boulevard. HHSC will also broadcast the public hearing; the broadcast can be accessed at *http://www.hhsc.state.tx.us/news/meetings.asp.* The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with §32.0282 of the Texas Human Resources Code, and §355.201 of 1 Texas Administrative Code (TAC) which require a public hearing and notice for adjustments of Medicaid fees, rates, and charges.

PROPOSAL. HHSC is proposing a new FFS pharmacy reimbursement methodology with ingredient costs that differ by pharmacy type, and a dispensing fee formula that includes a variable component. The new methodology will utilize either the National Average Drug Acquisition Cost (NADAC)--the new benchmark of retail pharmacy acquisition costs developed by the Centers for Medicare & Medicaid Services--or the Wholesale Acquisition Cost (WAC) when no NADAC pricing is available. Under the new methodology, some ingredient costs are increasing while others are decreasing; yet, in the aggregate, the new methodology will lower ingredient costs. On the other hand, the new dispensing fee methodology will increase the dispensing fee reimbursement. The new payment rates for FFS pharmaceutical providers are proposed to be effective March 1, 2016.

Current Methodology
VDP pharmacy reimbursement per claim = Ingredient Cost + Dispensing Fee

	Ingredient Cost	Dispensing Fee
Retail Pharmacies	Estimated Acquisition Cost (EAC) x number of units dispensed	$6.50 + (1.96 percent of the ingredient cost)
Specialty Pharmacies		
Long Term Care Pharmacies		

Proposed New Methodology
VDP pharmacy reimbursement per claim = Ingredient Cost + Dispensing Fee

	Ingredient Cost	Dispensing Fee
Retail Pharmacies	(NADAC or WAC - 2 percent)	$7.93 + (1.96 percent of the ingredient cost)
Specialty Pharmacies	(NADAC - 1.7 percent or WAC - 8.0 percent)	$7.93 + (1.96 percent of the ingredient cost)
Long Term Care Pharmacies	(NADAC - 2.4 percent or WAC - 3.4 percent)	$7.93 + (1.96 percent of the ingredient cost)

METHODOLOGY AND JUSTIFICATION. The proposed payment rates were calculated in accordance with the following sections of Title 1 of the TAC:

§355.8541, which addresses the drug ingredient cost reimbursement methodology for pharmaceutical providers; and

§355.8551, which addresses the drug dispensing fee reimbursement methodology for pharmaceutical providers.

BRIEFING PACKAGE. Since there are thousands of National Drug Codes (NDCs), and both NADAC and the WAC are frequently changing, including specific rates under the new methodology in this notice is not appropriate. Yet, a package describing the proposed payment methodology is available at *http://www.txvendordrug.com/news/index.shtml#ffsprice.* Interested parties may obtain a copy of the briefing package before the hearing by contacting the Vendor Drug Program by telephone at (512) 707-6148 or by e-mail at *Stacey.John-*

ston@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

WRITTEN COMMENTS. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Stacey Johnston, Vendor Drug Program, Mail Code 2250, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Stacey Johnston at (512) 730-7483; or by e-mail to *Stacey.Johnston@hhsc.state.tx.us.* In addition, written comments may be sent by overnight mail or hand delivered to Stacey Johnston, Vendor Drug Program, Mail Code 2250, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kristine Dahlmann at (512) 462-6299 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504703
Karen Ray
General Counsel
Texas Health and Human Services Commission
Filed: November 3, 2015

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Youth Empowerment Services (YES) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. The Centers for Medicare and Medicaid Services has approved this waiver through March 31, 2018. The proposed effective date for the amendment is September 1, 2015, with no changes to cost neutrality. The proposed amendments are considered non-substantive for purposes of 42 CFR §441.304.

This amendment request proposes to make the following changes:

1) Expand the Youth Empowerment Services waiver statewide.

2) Add 350 slots to the Point-In-Time (PIT) enrollment limit for a total of 1,000. The Factor C, or unduplicated count, will not be changed; it remains 1,300 for Waiver Year 3.

The YES waiver program is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver is currently approved to serve up to 1,300 eligible youth who are at least age three but under age 19 and who are predicted to remain in the waiver for 12 months.

To obtain copies of the proposed waiver amendment, including the YES settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this amendment or the YES settings transition plan, interested parties may contact Jacqueline Pernell by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7472, or by email at *TX_Medicaid_Waivers@hhsc.state.tx.us.*

TRD-201504726
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 4, 2015

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Department of State Health Services

Amendment to the Texas Controlled Substances Schedule

This amendment to the Texas Schedules of Controlled Substances was signed by the Interim Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

The Administrator of the Drug Enforcement Administration (DEA) issued a final rule removing ioflupane from Schedule II of the United States Controlled Substances Act (CSA) effective September 11, 2015. This final rule was published in the Federal Register, Volume 80, Number 176, pages 54715-54718. The Administrator has taken action based on the following:

1. The Secretary of the Department of Health and Human Services recommended to the DEA that the Food and Drug Administration approved products containing ioflupane be removed from Schedule II of the CSA;

2. Based upon information provided to the DEA and based upon DEA's consideration of its own eight-factor analysis, the Administrator of the DEA finds that ioflupane does not meet the requirements for inclusion in any schedule.

SCHEDULE II

Schedule II consists of:

-Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

(1-10) Opium extracts;

(1-11) Opium fluid extracts;

(1-12) Oripavine;

(1-13) Oxycodone;

(1-14) Oxymorphone;

(1-15) Powdered opium;

(1-16) Raw opium;

(1-17) Thebaine; and

(1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by

Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

*(4-2) coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:

(4-2-1) decocainized coca leaves or extractions of coca leaves which extractions do not contain cocaine or ecgonine; or

(4-2-2) ioflupane; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

-Opiates

***

-Schedule II stimulants

***

-Schedule II depressants

***

-Schedule II hallucinogenic substances

***

-Schedule II precursors

***

Change to the schedule is designated by an asterisk (*)

TRD-201504702
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 3, 2015

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Texas Department of Insurance

Company Licensing

Application to change the name of LEADING INSURANCE GROUP INSURANCE CO. LTD. (U.S. BRANCH) to KOOKMIN BEST INSURANCE CO. LTD. (US BRANCH), a foreign fire and/or casualty company. The home office is in New York, New York.

Application to change the name of HDI-GERLING AMERICA INSURANCE COMPANY to HDI GLOBAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application for incorporation in the State of Texas by TEXAS REPUBLIC LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

In the October 16, 2015, edition of the *Texas Register,* notice was published of an application for admission to the State of Texas by AMERICAN CAPITAL ASSURANCE CORP. The company was described as a foreign life, fire and/or casualty company. The company is in fact a foreign fire and/or casualty company.

In the October 23, 2015, edition of the *Texas Register,* notice was published concerning a name change application by FRESENIUS HEALTH PLANS INSURANCE COMPANY. The application was in fact submitted by ONENATION INSURANCE COMPANY to change its name to FRESENIUS HEALTH PLANS INSURANCE COMPANY.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register,* addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201504717
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 4, 2015

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Texas Lottery Commission

Scratch Ticket Game Number 1734 "Millionaire's Club"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1734 is "MILLIONAIRE'S CLUB". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1734 shall be $20.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1734.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, COIN SYMBOL, 10X SYMBOL, CROWN SYMBOL, $20.00, $25.00, $50.00, $100, $200, $500, $1,000, $10,000 and $1,000,000.

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. 1734 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	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
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV

48	FRET
49	FRNI
50	FFTY
COIN SYMBOL	WIN
10X SYMBOL	WINX10
CROWN SYMBOL	DBL

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $70.00, $100, $150, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1734), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1734-0000001-001.

K. Pack - A Pack of the "MILLIONAIRE'S CLUB" Scratch Ticket Game contains 025 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Scratch Ticket 001 will be shown on the front of the Pack; the back of ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Scratch Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Scratch Ticket 001 will be shown on the front of the Pack and the front of Scratch Ticket 025 will be shown on the back of the Pack.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "MILLIONAIRE'S CLUB" Scratch Ticket Game No. 1734.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MILLIONAIRE'S CLUB" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 65 (sixty-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 "COIN" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "CROWN" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 65 (sixty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 65 (sixty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000, $10,000 and $1,000,000 will each appear at least once, except on Tickets winning thirty (30) times.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and $20, 50 and $50).

J. On all Tickets, a Prize Symbol will not appear more than five (5) times except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "COIN" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "COIN" (WIN) Play Symbol will never appear more than once on a Ticket.

N. The "COIN" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

O. The "CROWN" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "CROWN" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

Q. The "CROWN" (DBL) Play Symbol will never appear more than once on a Ticket.

R. The "CROWN" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

S. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

U. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

V. The "10X" (WINX10) Play Symbol will never appear on a non-winning Ticket.

W. This Ticket consists of five (5) WINNING NUMBERS Play Symbols, thirty (30) YOUR NUMBERS Play Symbols and thirty (30) Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLIONAIRE'S CLUB" Scratch Ticket Game prize of $20.00, $25.00, $50.00, $70.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $70.00, $100, $150, $200 or $500 Scratch Ticket Game. 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 "MILLIONAIRE'S CLUB" Scratch Ticket Game prize of $1,000, $10,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLIONAIRE'S CLUB" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MILLIONAIRE'S CLUB" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MILLIONAIRE'S CLUB" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 1734. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1734 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20	640,000	9.38
$25	400,000	15.00
$50	600,000	10.00
$70	105,250	57.01
$100	187,250	32.04
$150	29,000	206.90
$200	2,750	2,181.82
$500	93	64,516.13
$1,000	38	157,894.74
$10,000	12	500,000.00
$1,000,000	6	1,000,000.00

*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 3.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1734 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1734, 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-201504706
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 3, 2015

♦ ♦ ♦

Scratch Ticket Game Number 1751 "Fast Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1751 is "FAST CASH". The play style is "match 3 of 6".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1751 shall be $1.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1751.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00 and $500.

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. 1751 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$500	FIV HUN

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $500.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1751), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1751-0000001-001.

J. Pack - A Pack of the "FAST CASH" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

K. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "FAST CASH" Scratch Ticket Game No. 1751.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "FAST CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 6 (six) Play Symbols. The player scratches the entire play area to reveal 6 prize amounts. If a player reveals 3 matching prize amounts, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 6 (six) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 6 (six) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to one (1) time.

D. Winning Tickets will not contain more than three (3) matching Prize Symbols.

E. Winning Tickets will not contain two (2) sets of three (3) matching Prize Symbols.

F. Non-Winning Tickets will not contain more than two (2) matching Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "FAST CASH" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $500 Scratch Ticket Game. 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 of these Game Procedures.

B. As an alternative method of claiming a "FAST CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. 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.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "FAST CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "FAST CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor. 2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed

within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 1751. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1751 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,352,000	5.33
$2	296,000	24.32
$3	104,000	69.23
$4	64,000	112.50
$5	80,000	90.00
$6	104,000	69.23
$10	32,000	225.00
$20	16,000	450.00
$50	2,487	2,895.05
$500	40	180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.51. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1751 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1751, 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-201504707

Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 3, 2015

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North Central Texas Council of Governments

Request for Partners for the Heavy-Duty Diesel Inspection and Maintenance Pilot - Phase 2

The North Central Texas Council of Governments (NCTCOG) and the Texas Transportation Institute are currently working on phase two of the On-Road Heavy-Duty Emissions Measurement System (OHMS) technology for further refinements that may be needed to deploy the system in the future. One of the objectives of the project is to also investigate other technologies such as emerging remote sensing technologies that can be implemented as part of a heavy-duty Inspection and Maintenance (I & M) program. The technologies that will be considered for the project shall be technologies that are capable of sampling the exhaust emissions of heavy duty diesel vehicles in real-time,

without interfering with the heavy duty vehicle operations. Candidate technologies must be capable of operating without being attached to the individual heavy duty vehicle. Technologies considered must also be able to identify high-emitting vehicles and market-ready or commercially available.

Potential partners interested in participating in this project should provide a written statement that details their technology and how it would benefit the project. The statements should clearly outline the capabilities of their system and how it could be used in this phase of the project. Previous test results of the technology are encouraged to be included in the written statement.

Statements of interest must be received no later than 5:00 p.m., on Friday, December 11, 2015, to Jason Brown, Air Quality Operations Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Partners will be available at *www.nctcog.org/rfp* by the close of business on Friday, November 13, 2015.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201504713
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 4, 2015

♦ ♦ ♦

Request for Proposals for Regional Joint Land Use Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consulting firms to conduct a Regional Joint Land Use Study (JLUS). This is a Land Use Compatibility Study to assess encroachment and land use issues surrounding several military installations and training centers in the North Central Texas region. The North Central Texas Regional Joint Land Use Study will focus on promoting compatible community growth around the regional military facilities to preserve military operational capabilities. The study is an update to the 2008 Naval Air Station Fort Worth, Joint Reserve Base (NAS Fort Worth, JRB) Joint Land Use Study, with an expanded study area to include all major military training facilities in the North Central Texas region - NAS Fort Worth, JRB, Dallas Army Aviation Support Facility, Fort Wolters, Camp Maxey, Eagle Mountain Training Center, and Colonel Stone Army Reserve Center.

Proposals must be received no later than 5:00 p.m., on Friday, December 11, 2015, to Kendall Wendling, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Proposal (RFP) will be available at *www.nctcog.org/rfp* by the close of business on Friday, November 13, 2015.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201504712
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 4, 2015

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Public Utility Commission of Texas

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 2, 2015, to amend a certificate of convenience and necessity for a proposed transmission line in Houston County, Texas.

Docket Style and Number: Application of Houston County Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line in Houston County, Docket Number 45247.

The Application: The proposed 138-kV transmission line of Houston County Electric Cooperative, Inc. (HCEC) is designated as the Mustang Prairie to Weldon 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line that will connect HCEC's existing Mustang Prairie Substation, located on the northwest side of State Highway 21, southwest of Crocket between Farm-to-Market Road (FM) 2967 and County Road 3380, to the proposed Weldon Substation, to be located along FM 2915 approximately 3.8 miles west of FM 230, southwest of Lovelady in southern Houston County. The total estimated cost for the project, including the proposed Weldon Substation, ranges from approximately $18,637,000 to $23,960,800 depending on the route chosen.

The proposed project is presented with 17 alternate routes and is estimated to be approximately 13 to 18 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is December 17, 2015. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45247.

TRD-201504715
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2015

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On October 30, 2015, Globalinx Enterprises, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its Service Provider Certificate of Operating Authority (SPCOA) Number 60696.

Style and Docket Number: Application of Globalinx Enterprises, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 45298.

Application: Globalinx Enterprises, Inc. seeks to relinquish its service provider certificate of operating authority because the company is no longer doing business in the state and wishes to withdraw their authority.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 20, 2015. Hearing- and speech-impaired individuals

with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45298.

TRD-201504716
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2015

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

TARIFF CONTROL NO. 45289

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 29, 2015, to implement a minor rate change pursuant to 16 Texas Administrative Code (TAC) §26.171.

Tariff Control Title and Number: Notice of Santa Rosa Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 TAC §26.171 and Public Utility Regulatory Act, Tex. Util. Code Ann. §53, Subchapter G (West 2007 & Supp. 2014), Tariff Control Number 45289.

The Application: Santa Rosa Telephone Cooperative, Inc. (Santa Rosa or Applicant) filed an application with the Commission for revisions to its Local Exchange Tariff. Santa Rosa proposed an effective date of December 1, 2015. The estimated revenue increase to be recognized by the Applicant is $30,108.00 in gross annual intrastate revenues. The Applicant has 1,407 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by November 25, 2015, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by November 25, 2015. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45289.

TRD-201504630
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2015

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) on October 29, 2015, of notice of intent to serve a 1,102-acre tract in Denton County.

Docket Style and Number: City of Fort Worth Notice of Intent to Provide Water and Sewer Service to Area Decertified from Suetrak USA Company, Inc. in Denton County, Docket Number 45292.

The Application: On October 29, 2015, pursuant to 16 TAC §24.113(i), the City of Fort Worth filed with the Commission notice of its intent to serve a 1,102-acre tract in Denton County that was decertified from water Certificate of Convenience and Necessity (CCN) Number 11916 and sewer CCN Number 20629 held by Suetrak USA Company, Inc. The 1,102-acre tract at issue was decertified pursuant to Texas Water Code §13.254(a-5) (TWC).

TWC §13.254(a-6) provides that the Commission may require an award of compensation to a decertified retail public utility that is the subject of a petition filed under TWC §13.254(a-5). TWC §13.254(e) provides that the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. Further, the Commission is required to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the Commission of its intent to provide service to the decertified area.

Persons wishing to comment should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45292.

TRD-201504668
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2015

♦ ♦ ♦

Texas Department of Transportation

Public Transportation Division (PTN) - Notice of Call for Projects

The Texas Department of Transportation (department) announces a Call for Projects for:

1. Statewide Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

4. Rural Discretionary - 49 U.S.C. §5311, Discretionary Program, 43 TAC §31.36

These public transportation projects will be funded through the Federal Transit Administration (FTA) §5304, §5311(b)(3), §5311(f), and §5311 Discretionary Program. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2017-2018. Project selection will be administered by PTN. Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. Successful applicants will become subrecipients of the department.

Purpose: The Call for Projects invites applications for services to develop, promote, coordinate, or support public transportation. Applications submitted for funding should reflect projects that will:

• assist small urban and rural transit agencies in developing projects and strategies to further meet the transportation needs of local residents using current program resources;

• design and implement training and technical assistance projects, and other support services tailored to meet the specific needs of transit operators in rural areas;

• assist public transportation providers in rural areas in providing passenger transportation services to the general public using the most efficient combination of knowledge, materials, resources and technology; or

• support connections, services, and infrastructure to meet the intercity mobility needs of residents in rural areas.

Eligible Projects: Eligible types of projects have been defined by the department in accordance with FTA guidelines and other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. Projects include funding for capital, planning, marketing, facilities, training, technical and operating assistance, and research.

Eligible Applicants: Successful applicants shall be required to enter into a grant agreement as a subrecipient of the department. Eligible subrecipients may include state agencies, local public bodies and agencies thereof, private nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and private for-profit operators. Eligible applicants are defined in 43 TAC Chapter 31.

Availability of Funds: In accordance with Transportation Code, Chapter 455, the department currently provides funding for public transportation projects, funded through FTA §5304 Statewide Planning Assistance, §5311(b)(3) Rural Transportation Assistance, §5311(f) Intercity Bus program, and §5311 Rural Discretionary programs. The department will also consider offering transportation development credits to assist with some local match needs for capital projects.

Review and Award Criteria: Applications will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no precondition on the number or on the types of projects to be selected for funding. The department reserves the right to conduct negotiations pertaining to a proposer's initial responses, including but not limited to specifications and prices. An approximate balance in funding awarded to the types of projects, or an approximate geographic balance to selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission (the commission).

Key Dates and Deadlines:

November 19, 2015: Statewide pre-application webinar.

December 8, 2015: Statewide pre-application webinar, to include responses to written questions submitted by November 30th.

January 6, 2016: Deadline for submitting written questions.

January 15, 2016: Target date for written responses to questions to be posted on the PTN website.

February 15, 2016: Deadline for receipt of applications.

April 1, 2016: Target date for the department to complete the evaluation, prioritization, and negotiation of applications.

May 26, 2016: Target date for presentation of project selection recommendations to the commission for action.

September 1, 2016: Target date for most project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the RFP: The RFP will be posted on the Public Transportation Division website at *http://www.txdot.gov/business/governments/grants/public_transportation.htm.* Proposers with questions relating to the RFP should email PTN_ProgramMgmt@txdot.gov.

TRD-201504704
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 3, 2015

♦ ♦ ♦

Texas Veterans Commission

Notice of Deadline Extension for Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Veterans Treatment Court Grant Program

Purpose. This Notice is to inform potential applicants to the 2016-2017 Veterans Treatment Court Grant program that the deadline to submit an application has been extended by three weeks. The new deadline is Thursday, December 3, 2015. Applications must be received by the Texas Veterans Commission (TVC) by 5:00 p.m. on Thursday, December 3, 2015 at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

All other requirements regarding Application Submission remain the same as published in the 2016-17 Veterans Treatment Court Grant Request for Applications (RFA), and the original notice published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6384).

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation is posted on the TVC website at *http://tvc.texas.gov/Apply-For-A-Grant.aspx.* All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to *grants@tvc.texas.gov.* All questions and the written answers will be posted on the TVC website as per the RFA.

TRD-201504719
Charles Catoe
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: November 4, 2015

♦ ♦ ♦

Texas Workforce Commission

Resolution of the Texas Workforce Commission Establishing the Unemployment Obligation Assessment for Calendar Year 2016

Resolution of the Texas Workforce Commission
Establishing the Unemployment Obligation Assessment
For Calendar Year 2016

Whereas, pursuant to Texas Labor Code, Chapter 203, Subchapter F, the Texas Public Finance Authority Unemployment Compensation Obligation Assessment Series 2010A, Series 2014A and Series 2014B (the "Bonds") have been issued on behalf of the Texas Workforce Commission (the "Commission") and will be outstanding; and

Whereas, pursuant to Texas Labor Code, Section 203.105, the Commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of Bond Obligations, consisting of the principal, premium if any, interest on the Bonds and bond administrative expenses; and

Whereas, the rate of the unemployment obligation assessment must be based on the formula prescribed in Commission rule 815.132 (40 Tex. Admin. Code, §815.132); and

Whereas, in accordance with the Financing and Pledge Agreement entered into by and between the Commission and the Texas Public Finance Authority (the "Authority"), in connection with the Bonds, the Commission has covenanted to impose an unemployment obligation assessment so long as Bonds are outstanding in an amount not less than 1.50 times the debt service amount due in the next year; and

Whereas, the Authority has provided notification of the required unemployment obligation assessment of $332,508,200 for calendar year 2016; and

Whereas, the Chief Financial Officer finds that $5,800,000 is available in the obligation trust fund that is not anticipated to be expended for the purposes set out in Texas Labor Code §203.258 (2)-(4); therefore the $332,508,200 obligation assessment will be reduced by $5,800,000 as prescribed in Commission Rule 815.132 (e)(2); and

Whereas, the Commission has calculated an obligation assessment ratio by dividing the obligation assessment amount by the tax due from the General and Replenishment rates for the four quarters ending June 30, 2015;

Now, therefore, the Commission hereby RESOLVES:

1. In accordance with the formula provided in 40 Tex. Admin Code §815.132 as set out in part in subsection (e):
"(e) The rate of the portion of the assessment that is to be used to pay a bond obligation is a percentage of the product of the unemployment obligation assessment ratio and the sum of the employer's prior year general tax rate, the replenishment tax rate and the deficit tax rate. The percentage to be determined by Commission resolution, shall not exceed 200%." The "percentage" for 2016 is 100%.

2. The obligation assessment ratio is .17 for calendar year 2016.

3. The rate calculated with the 2016 percentage and the obligation assessment ratio will generate an amount that the Authority has informed the Commission is needed to pay Bond Obligations.

4. The 2016 percentage shall be published in the *Texas Register* on November 13, 2015.

Further, the Commission hereby CERTIFIES:

1. The 2016 percentage as set herein is set in accordance with the requirements of Chapter 203 of the Texas Labor Code.

2. The 2016 percentage is a rate that will provide at least 1.50 times the debt service amount, as determined by the Authority, due in calendar year 2016.

3. The action of the Commission reflected in this Resolution complies with the requirements in Chapter 203 of Texas Labor Code.

Signed this 3rd day of November 2015, upon the affirmative vote of a majority of the Commission present and voting.

Andres Alcantar, Chairman and Commissioner Representing the Public

Ronald G. Congleton, Commissioner Representing Labor

Ruth R. Hughs, Commissioner Representing Employers

Attested: _____
(Secretary or other appropriate officer/employee of the Commission)

SWORN AND SUBSCRIBED TO before me this 3rd day of November, 2015

KIM BERGMANN
Notary Public, State of Texas
My Commission Expires
April 17, 2019

Notary Public, State of Texas

TRD-201504722
Paul N. Jones
General Counsel
Texas Workforce Commission
Filed: November 4, 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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