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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THE GOVERNOR

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

Appointments

Appointments for June 16, 2016

Appointed to the Radiation Advisory Board for a term to expire April 16, 2017, Karen C. Newton of San Antonio (replacing Mark T. Pittman of Fort Worth who resigned).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2021, Mark C. Harvey, Ph.D. of Houston (replacing Nora A. Janjan of Navasota whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2021, Kenneth Vincent Krieger of Lacy Lakeview (Mr. Krieger is being reappointed).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2021, Frank M. "Neal" Leavell, D.D.S. of Lampasas (replacing Melanie R. Marshall of Burleson whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2021, Gerald "Tim" Powell of Bay City (replacing Ian Scott Hamilton of Cypress whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2021, Melissa R. "Missy" Shorey of Dallas (replacing Amy Marie Clark of Three Rivers whose term expired).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2021, Simon Trubek, M.D. of Houston (replacing David Haskell Nichols of Austin whose term expired).

Appointments for June 17, 2016

Appointed to the Task Force on Infectious Disease Preparedness and Response for a term at the pleasure of the Governor, Charles R. Smith, Jr. of Austin (replacing Christopher R. "Chris" Traylor of Austin).

Appointments for June 20, 2016

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2018, Aaron W. Bangor, Ph.D. of Austin (Dr. Bangor is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2018, Nancy M. Clemmer of Austin (replacing Margaret M. Larsen of The Hills whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2018, Heather C. Griffith-Dhanjal of Fort Worth (Ms. Griffith-Dhanjal is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2018, Phoene "Faye" Kuo of Austin (Ms. Kuo is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2018, Richard Martinez of San Antonio (replacing Rodolfo Becerra, Jr. of Nacogdoches whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2018, Marco A. Trevino of Edinburg (Mr. Trevino is being reappointed).

Appointments for June 21, 2016

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas with all rights, privileges and emoluments appertaining to this office, effective June 25, 2016, Colonel Johanna R. Kinsey of Austin.

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, David A. "Dave" Allen, D.N.P. of San Antonio (replacing Judith D. "Judy" Powell of The Woodlands whose term expired).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Paula E. Anthony-McMann, Ph.D. of Tyler (replacing Edward W.H. "Ed" Marx of Colleyville whose term expired).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Frederick Joel "Fred" Buckwold, M.D. of Houston (Dr. Buckwold is being reappointed).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Shannon K.S. Calhoun of Goliad (replacing Kathleen K. "Kathy" Mechler of Fredericksburg whose term expired).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Brandon C. Charles, M.D. of Coppell (replacing Bert E. Marshall of Plano whose term expired).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, David C. Fleeger, M.D. of Austin (Dr. Fleeger is being reappointed).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Matthew J. "Matt" Hamlin of Argyle (Mr. Hamlin is being reappointed).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Mark S. Lane, M.D. of Lampasas (pursuant to Health and Safety Code Sec. 182.053).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Andrew Lombardo of Harlingen (replacing Shannon K.S. Calhoun of Goliad whose term expired).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Debbie Marino of San Antonio (replacing Jennifer Lynn Rangel of Austin whose term expired).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, William A. "Bill" Phillips, Jr. of San Antonio (Mr. Phillips is being reappointed).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2017, Stephen "Steve" Yurco, M.D. of Austin (Dr. Yurco is being reappointed).

Appointed to the Texas Health Services Authority Board of Directors as Ex-Officio Member, Michael D. "Mike" Maples of Liberty Hill (replacing Francie Kalunde Wambua of Round Rock whose term expired).

Appointed to the Texas Health Services Authority Board of Directors as Ex-Officio Member, Melanie Williams, Ph.D. of Austin (pursuant to Health and Safety Code Sec. 182.053).

Designating David C. Fleeger, M.D. of Austin as presiding officer of the Texas Health Services Authority Board of Directors for a term at the pleasure of the Governor. Dr. Fleeger is replacing Edward W.H. "Ed" Marx of Colleyville as presiding officer.

Greg Abbott, Governor

TRD-201603170

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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-0111-KP

Requestor:

Ms. Jennifer D. Robison

Brown County Auditor

200 South Broadway, No. 106

Brownwood, Texas 76801

Re: Authority of county attorneys regarding payments made in conjunction with pretrial diversion agreements (RQ-0111-KP)

Briefs requested by July 18, 2016

RQ-0112-KP

Requestor:

The Honorable Rebecca R. Walton

Hardin County Attorney

Post Office Box 516

Kountze, Texas 77625

Re: Simultaneous service as a municipal police chief and a constable (RQ-0112-KP)

Briefs requested by July 18, 2016

RQ-0113-KP

Requestor:

The Honorable Byron Cook

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Eminent domain authority to condemn property for the Texas High Speed Railway (RQ-0113-KP)

Briefs requested by July 19, 2016

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

TRD-201603120

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: June 20, 2016

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Opinions

Opinion No. KP-0094

The Honorable Dan Flynn

Chair, Committee on Pensions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

S U M M A R Y

Under Texas law, a court is not required in family law disputes to enforce a foreign law if enforcement would be contrary to Texas public policy or if it would violate a party's basic right to due process.

Opinion No. KP-0095

The Honorable James Keffer

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a rental property owner's use of an online payment option that is accompanied by a convenience fee involves the imposition of a credit-card surcharge in violation of state law (RQ-0084-KP)

S U M M A R Y

A court is likely to conclude that a fee uniformly charged to all online means of payment by an arms-length third-party vendor does not violate the surcharge prohibitions of Finance Code subsection 339.001(a) or Business and Commerce Code section 604A.002. Whether a rental property owner or operator and a third-party vendor of online payment processing services have a true arms-length relationship is a question of fact that cannot be answered in the opinion process.

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

TRD-201603109
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 17, 2016

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Opinions

Opinion No. KP-0096

Mr. Mike Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Application of section 39.112 of the Education Code to a board of managers in specific circumstances (RQ-0085-KP)

S U M M A R Y

Subsection 39.112(e) of the Education Code, as amended by House Bill 1842 of the Eighty-fourth Legislature, governs the period of appointment of a board of managers, except that a board of managers' authority may be extended under subsection (f).

Subsection 39.112(e) of the Education Code, as amended by House Bill 1842, governs the period of appointment of the board of managers of the Beaumont Independent School District.

Opinion No. KP-0097

Mr. Mike Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: The legal status of real property described by section 12.128 of the Education Code that is returned to the State from a charter school (RQ-0086-KP)

S U M M A R Y

Subsection 12.128(c) of the Education Code provides that the Commissioner of Education shall take possession and assume control of, and supervise the disposition of, public property of an open-enrollment charter school that ceases to operate. In this provision, the Legislature has set aside this returned public property such that it is not unappropriated property for the Permanent School Fund under subsection 43.001(a)(2) of the Education Code.

Chapter 31 of the Natural Resources Code does not authorize the General Land Office ("GLO") to unilaterally direct the disposition of public property returned to the State pursuant to section 12.128, but it provides for GLO involvement in the Commissioner of Education's disposition of such property.

Texas Constitution article III, sections 51 and 52(a) prohibit the Commissioner of Education from gratuitously granting such property to private interests, and article IV, subsection 8.02(h) of the 2015 General Appropriations Act appropriates the proceeds from the disposition of such property. Aside from these provisions, we cannot foreclose the possibility that other law may apply to the Commissioner's disposition of the property.

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

TRD-201603147
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 21, 2016

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.408

The Texas Department of Agriculture (the Department) adopts on an emergency basis new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.408, concerning citrus canker quarantine. The new sections are adopted on an emergency basis to establish an emergency quarantine to contain and combat an ongoing infestation of a strain of citrus canker in the Rancho Viejo area near Brownsville, Texas. The new rules are adopted to enforce quarantine restrictions on 155 newly infected lime plants discovered in the general area of those plants which were destroyed under an emergency quarantine which was established pursuant to emergency rules adopted on February 1, 2016, and published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1047). The rules are also adopted on an emergency basis to reflect a recent reclassification of pests and other terminology which have been modified to assure they are aligned with federal guidance in 7 CFR §§301.75-3.

The term "citrus canker" is historically referred to as a plant disease with a group of strains or pathotypes of the bacterium *Xanthomonas citri,* subsp. *citri.* The best available scientific evidence indicates that a distinctive citrus canker strain was detected on October 16, 2015. Since then, it has been found on young leaves and twigs of 153 Mexican lime, 1 Kaffir lime and 1 Ponderosa lemon trees in the Rancho Viejo area on dooryard trees during the survey and sampling. It has a restricted host range of limes and lemons. The varieties of grapefruit, sweet orange and sour orange commonly grown in the Rio Grande Valley showed no infection. The studies by Texas A&M University-Kingsville Citrus Center (TAMUK-CC) suggest that this strain is probably not the Asiatic or A strain, but is likely the Wellington or Aw strain that has only previously been recorded in Florida and has a very restricted host range amongst limes and lemons. The current infestation is the first known incidence of citrus canker in Texas after its eradication in 1943.

Citrus canker is harmless to humans and animals. However, the newly detected infestation presents a serious risk to lime and lemon trees in the Lower Rio Grande Valley (LRGV). Texas does not have commercial production of lime or lemon fruit; however, homeowners and nurseries in the LRGV produce lime and lemon trees. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and it can expose the interior of fruit to secondary infection by decay organisms. The disease does not travel through the tree to become systemic. The marketability of symptomatic fresh fruit is negatively impacted. Leaf lesions may appear within 14 days following inoculation and can attain 2-10 mm diameter on a susceptible host. In the field, symptoms may take several months to appear, and lower temperatures may increase the latency of the disease. The rod shaped flagellate citrus canker bacteria can enter young leaves through stomata, wounds on leaves, young twigs or shoots. The damage caused by citrus leaf miner larvae *(Phyllocnistis citrella)* can provide access for infection and canker was found associated with leaf minor damage on Ponderosa lime. Citrus canker bacterium can stay viable in old lesions on leaves, branches and other plant surfaces for several months, including in those dropped on the ground. *X. citri,* subsp. *citri* can spread by wind, splashing water, movement of infected plant material or mechanical contamination. The pathogen flourishes under warm moist conditions and requires a host to survive in a natural environment.

Lime and lemon nursery and dooryard trees in the area are in peril without the emergency quarantine, which provides necessary steps to prevent the spread of this devastating plant disease and to undertake actions to prevent further spread of the disease. All owners of trees that have tested positive for citrus canker are voluntarily cooperating in the destruction of infected trees.

The adoption of rules to establish an emergency quarantine is both necessary and appropriate in order to effectively combat and prevent the spread of citrus canker to non-infected areas, including nurseries, groves and residential areas.

The quarantine area covers a total of 57 square miles. There is no commercial citrus production in the quarantined area. For practical purposes, borders of the quarantined area are set using the closest property lines, roads, canals or river and posted on the Department's website: *www.texasagriculture.gov.*

The movement, distribution or sale of citrus plants within or out of the quarantined area is prohibited. Regulated articles or equipment coming in direct contact with infected plant material must be decontaminated prior to moving out of the quarantined area using any approved decontaminant. The citrus fruits sold, distributed or moved to packing houses for processing may only be sold subject to a compliance agreement. Landscapers and mowers servicing the quarantined area must come under compliance agreement with the Department, and decontaminate equipment by steam cleaning or washing prior to moving out of the quarantined area. To manage the disease, removal of infected tree and plant material and disposal should be made by burning, or bagging and burying at least 2 feet deep at the municipal landfill. Residents and visitors of the quarantined area should be aware of the disease and may help combat it by contacting the Depart-

ment, Texas A&M University AgriLife Extension, TAMUK-CC, United States Department of Agriculture, or Texas Citrus Pest and Disease Management Corporation for more information.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

The codes affected by the adoption are Texas Agriculture Code, Chapters 12 and 71.

§19.400. Quarantined Pest.

The quarantined pest, a serious plant disease that is not widely distributed in this state, is citrus canker and its causal agent, the bacterial pathogen *Xanthomonas citri* subsp. *citri.*

§19.401. Quarantined Areas.

Quarantined areas described under this Subchapter U, and as found at the Department's webpage at *www.TexasAgriculture.gov.* A map of the quarantined area is also available on the Department's website.

(1) On the basis of new or revised information, the Department may declare, augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas.

(2) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area on the department's webpage on Citrus Canker Quarantine.

§19.402. Regulated Articles.

For purposes of this subchapter, regulated articles are:

(1) Plants or plant parts, including fruit and seeds, or any of the following: all species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella,* and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium* and *Poncirus trifoliata.* The most common of these are: lemon, pummelo, grapefruit, key lime, Persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliate orange, and wampi.

(2) Grass, plant, and tree clippings.

(3) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (1) of this section, when it is determined by an inspector that it presents a risk of spreading citrus canker, and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subchapter.

(4) Any other article that is a regulated article under 7 CFR §§301.75-3.

(5) A quarantined article under §71.0092 of the Texas Agriculture Code.

§19.403. Requirements and Restrictions for Movement of Regulated Articles.

(a) Movement of regulated plants within, into, or from the quarantined area for sale, distribution or planting is prohibited.

(b) Regulated fruits must be free of leaves, stems and debris if offered for sale or distribution. Fruit can only move out of the quarantined area for sale, distribution, processing or packing at a packing house under a compliance agreement with the Department or the USDA.

(c) Regulated articles intended for movement, distribution or sale through or out of the quarantined area or between noncontiguous quarantined areas for intrastate or interstate movement shall conform to the restrictions and requirements of 7 CFR §301.75 Subpart-Citrus Canker, including the corresponding restrictions and requirements applying to intrastate or interstate movement, distribution or sale.

(d) Landscapers and mowers servicing the quarantined area must come under compliance agreement with the Department or USDA, and decontaminate tools, appliances and equipment by steam cleaning or washing with an approved disinfectant prior to moving out of the quarantined area.

(e) Infected plants, plant parts or regulated articles that are completely covered can move out of the quarantined area for burning or burial in the municipal landfill under a compliance agreement or permit issued by the Department.

§19.404. Ongoing Pest Management.

At all times, all the citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker, the closest regional office of the Department must be immediately notified.

(1) The regulated article must be held at the location of sale or distribution, pending inspection, sampling and testing by the Department.

(2) Plants or plant parts that test positive for citrus canker must be destroyed and disposed of under Department supervision in accordance with this subchapter.

§19.405. Citrus Fruit Harvest.

(a) Compliance agreement required. Regulated fruit from a quarantined area intended for noncommercial or commercial movement, sale or distribution outside of the quarantined area, shall not be moved from the production site, except under a compliance agreement with the Department or USDA.

(b) Disinfecting of regulated fruit.

(1) Disinfecting of regulated fruit shall include chemical treatment of regulated fruit, according to D301.75-11(a-1) or (a-2) or (a-3) of the USDA Treatment Manual.

(2) Personnel using a treatment prescribed under paragraph (1) of this subsection must disinfect their hands according to requirements in D301.75-11 of the USDA Treatment Manual.

(3) Sodium hypochlorite, peroxyacetic acid, and sodium o-phenyl phenate (SOPP) must be applied for disinfecting hands in accordance with label directions.

§19.406. Consequences for Failure to Comply with Quarantine Requirements or Restrictions.

(a) A person who fails to comply with quarantine restrictions or requirements or a Department order relating to the quarantine established under this subchapter is subject to administrative or civil penalties up to $10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance.

(b) The Department is authorized to seize and treat, or destroy or order to be treated or destroyed, any regulated article:

(1) that is found to be infested with the quarantined pest; or, regardless of whether infected or not,

(2) that is transported within, out of, or through the quarantined area in violation of this subchapter.

(c) Regulated articles seized pursuant to any Department order shall be destroyed at the owner's expense under the supervision of a Department inspector.

§19.407. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An enforcement order issued by the Department under a quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.408. Conflicts between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of regulated articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for exemption of compliance with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603102
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: June 17, 2016
Expiration date: October 14, 2016
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.39

The Texas State Board of Examiners of Psychologists adopts on an emergency basis new rule §465.39, LSSP Supervisor Qualifications, effective June 7, 2016.

The new rule is being adopted on an emergency basis in order to ensure that LSSP supervisors will be able to continue providing supervision to students and interns who are currently enrolled in school psychology training programs and undergoing the supervised experience necessary for licensure under Board rule §463.9. The Board further finds that recently adopted rule changes may result in the unintended consequence of LSSP supervisors previously qualified under Board rule §465.38(5), not being able to continue their supervision of current students and interns because they no longer qualify under the newly adopted Board rule §465.2(d)(2). This was not the Board's intent when adopting changes to Board rule §465.38(5) and §465.2(d)(2) at its February 25, 2016 meeting.

The Board further finds that without this emergency rule, any supervised experience obtained by a student or intern on or after May 5, 2016 from a supervisor who does not meet the newly adopted requirements set forth in Board rule §465.2(d)(2), would not be acceptable for licensure purposes. Again, this was not the Board's intent when adopting the changes to §465.38(5) and §465.2(d)(2). Lastly, the Board finds that this emergency rule is necessary to prevent future LSSP applicants who are currently in the process of obtaining their supervised experience, from being denied the full use and benefit of any supervised experience obtained under previously acceptable supervisor qualifications.

The new rule is being adopted on an emergency basis under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.39. LSSP Supervisor Qualifications.

(a) Notwithstanding Board rule §465.2(d)(2) of this title (relating to Supervision), supervision may also be provided by a LSSP who has a minimum of three years of experience providing psychological services in the public schools of this or another state. To meet supervisor qualifications, a licensee must be able to document the required experience by providing documentation from the authority that regulates the provision of psychological services in the public schools of that state and proof that the licensee provided such services, documented by the public schools in the state in which the services were provided. Any licensed specialist in school psychology may count one full year as an intern or trainee as one of the three years of experience required to perform supervision.

(b) Supervised experience acquired during the pendency of this rule from a supervisor meeting the qualifications of this rule, will be accepted when reviewing an application under Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology). The expiration of this rule will not affect the validity of any supervised experience acquired from a supervisor qualified under this rule.

(c) This rule shall be retroactive to May 5, 2016, and shall remain in effect through August 31, 2016, after which it shall expire.

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

Filed with the Office of the Secretary of State on June 13, 2016.

TRD-201602976
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 13, 2016
Expiration date: August 11, 2016
For further information, please call: (512) 305-7706

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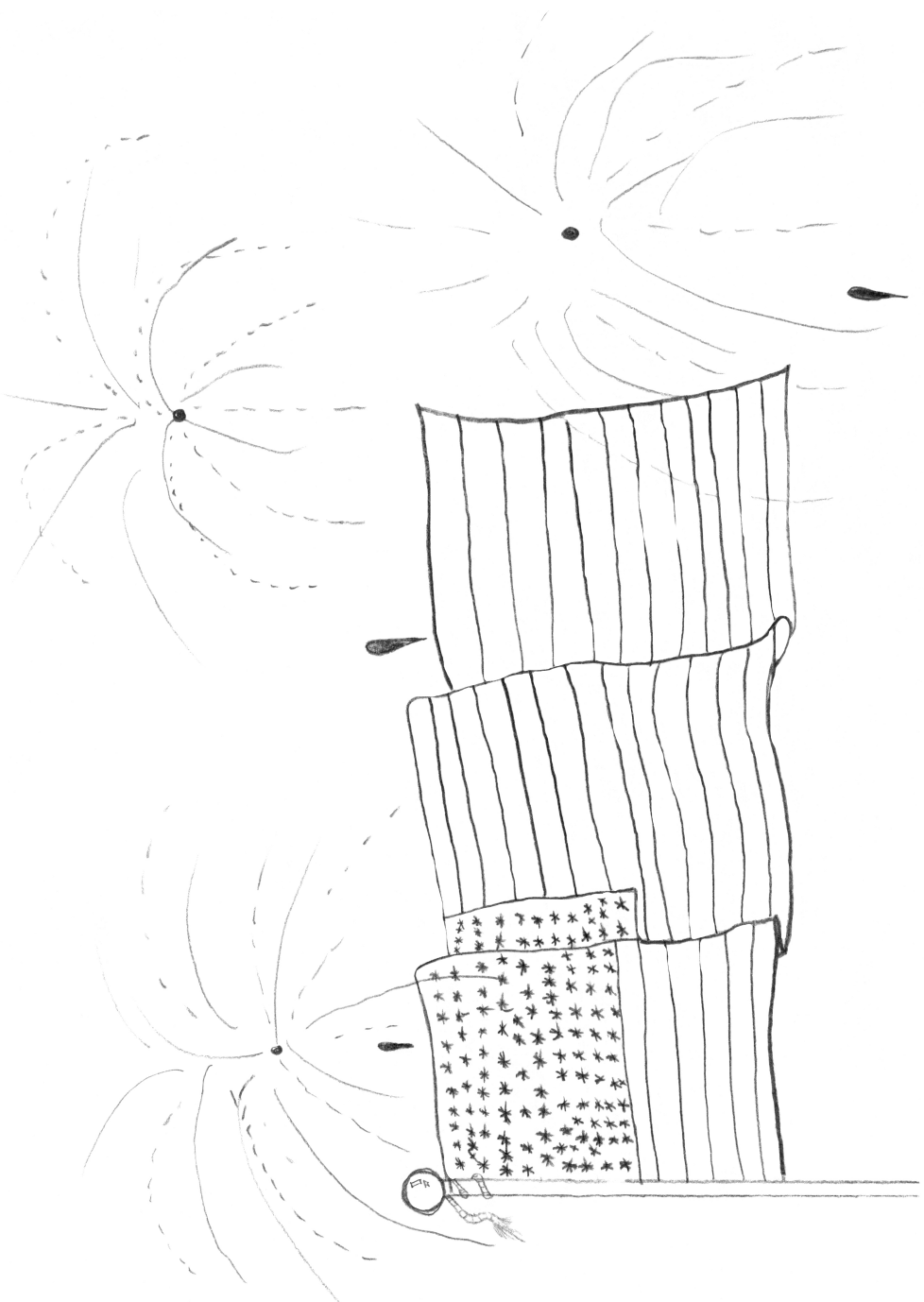

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, 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 2. TEXAS ETHICS COMMISSION

CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §40.11

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rules §40.11, regarding the disclosure of income received from publicly traded corporations on a personal financial statement.

Section 572.023(b)(4) of the Government Code requires a personal financial statement (PFS) to include the "identification of each source" of income in excess of $500 derived from interest, dividends, royalties, and rents. The law also requires the category of the amount of income to be disclosed. The form used for the PFS currently requires the source of that income to be disclosed by the source's full name and address.

Under the proposed rule, if a filer receives income over $500 from a publicly held corporation in the form of interest, dividends, royalties, or rents, the corporation would be identified only by its full name, and no address would be required. The rule does not change the disclosure requirements for any other source of income or for any other section of the PFS form.

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

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in the commission's rules regarding the disclosure of income received from publicly traded corporations on a PFS. The rule would also enhance the potential for individual participation in electoral and governmental processes by easing the burdens of disclosure without reducing the value of disclosure because publicly traded corporations would remain easily identifiable without an address. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

The new rule §40.11 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §40.11, affects §572.023 of the Government Code.

§40.11. Publicly Traded Corporation as Source of Income over $500. For purposes of section 572.023(b)(4), Government Code, a publicly traded corporation is identified as a source of income by disclosing its full name in addition to the category of the amount of income.

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 June 13, 2016.

TRD-201602986
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 463-5800

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PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 53. MUNICIPAL SECURITIES
SUBCHAPTER A. APPROVAL OF MUNICIPAL SECURITIES BY ATTORNEY GENERAL

1 TAC §§53.1 - 53.30

The Office of the Attorney General (OAG) proposes the repeal of §§53.1 - 53.30 of Subchapter A, Approval of Municipal Securities by Attorney General. The OAG is proposing updated rules at the same time as this proposed repeal.

Ms. Leslie Brock, Chief, Public Finance Division, OAG, 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.

Ms. Brock also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to clarify and update the requirements for the approval of municipal securities by the OAG. There will be no effect on small businesses. There is no

anticipated economic cost to persons who are required to comply with the repeal as proposed.

Written comments on the proposal must be submitted no later than 30 days from the date of this publication by emailing the comments to leslie.brock@texasattorneygeneral.gov or by mailing the comments to Ms. Leslie Brock, Public Finance Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

The repeal is proposed in accordance with Chapters 1202, 2001, and §402.044 of the Government Code, which collectively authorize the OAG to adopt rules regarding its review of public securities that by law require OAG approval. In addition to Chapter 1202, other statutes require OAG review and approval before public securities and certain other obligations may be issued, including, but not limited to, §§1371.057, 1371.059, 1431.009, and 1431.011 of the Government Code, §§271.004, 271.005, and 372.028 of the Local Government Code, Chapter 45 of the Education Code, and §49.184 of the Water Code.

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

§53.1. Application.

§53.2. Transcripts Submitted to Bond Division.

§53.3. Content of Transcripts Submitted to the Bond Division.

§53.4. Financial Publications.

§53.5. Determinations of Bond Allowable and Annual Tax Funds Available for Debt Retirement.

§53.6. Satisfaction of Tax Coverage.

§53.7. Transcripts of Combination Tax and Revenue Public Securities.

§53.8. Certification of Appropriated Funds.

§53.9. Securities in Litigation.

§53.10. Waiver of Notice.

§53.11. Certification of the City Population.

§53.12. Representations in Official Notices of Sale.

§53.13. Limited Tax Obligations.

§53.14. Estimates in Statements of Taxable Values.

§53.15. Seals.

§53.16. Issues of Refunding Bonds.

§53.17. Refunding Issues by Consent.

§53.18. Adequate Resources.

§53.19. Then Current Conditions.

§53.20. Applications for Bond Replacement.

§53.21. Authorization Elections.

§53.22. Federal Voting Rights Act Requirements.

§53.23. Bond Counsel's Preliminary Letter.

§53.24. Prior Issue Transcripts.

§53.25. Partial, Preliminary, or Incomplete Transcripts.

§53.26. Completion of Examination.

§53.27. Review of and Additions to Transcript.

§53.28. Additional Showings.

§53.29. Novel or Uncommon Characteristics or Transactions.

§53.30. Waiver of Rules.

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 June 16, 2016.

TRD-201603063
Amanda Crawford
General Counsel
Office of the Attorney General
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 936-7940

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1 TAC §§53.1 - 53.22

The Office of the Attorney General (OAG) proposes a new Subchapter A consisting of §§53.1 - 53.22, concerning the Approval of Municipal Securities by Attorney General. OAG also concurrently proposes to repeal the existing §§53.1 - 53.30, which previously regulated the approval of municipal securities by the Attorney General.

Pursuant to state law, including primarily Chapter 1202 of the Government Code, public securities and other obligations issued by an agency, authority, board, public body, department, district, instrumentality, municipal corporation, political subdivision, public corporation or subdivision of the state, or a non-profit corporation acting for or on behalf of any such entities as provided by law (collectively referred to herein as "Issuers") must be submitted for approval to OAG. OAG must approve the public securities if it finds that the public security has been authorized in accordance with law. The proposed Subchapter A would update the general rules applicable to the submission of public securities and records of proceedings by Issuers and the review of such submissions by OAG in order to ensure the orderly and efficient review of such proceedings in compliance with state law.

New §53.1 concerns Application; new §53.2 concerns Form of Records; new §53.3 concerns Content of Transcripts; new §53.4 concerns Financial Publications; new §53.5 concerns Determination of Bond Allowable Rate; new §53.6 concerns Satisfaction of Coverage; new §53.7 concerns Transcripts of Combination Tax and Revenue Public Securities; new §53.8 concerns Appropriated Funds and Capitalized Interest; new §53.9 concerns Securities in Litigation; new §53.10 concerns Estimates in Statements of Taxable Values; new §53.11 concerns Seals; new §53.12 concerns Refunding Bonds; new §53.13 concerns Refunding Issues by Consent; new §53.14 concerns Elections; new §53.15 concerns Compliance with State and Federal Election Laws; new §53.16 concerns Submission and Approval of Transcripts; new §53.17 concerns Examination Fees; new §53.18 concerns Additional Showings; new §53.19 concerns Novel or Uncommon Characteristics or Transactions; new §53.20 concerns County State Highway Bonds; new §53.21 concerns Waiver of Rules; and new §53.22 concerns Interpretation.

Ms. Leslie Brock, Chief, Public Finance Division, OAG, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Ms. Brock has determined that for each of the first five years following the adoption of the sections, the anticipated public benefit of the proposed sections will be to clarify and update the requirements for the approval of municipal securities by OAG. Also Ms.

Brock has determined that the proposed sections are not likely to have an adverse economic impact on micro-business or small business. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposed sections must be submitted no later than 30 days from the date of this publication by emailing the comments to leslie.brock@texasattorneygeneral.gov, or by mailing the comments to Ms. Leslie Brock, Public Finance Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

The staff of the Public Finance Division will hold a public hearing on the proposed rules on July 26, 2016, at 1:30 p.m. in the Ground Floor Conference Room of the Price Daniel Building located at 209 West 14th Street, Austin, Texas 78701. The hearing is structured for the receipt of oral comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing.

The new sections are proposed in accordance with Chapters 1202, 2001, and §402.044 of the Government Code, which collectively authorize OAG to adopt rules regarding its review of public securities that by law require OAG approval. In addition to Chapter 1202, other statutes require OAG review and approval before public securities and certain other obligations may be issued, including, but not limited to, §§1371.057, 1371.059, 1431.009, and 1431.011 of the Government Code, §§271.004, 271.005, and 372.028 of the Local Government Code, Chapter 45 of the Education Code, and §49.184 of the Water Code.

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

§53.1. Application.

(a) General Application. This subchapter applies to all proposed public securities and records of proceedings submitted by issuers, other than nonprofit corporations and other conduit issuers, to the Office of the Attorney General for review, as required by Chapter 1202 of the Government Code or other applicable state law.

(b) Application to Nonprofit Corporations and Other Conduit Issuers. Sections 53.2, 53.9, 53.16 - 53.19, 53.21, and 53.22 of this subchapter shall apply to proposed public securities and records of proceedings submitted by nonprofit corporations and other conduit issuers to the Office of the Attorney General for review. Additional requirements for proposed public securities to be issued by nonprofit corporations and other conduit issuers are contained in subchapters L through P of this chapter.

(c) Additional Requirements. Additional subchapters may apply to transcripts submitted to the Office of the Attorney General depending on the type of public securities and the type of issuer.

(d) Definition of Public Securities. For the purposes of this subchapter, the term "public securities" means public securities as defined under §1202.001 of the Government Code and other obligations subject to review by the Office of the Attorney General under state law.

(e) Other Definitions: Except as otherwise provided by this subchapter, all terms used in this subchapter shall have the meaning ascribed to them in §1202.001 of the Government Code.

§53.2. Form of Records.

Records of proceedings shall be submitted to the Public Finance Division of the Office of the Attorney General for approval. All records of proceedings shall conform to the following requirements:

(1) each transcript shall be submitted in an appropriately sized expanding file folder;

(2) the transcript page size shall not exceed 8 1/2 by 11 inches, and each line of each page should be entirely legible. (Oversize documents, such as maps and charts, should be folded within the 8 1/2 by 11 inch requirement);

(3) each transcript shall contain a table of contents;

(4) each transcript shall have the table of contents keyed to right side tab numbers; and

(5) each transcript shall be arranged in chronological order or in some other consistent, logical arrangement that will permit an efficient review.

§53.3. Content of Transcripts.

(a) Transcript Requirements. Each transcript shall include the following, as applicable:

(1) Initial Public Securities. The initial public securities executed in accordance with applicable law;

(2) Authorizing Document. The authorizing ordinance, order or resolution and, as applicable, indenture of trust for the proposed public securities, including the following:

(A) citation to the legal authority for the issuance of the proposed public securities;

(B) the terms of the proposed public securities, including the title, numbering, denominations, date, persons authorized to sign, method of signing, principal and interest payment dates, redemption terms, if any, place of payment and registration and form of paying agent and registrar agreement, and substantially final form of the public securities; provided, however, that to the extent specific terms of the public securities have been lawfully delegated to a representative or committee for determination, those terms shall be set forth in the pricing certificate;

(C) citation to the legal authority for the issuer to construct or acquire the proposed improvements or services, to pledge the specified payment source, and, as applicable, to contract with other parties for payment of principal and interest and other payments relating to the proposed public securities;

(D) identification of a specified revenue source and/or a levy of a tax, which shall be pledged in amounts sufficient, within any applicable limitation, to pay the annual debt service requirements of the proposed public securities for the current year and each succeeding year during which the proposed public securities are outstanding. Cities and counties issuing public securities supported in whole or in part by ad valorem taxes constitutionally must provide for an annual levy sufficient to collect a sinking fund of not less than 2% of the principal amount of the proposed public securities regardless of the year in which the first principal payment is due;

(E) a reasonably complete and detailed description of the improvements, services, or projects being financed and the intended use of the proceeds, including whether any of the proceeds are being used to repay an interim borrowing, reimburse the issuer for amounts previously expended, pay capitalized interest or fund a reserve fund;

(F) a recitation of the following:

(i) the manner of the sale, whether negotiated or competitively bid,

(ii) the identification of the purchaser,

(iii) the purchase price, including any discount or premium, and

(iv) the finding that the terms of the sale were in the issuer's best interest, and additionally, if competitively bid, that the sale was awarded based on the lowest net effective interest rate, or other applicable standard as permitted by law;

(G) for proposed public securities with a floating, variable, or adjustable interest rate, a provision limiting the maximum rate of interest to:

(i) a net effective interest rate not to exceed the maximum interest rate provided for and calculated in accordance with Chapter 1204 of the Government Code; or

(ii) such other limit applicable to the securities and/or the issuer;

(H) incorporation of the provisions of Title 6 of the Property Code (Unclaimed Property) regarding the disposition and reporting of unclaimed principal and interest payments, specifically requiring compliance with the reporting requirements of Chapter 74 of the Property Code;

(I) provisions to account for the use of surplus public securities proceeds, premiums, and interest earnings on public securities proceeds;

(J) if issuing public securities under voted authorization, recitation of amounts previously issued under such voted authorization and the amount of voted authorization remaining after the issuance of the proposed public securities; provided, however, that if a determination of the amount of the public securities to be issued has been lawfully delegated, the amount of remaining voted authorization shall be stated in the pricing certificate; and

(K) approval of the form of contracts included in the transaction, as applicable;

(3) Pricing Certificate. A pricing certificate, when appropriate to facilitate a lawful delegation of specific terms of proposed public securities to an identified representative of the issuer. The certificate shall be signed by the representative(s) identified in the authorizing ordinance, order, or resolution, and shall reflect compliance with any parameters established therein;

(4) General Certificate. A general certificate, signed by a senior executive officer or an elected or appointed official of the issuer, and the official custodian of records of the issuer, and, if appropriate, any other officers or authorized representatives of the issuer, which certificate includes the following:

(A) for all public securities, a debt retirement schedule that:

(i) is current as of the date of the sale of the proposed public securities;

(ii) includes the combined debt service requirements of the proposed public securities and all other outstanding indebtedness payable in whole or in part from the same source regardless of lien priority, including any additional series of public securities being issued at the same time as the proposed public securities,

(iii) calculates interest as follows:

(I) at the actual interest rates sold, if known;

(II) in the case of future interest for variable rate debt, at the lesser of the maximum interest rate permissible under the ordinance, order, resolution or trust indenture authorizing the debt, or the maximum rate under applicable state law; or

(III) in the case of commercial paper, at the prevailing interest rate for governmental issuers with the same unenhanced credit rating as the issuer with principal (the maximum authorized program amount) shown as being amortized such that there will be level debt service payments over the life of the commercial paper program or twenty (20) years, whichever is greater, but not to exceed thirty (30) years or, if applicable, in accordance with §1371.057(c) of the Government Code;

(iv) for outstanding indebtedness or proposed public securities payable from a combination of ad valorem taxes and another pledged source, includes the debt service requirements as though such indebtedness were payable solely from ad valorem taxes, unless it is shown that such indebtedness can be and is paid, or with respect to proposed public securities, is intended to be paid, from the other pledged sources;

(v) for cities and counties constitutionally required to levy taxes sufficient to collect an annual 2% sinking fund for principal, reflects the annual 2% sinking fund amount in the debt service requirements even if no principal is due in a given year; and

(vi) for indebtedness with a related interest rate management agreement, as that term is defined in Chapter 1371 of the Government Code, taking into account the effect of the agreement on the interest rate(s) of the indebtedness in calculating the debt service requirements;

(B) for all proposed revenue and combination limited tax and revenue public securities:

(i) a history of the pledged revenue collections during the most recent three year period or, if revenues are being relied upon to show coverage, a revenue projection in the event a revenue history is unavailable or insufficient to provide debt service coverage. A revenue projection must include an explanation of the circumstances, such as a recent increase in the applicable rates, fees, or charges, that support a projected increase in revenues;

(ii) for a revenue projection based on an expanded system, a certificate of a licensed engineer or qualified consultant, as appropriate;

(iii) a copy of the current rate order or ordinance or adopted rate schedule of the issuer; and

(iv) a statement of the annual operating and maintenance expenses for the most recent year;

(C) for ad valorem tax public securities, certified statements of taxable values, and, if an issuer intends to rely on a collection rate greater than 90%, a certificate of the issuer's collection rates for the most recent three years;

(D) for general law city ad valorem tax public securities, certification of the type of general law city and the city's population as of the next immediately preceding federal decennial census;

(E) for home rule cities, certification of the date of the most recent amendment to the city charter and a certified copy of any charter amendment not previously submitted with a transcript;

(F) for issuers other than municipalities, citation to the statutory and, if applicable, constitutional provisions authorizing the issuer's creation and, if applicable, its taxing power;

(G) certification of incumbency, including the following:

(i) certification of the incumbency of each issuer's executive or administrative officer subscribing any document in the transcript; and

(ii) certifications of incumbency for city secretaries, county clerks, and other officers customarily certifying incumbencies, which certifications may be made by the presiding officer of the governing body of the issuer or, in his or her absence, any other member of the governing body; and

(H) at the discretion of the issuer, any other certifications required by this chapter;

(5) Purchase Agreement. For negotiated sales, executed original of any purchase agreement relating to the sale of the proposed public securities;

(6) Bid Form. For competitive sales, evidence of the winning bid form;

(7) Insurance. For financings for which insurance is obtained:

(A) a copy of the insurance commitment letter, executed by the insurer, if applicable;

(B) certified proceedings authorizing the insurance, which may be in the ordinance, order or resolution authorizing the public securities;

(C) if a statement of insurance is to be printed on the public securities, express authorization by the issuer in the ordinance, order or resolution authorizing the public securities or pricing certificate; and

(D) in the case of any agreement entered into with the insurer, if the agreement constitutes an authorized credit agreement pursuant to Chapter 1371 of the Government Code, submission of the proceedings authorizing the agreement;

(8) Offering Document. An official statement or other offering document; if a preliminary official statement is initially provided, a final official statement is to be provided prior to approval by the Office of the Attorney General;

(9) Affidavit of Publication. An affidavit of publication, executed by a representative of the newspaper, including a confirmation that the newspaper is of general circulation within the boundaries of the issuer, if a specific finding to that effect has not been made by the governing body of the issuer, and a recitation that the newspaper meets the requirements §2051.044 of the Government Code with a copy of a clipping of the published material attached;

(10) Paying Agent/Registrar Agreement. The paying agent/registrar agreement in substantially final form containing the following:

(A) a statement that the paying agent/registrar accepts the duty to act as paying agent and/or registrar, as appropriate;

(B) a statement that the paying agent/registrar is subject to a good faith and reasonable care standard;

(C) a statement that any indemnification provision is explicitly limited "to the extent permitted by law" and excludes negligence and willful misconduct on the part of the paying agent/registrar;

(D) a statement that any early termination provisions shall not be effective until a successor paying agent/registrar has been appointed by the issuer and such appointment has been accepted;

(E) if the agreement provides that a bank will not release contents of the register to anyone other than the issuer, a statement qualifying that such a provision may be effective "except upon court order or as otherwise required by law";

(F) if the agreement addresses the bank's right to file any legal action, a statement expressly limiting the venue and jurisdiction for such an action to the State of Texas;

(G) a statement that in the event of a conflict between the agreement and the authorizing ordinance, order or resolution, the authorizing ordinance, order or resolution controls;

(H) a statement that the agreement is governed by Texas law;

(I) a statement that any moneys held by the bank are subject to the unclaimed property laws of the State of Texas; and

(J) collateralization language;

(11) Certificate of Authority. Evidence of authority to sign for any persons who signed any transcript document in a representative capacity (the representative's own verification is not sufficient);

(12) Acknowledgment of Special Meeting. Acknowledgment of timely receipt of notice of a special meeting signed by each member of the issuer's governing body who failed to attend the meeting of the governing body at which a transcript document was approved;

(13) Certification of Official Actions. A certificate for each action taken by the governing body relating to the issuance of the proposed public securities, executed by the custodian of records of the governmental body, indicating presence of appropriate quorum, type of meeting (special, regular, or emergency), introduction and adoption of the action and the number of votes for, against, and abstaining. Such actions must be certified as true and correct copies of originals on file in the body's official minutes and all meetings at which such actions have been taken must be certified as having been held in full compliance with Chapter 551 of the Government Code;

(14) Signature Identification and No-Litigation Certificate. An undated signature identification and no-litigation certificate signed by the officers who executed the proposed public securities that complies with the following requirements:

(A) signatures shown on the certificate must substantially conform to the signatures on the proposed public securities;

(B) signatures must be certified as genuine by a bank or acknowledged by a notary public;

(C) certificate must include certification that no litigation is pending or to the best of the knowledge of the issuer, threatened, against the issuer seeking to restrain or enjoin the issuance of the public securities, questioning the issuance or sale of the public securities or the authority or action of the governing body relating to the issuance or sale of the public securities, or the levy of taxes or collection of revenues or the pledge of taxes or revenues to the principal of and interest on the securities, as appropriate, or materially affecting the assessment or collection of taxes to pay the principal of and interest on the public securities, when appropriate; and that neither the corporate existence or boundaries of the issuer nor the right to hold office of any member of the governing body of the issuer or any other elected or appointed official of the issuer is being contested or otherwise questioned; and

(D) authorization for the Office of the Attorney General to insert the date of the approving opinion on the certificate must be provided, along with a representation that the issuer will notify the Office of the Attorney General by phone if it becomes aware of any changes with respect to any representation in the certificate or any transcript document to which the issuer is a party that occur between the date of the approving opinion and the date of closing;

(15) Reimbursement of Expenditures. If applicable, documentation evidencing intent to use the public security proceeds to reimburse the issuer for its prior expenditures;

(16) Bond Review Board Information. Bond Review Board information required by §1202.008 of the Government Code along with an additional copy of the official statement; and

(17) Election Proceedings. Certified election proceedings as provided in §53.14 of this subchapter.

(b) Execution of Documents. All certificates must be originally signed and, if required, sealed. All issuer contracts providing security or otherwise affecting the marketing or terms of public securities and governmental orders must either be originally signed and, if required, sealed, or legible copies certified to be true and correct copies.

§53.4. Financial Publications.

The following financial publications circulated within the State of Texas are approved for publication of notices of public security sales:

(1) The Texas Bond Reporter;

(2) The Bond Buyer; and

(3) The Wall Street Journal.

§53.5. Determination of Bond Allowable Rate.

The following apply to determinations of the ad valorem tax bond allowable rate:

(1) "bond allowable rate" means the portion of the maximum authorized tax rate available for debt service;

(2) except as provided below, and except for good cause shown, all political subdivisions have a bond allowable rate equal to 2/3 of the maximum tax rate authorized by law;

(3) home rule cities and general law cities authorized by §5 of Article XI of the Texas Constitution to levy a tax of up to $2.50 per $100 valuation have a bond allowable rate of $1.50 per $100 valuation, unless the tax rate is further limited by the city's charter;

(4) counties have a bond allowable rate of $.40 per $100 valuation, plus an additional bond allowable rate of 1/2 of the tax rate voted for "further maintenance of public roads" authorized by §9 of Article VIII of the Texas Constitution up to a maximum additional tax of $.075 per $100 for public securities payable from that tax;

(5) annual tax funds available for debt service shall be calculated assuming a collection rate of 90% or a higher rate based on the average collection rate for the most recent three years, as certified by the issuer. In calculating the average collection rate, the annual collection rate used for any year may not exceed 100%;

(6) the bond allowable rate calculation for school district bonds and maintenance tax notes shall be determined in accordance with applicable law or with an All Bond Counsel Letter addressing the matter; and

(7) the bond allowable rate may be further restricted by law or an All Bond Counsel Letter in certain instances.

§53.6. Satisfaction of Coverage.

The maximum annual debt service reflected in the debt retirement schedule may not exceed:

(1) for proposed public securities supported in whole or in part by ad valorem taxes, the product of the bond allowable rate, the applicable collection rate, and the issuer's most recent certified taxable assessed valuation; and/or

(2) for proposed public securities supported by revenues, the issuer's certified historical or projected revenue collection amount, as applicable.

§53.7. Transcripts of Combination Tax and Revenue Public Securities.

Generally, transcripts for proposed public securities supported by a combination of ad valorem taxes and other revenues shall meet the transcript requirements for both ad valorem tax public securities and revenue public securities as provided by this chapter.

§53.8. Appropriated Funds and Capitalized Interest.

(a) When an issuer must pay debt service on a proposed ad valorem tax public security or combination ad valorem tax and revenue public security before the initial tax levy can be collected, the issuer must provide certification that the issuer has appropriated lawfully available funds for such payment to the extent not paid from capitalized interest.

(b) For city and county ad valorem tax public securities, the proceeds may be used to pay interest only for the initial period during which the city or county is unable to levy and collect taxes in advance of the payment date.

§53.9. Securities in Litigation.

Pending litigation will generally disqualify proposed public securities from approval when the pending litigation concerns the public securities, the majority of the titles to office, the issuer's creation, the boundaries of a traditional governmental issuer if a final judgment may reduce the tax base or revenue of the issuer such that the payment source for the public securities is materially impaired, or when pending litigation in any other way challenges the authority of the issuer to issue the public securities or undertake the project being financed.

§53.10. Estimates in Statements of Taxable Values.

Except where otherwise permitted by law, estimates in statements of taxable values are not permissible unless the issuer has been in operation for a period of less than 18 calendar months.

§53.11. Seals.

Seals must bear an inscription of the official title of the issuer as it appears in the transcript. Seals on certificates must exactly correspond to seals on securities.

§53.12. Refunding Bonds.

(a) Definitions. For purposes of this section, the term "bonds" includes commercial paper used for refunding purposes, and the term "public securities" includes other obligations authorized to be refunded by law that do not constitute public securities under §1202.001 of the Government Code.

(b) Types of Refundings. Refundings may be accomplished by the issuance of advance or current refunding bonds sold for cash or exchange refunding bonds issued in exchange for the refunded obligations. For state law purposes, all refundings in which the public securities being refunded are not paid and discharged the same day as the refunding bonds are issued are considered to be "advance refundings."

(c) Advance Refundings. Transcripts for net defeasance advance refunding must include documentation from an accounting firm or other qualified entity, other than the issuer, verifying the sufficiency of the investments of the escrowed proceeds to redeem on the redemption date or pay at maturity, as applicable, the refunded public securities. For a gross defeasance, a certificate of sufficiency from the paying agent for the refunded obligations or other qualified entity, other than

the issuer, is required. For purposes of this section, "net defeasance" means a deposit of refunding proceeds upon closing in escrow, which requires the accrual of investment earnings in order to provide sufficient funds to pay the redemption price on the redemption date; and "gross defeasance" means a deposit of refunding proceeds upon closing, which is sufficient to pay the redemption price on the redemption date without further investment. For an advance refunding pursuant to Subchapter C of Chapter 1207 of the Government Code:

(1) the financial institution with whom the refunding bond proceeds are to be deposited must enter into an escrow or similar agreement if required by §1207.062 of the Government Code, or otherwise execute an agreement or certificate confirming its agreement to hold the refunding proceeds in trust for the owners of the refunded public securities; each agreement shall collateralize uninvested funds until their payment at redemption to the extent not insured by the Federal Deposit Insurance Corporation; and

(2) a certification of incumbency, including specimen signatures, and corporate authority of the financial institution executing an escrow or similar agreement must be included in the transcript.

(d) Paying Agent for Refunded Public Securities. All paying agents for public securities to be redeemed must acknowledge:

(1) receipt of a notice of redemption and, in cases in which a notice of redemption is required to be published or mailed to the registered owners prior to the delivery of the refunding bonds, evidence of such publication or a certification by the paying agent/registrar as to provision of notice to registered owners must be included in the transcript; and

(2) satisfaction of paying agent fees; if fees will not be paid at closing, the paying agent must certify that it will not look to the bond proceeds as payment for its fees but its sole remedy will be an action for payment under the paying agent agreement.

(e) Exchange Refundings. Exchange refunding bonds issued pursuant to the authority of §1207.081 of the Government Code may be sent to the Comptroller for registration after approval if the transcript includes instructions from the issuer to the paying agent for the refunding bonds to hold the bonds and deliver them only upon surrender of the public securities being refunded, and a representation that the refunding bonds will be delivered to the paying agent for further delivery as instructed and not to any other party, or provides a similar mechanism for ensuring delivery only in exchange for the public securities being refunded.

(f) Combination New Money and Refunding Public Securities. For combination new money/refunding bonds issued pursuant to Chapter 1207 of the Government Code, the issuer must provide documentation in accordance with these rules evidencing compliance with any election, notice, or publication requirements for the new money portion.

(g) Public Purpose and Required Findings. A refunding pursuant to Chapter 1207 of the Government Code for which the aggregate amount of payments to be made on the refunding bonds will or may exceed the aggregate amount of payments to be made on the public securities being refunded must include the finding required by §1207.008(a)(1) and must include the finding required by §1207.008(a)(2), unless, as provided by subsection (b) of that section, the governing body of the issuer determines and states in the order, ordinance, or resolution authorizing the refunding that the manner in which the refunding is being executed does not make it practicable to make the determination required by subsection (a)(2) of that section. Refunding transcripts must include a debt service savings schedule showing the amount of debt service savings or loss, reflecting the calculation of any issuer contribution and showing the methodology used. If there is no gross savings or the issuer has made a finding of impracticability under §1207.008(b), a statement must be included in the bond order, ordinance, or resolution explaining the public purpose of the refunding.

(h) Submission of Refunded Public Securities Documents. All refunding transcripts must contain a copy of the order, ordinance or resolution authorizing, or a copy of the trust indenture securing, the public securities being refunded. The documentation submitted should include the pricing certificate for public securities sold pursuant to delegated authority.

(i) Refunding Assumed Public Securities. For municipal refunding bonds being issued to refund public securities for which the obligation to pay has been assumed through annexation of another political subdivision or special district, the following must be included in the transcript:

(1) if applicable, a certified copy of the action taken by the governing body that conducted the annexation calling the public hearing and authorizing publication of the notice of the hearing;

(2) if applicable, an original or certified copy of the affidavit of publication of the notice of the hearing with the newspaper clipping attached; and

(3) a certified copy of the action taken by the governing body annexing the land and assuming the debt.

§53.13. Refunding Issues by Consent.

When refunded public securities are being redeemed by consent of the holders thereof, written evidence of such consent must be included in the transcript.

§53.14. Elections.

(a) Types of Elections. Proceedings of the following elections must be submitted with the first transcript of proposed public securities utilizing the authority acquired through the election:

(1) an election authorizing the issuance of public securities;

(2) an election authorizing the levy or imposition of a tax or other security pledged to the payment of public securities;

(3) an election creating or incorporating, or confirming the creation of, an issuer;

(4) an election approving a home rule charter for a municipality; and

(5) elections discussed in other subchapters of this chapter. Proceedings of state elections, including amendments to the Constitution, are not required.

(b) Election Contest Period. When the proceedings of an election held pursuant to the Election Code are submitted as part of the record of proceedings, the proposed public securities will not be approved until the time for filing a petition for an election contest has expired in accordance with §233.006 of the Election Code or, if an election contest has been filed, a final, nonappealable judicial order that does not overturn the election has been obtained.

(c) Election Proceedings. Election proceedings must include the following:

(1) Official Action Calling the Election. A certified copy of the action taken by the governing body calling the election; the official action must include the elements required by all applicable law;

(2) Election Notice. Affidavits of publication, and/or certificates of posting or mailing, as required by law, of notice of an elec-

tion, in English and other languages as required by law with a copy of the election notice; the election notice must contain the elements required by applicable law;

(3) Official Action Canvassing the Election. A certified copy of the action taken by the governing body canvassing the results of the election, including the total number of votes for and against a proposition;

(4) Compliance with the Election Code. Certification as to compliance with the Election Code, including particularly the giving of notice of an election to the county clerk pursuant to §4.008 of the Election Code and the bilingual requirements of Chapter 272 of the Election Code, or explaining why these requirements are not applicable to the election; and

(5) Home Rule Charter Election. For an election approving a home rule charter for a municipality, certification as to compliance with §9.003(b) and §9.007 of the Local Government Code.

§53.15. Compliance with State and Federal Election Laws.

When election proceedings are submitted as part of a record of proceedings, the general certificate shall include a certification confirming that the election was conducted in accordance with all applicable state and federal laws.

§53.16. Submission and Approval of Transcripts.

(a) Submitting Attorney. A transcript must be submitted by an attorney licensed in Texas.

(b) Submission Deadlines. An issuer must submit its record of proceedings at least 10 working days prior to closing for traditional financings, and at least 12 working days prior to closing for nonprofit corporation or other conduit issuer financings. In the cover letter for the transcript submission, bond counsel must advise the Public Finance Division of public securities requiring the delivery of an approving opinion earlier than normally provided and must submit the record of proceedings a corresponding amount of additional time prior to the proposed closing date. These time periods may be increased with advance notice from the Public Finance Division in an All Bond Counsel Letter. Record of proceedings must be submitted in substantially final form. Preliminary or pro-forma proceedings will not be accepted for review without prior approval for good cause shown when the current Public Finance Division workload allows. Black-lined pages identifying changes must accompany any changed pages to the record of proceedings. An issuer's failure to submit a substantially complete record of proceedings prior to the expected release date of a preliminary approval letter under subsection (d) of this section may prevent the release of approved public securities by the proposed closing date.

(c) Initial Public Securities. Initial public securities must be submitted no later than five working days prior to closing.

(d) Preliminary Approval Letters. No preliminary approval letter from the Public Finance Division should be expected until the end of the fifth working day preceding the date set for closing, or an earlier date as requested by bond counsel in writing, if the time requirements for an earlier approval date have been met. If the issuer fails to submit a substantially complete record of proceedings, the Public Finance Division may delay the release of the preliminary approval letter until such time as a substantially complete record of proceedings is received. After receipt by bond counsel of a preliminary approval letter relative to a given issue, bond counsel shall supply a written response to any questions, enclosing, when requested, missing or substituted documentation. Intervening telephone discussion is welcome, and confirmation of any verbal waivers or modifications to the preliminary approval requirements should be included in the reply letter.

(e) Submission of Final Documents. Any outstanding requirements for final approval as well as the executed, final versions of documents originally submitted in unexecuted or uncertified form, must be submitted no later than three working days prior to closing. Exceptions to this requirement may be granted by the Public Finance Division for good cause, if the current workload allows.

(f) Registration of Public Securities. If all requirements have been satisfied, approved public securities generally will be sent by the Public Finance Division to the Texas Comptroller of Public Accounts for registration two days prior to the proposed closing date.

(g) Approval of Certain Contracts. For record of proceedings in which specific approval by the Office of the Attorney General of a contract providing revenue or security to pay the public security is required, the proceedings, including the contract, must be supplied in final and executed or certified form by the time of approval.

(h) Agreements to be Registered by Texas Comptroller of Public Accounts. For agreements required by law to be registered by the Texas Comptroller of Public Accounts, such as lease purchase agreements, the issuer must submit two fully executed agreements. One will be registered with the Texas Comptroller of Public Accounts and returned to the issuer, and the second will remain with the transcript file.

(i) No Guarantee of Final Approval. Receipt of a preliminary approval letter does not constitute a guarantee of final approval of the public securities and should not be relied upon as such. Closings may be delayed if required documents are not timely filed or if there are unresolved legal issues. Furthermore, the Office of the Attorney General does not represent, assure or guarantee completion of transcript examination or the issuance of transcript approval by any specific date or time.

(j) Calculation of Deadlines. For calculations under this section, the day of submission is counted if the record of proceedings is received by 3:00 p.m., but the day of closing is not counted. If bond counsel states that it is satisfactory for the public securities to be registered by the Comptroller of Public Accounts the day before closing, then one day may be subtracted from the time requirements. If approval is requested a certain number of days prior to closing, then the time requirements are counted back from the requested approval day, not from closing.

(k) Review of Forward Deliveries. An opinion for forward delivery public securities will not be delivered until shortly before the delivery date of the public securities. A preliminary approval letter will be provided, and subsequently, if requested, the reviewing attorney will confirm that all outstanding requirements have been satisfied, to the extent this has occurred. An extensive "settlement certificate" generally setting forth information of the nature required to be in general and no-litigation certificates and confirming that there have been no material changes made to the transcript previously reviewed by this office will be required before the opinion is given.

(l) Return of Record of Proceedings. A record of proceedings on file with the Public Finance Division for six (6) months with no action will be returned to bond counsel. Should any such proceedings be resubmitted, a new fee will be required.

(m) Facsimile Transmissions. Unless specifically requested or approved by the Public Finance Division, no fax transmissions of more than 20 pages may be sent to the Public Finance Division. Unless specifically requested, material should not be faxed in the late afternoon or evening if it is being sent by overnight delivery.

§53.17. Examination Fees.

Section 1202.004 of the Government Code sets out the fee amounts for submitting a public security and/or a record of proceedings to the Office of the Attorney General for examination and approval.

§53.18. Additional Showings.

If independent investigation or extrinsic evidence relating to any public securities proceedings indicates the need for other or additional showings by the issuer to satisfy any legal requirements precedent to the approval of such proceeding, approval of such proceedings and the issue subject thereof may be withheld pending such showings being furnished to the Public Finance Division.

§53.19. Novel or Uncommon Characteristics or Transactions.

Issuers contemplating authorization, issue, and sale of public securities not specifically addressed in these rules or which contain novel or uncommon characteristics are encouraged to present preliminary plans to the Public Finance Division for review and comment before taking official action for issuance. The Public Finance Division is also willing to pre-review transcripts for unusual or particularly complex transactions, provided the transcripts are accompanied by the appropriate fee.

§53.20. County State Highway Bonds.

An election for county limited ad valorem tax bonds for state highway purposes is not required in order to issue bonds pursuant to Chapter 1479 of the Government Code.

§53.21. Waiver of Rules.

Subject to specific requirements set out in the Constitution of the State of Texas, applicable statutes, or applicable city charter, the rules for public securities promulgated herein may be waived by the Public Finance Division upon a showing of good cause.

§53.22. Interpretation.

These rules and the applicable laws have been and will be interpreted from time to time by the issuance of All Bond Counsel Letters by the Public Finance Division pursuant to §402.044 of the Government Code. All substantive All Bond Counsel Letters from November 1987, and selected letters from before that date, are on the Attorney General's website.

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 June 16, 2016.

TRD-201603064
Amanda Crawford
General Counsel
Office of the Attorney General
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 936-7940

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

The Texas Judicial Council (Council) proposes to repeal the existing Chapter 175 of Title 1 of the Texas Administrative Code (1 TAC §§175.1 - 175.7) and proposes a new Chapter 175 (1 TAC §§175.1 - 175.6) concerning the Collection Improvement Program (Program). The purpose of the Council's actions is to revise the current Program components and requirements to ensure that compliance with the Program does not result in an undue hardship on defendants and defendant's dependents and to clarify that the Program is not intended to apply to defendants who have been determined by a court to be unable to pay any portion of the assessed costs, fines, and fees without undue hardship to the defendant or the defendant's dependents.

Summary of Proposed Changes

The following is a section-by-section discussion of the difference between the current rules (1 TAC §§175.1 - 175.7) which the Council is proposing to repeal and new Chapter 175 (1 TAC §§175.1 - 175.6) proposed by the Council.

§175.1. Purpose and Scope.

Proposed §175.1 deletes the word "Source" from the title of the current §175.1 and clarifies the following:

1) the purpose of the rules is to improve defendant's compliance with court ordered costs, fines and fees without imposing undue hardship on defendants and defendant's dependents;

2) the Program components do not apply to cases in which the court has determined that a defendant is unable to pay a portion of the assessed costs, fines and fees;

3) courts may utilize local program staff to monitor compliance with court orders in cases that don't fall under a local collections improvement program, such as when a defendant has been ordered to satisfy the assessed costs, fines and fees through community service or other non-monetary compliance options; and

4) the Program is not intended to alter the legal authority or discretion of a judge regarding the determination of whether to waive or the method to satisfy the payment of costs, fines and fees, or how to adjudicate any aspect of the case.

§175.2. Definitions.

Proposed §175.2 adds the following definitions: 1) discretionary income, 2) household income, 3) non-monetary compliance, and 4) spouse. The definition of "eligible case" is moved from this section to §175.5, the compliance review standards section. The proposed rule also adds "e-mail" to the list of "contact information" in that definition. Lastly the proposed rule deletes the following definitions because they are unnecessary: 1) contact, 2) designated counties, and 3) designated municipalities.

§175.3. Collection Improvement Program Components.

Proposed §175.3 makes several changes to the current rule. The current rule separates the Program components into two subsections (current §175.3(c) and (d)). Proposed §175.3 lists all of the component in one subsection (new §175.3(a)) and rearranges the order of the components so that they are consistent with the processing of a case by local program staff.

§175.3 also makes the following changes:

1) Application or Contact Information. Under the current rule, local program staff does not have to collect an application with payment ability information from defendants who have a payment plan set by the judge before the case is referred to the local program. They only need to collect contact information. Under the proposed rule, staff must obtain from these defendants a signed statement regarding whether the defendant has the ability to pay the assessed costs, fines and fees under the imposed terms without undue hardship to the defendant and defendant's dependents. If the defendant is unable to make this acknowledgment, the local program staff must obtain contact information and payment ability information from the defendant. The

proposed rule does not change the requirement that local program staff collect from all other defendants an application with payment ability information and contact information.

2) Defendant Interviews. The proposed rule would require local program staff to review payment ability information obtained from defendants who have a payment plan set by the judge before the case is referred to the local program if they do not provide an acknowledgment that they have the ability to pay. If they do provide this acknowledgement, local program staff would only be required to review the terms of the payment plan set by the judge with the defendant as is provided under the current rule. The proposed rule does not change the current local program requirements for interviewing other defendants. Local program staff would continue to review payment ability information with these defendants.

3) Referral to Court for Review of Defendant's Ability to Pay. This is a new component without a comparable component in the current rules. It would require local program staff to refer a case back to the court if they receive information indicating that the defendant is unable to pay the assessed costs, fines and fees without undue hardship to the defendant and defendant's dependents. This component also provides that a defendant is presumed to be unable to pay all the costs, fees, and fines assessed if the defendant meets at least one of the following three criteria: 1) the defendant is required to attend school pursuant to the compulsory school attendance law, 2) the defendant's income or defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines, and 3) the defendant qualifies for certain federal assistance programs. The proposed rule also requires local program staff to collect information regarding a defendant's ability to satisfy the assessment with non-monetary compliance options (i.e. community service, etc.) and to provide the court with this information when the case is referred back to the court. Though local program staff are currently able to refer cases back to the court if they believe a defendant is unable to pay and are able to collect information regarding available non-monetary compliance options, there is no comparable provision specifically stated in the current rule. The proposed rule also specifies that it is not intended to discourage staff from referring other cases back to the court even if the defendant does not specifically fall under the provided "inability to pay" presumption, and it also provides that it is not intended to bind or influence judicial discretion regarding these matters.

4) Payment Plan Guidelines. The current rule contains a subsection (§175.3(c)(4)) called "Specified Payment Terms" that includes documentation requirements, payment guidelines and time requirements. The proposed rules substitute the "Specified Payment Terms" subsection with a new "Payment Plan Guidelines" subsection. None of the provisions in the current "Specified Payment Terms" subsection are included in the new "Payment Plan Guidelines" subsection except for the requirement that payment plans be documented. The new rule requires that payment plans include payment amounts, the designated payment intervals and the number of payments and provides that, generally, payment amounts should not exceed 20 percent of the defendant's discretionary income per month.

5) Telephone and Written Notice Contact. The proposed rule adds e-mail and other electronic communication options as a means to communicate with defendants. It also requires local program staff to include instructions in their telephone and written contacts about what a defendant can do if the defendant is unable to pay and information regarding the availability of non-monetary compliance and how a defendant can request a hearing for the judge to consider the defendant's ability to pay.

6) Final Contact Attempt. The proposed rule replaces the "Contact if Capias Pro Fine Sought" subsection with a subsection called "Final Contact Attempt." The new provision would require that before reporting the case as non-compliant to the court, the local program make a final contact in writing by mail. The final contact must include all of the information included in the telephone and other written contacts regarding steps a defendant can take if defendant is unable to pay. The proposed rule provides that local program staff must wait a month before reporting the case to the court in order to give the defendant time to discuss options with local program staff. It also clarifies that the provision is not intended to interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

§175.4. Content and Form of Local Government Reports.

The proposed rule would require counties subject to these rules to provide another report to the Office of Court Administration (OCA) than is currently required - the number of cases in which local program staff refer cases back to the court under the proposed new provision that requires local program staff to refer the case if they determine that the defendant is unable to pay.

§175.5. Compliance Review Standards.

The proposed rule would change the name of §175.5 from "Audit Standards" to "Compliance Review Standards." The purpose is to remove the impression that the audits OCA conducts are to review matters related to how much money an entity collects and more closely follow the intent of Code of Criminal Procedure Art. 103.0033(j) which requires that OCA conduct an audit to confirm that the county or municipality is conforming with requirements relating to the Program.

§175.6. Implementation Schedule.

The proposed rule does not include the current §175.6 regarding local program implementation schedules published by OCA because they are no longer necessary.

§175.7 Waivers.

The only change to the current rule is the addition of the statutory requirement (Code of Criminal Procedure Art. 103.0033(h-1)) that OCA grant a blanket waiver to a county that contains within its borders a correctional facility operated by or under a contract with the Texas Department of Criminal Justice and that has a population of 50,000 or more because the inmate population is included in the county's population.

Fiscal Note

Jennifer Henry, OCA's chief financial officer, does not anticipate that for the first five-year period the new rules and repeals are in effect that the fiscal implications for state government, if any, will be significant. There may be a fiscal impact to local government for the cost of any new forms that may need to be developed, for the reconfiguration of any notification systems currently in place, and for programming that may be required to add the additional reporting requirement. The actual cost of complying with the new rules will vary depending on counties' and municipalities' current operations and systems. However, OCA does not anticipate that the cost will be significant.

Public Benefit and Economic Impact

Scott Griffith, director of research and court services of OCA, has determined that for each year of the first five years the new rules and repeals are in effect, the public benefit anticipated as a result of the proposed rules will be clarification of the intent and meaning of the Program's requirements and the ability of defendants who are unable to pay court ordered costs, fines and fees at the time they are assessed to establish a payment plan so that they can comply with court orders without undue hardship to themselves and their dependents.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed. There are no anticipated costs to small business and there is no anticipated impact on local employment.

Comments

Comments on the proposed new rules and repeals may be submitted in writing to Scott Griffith at scott.griffith@txcourts.gov, at P.O. Box 12066, Austin, Texas 78711-2066, or at fax number (512) 463-1648. Comments will be accepted for 30 days following the publication of the proposal in the *Texas Register.*

1 TAC §§175.1 - 175.6

Statutory Authority

New Chapter 175 is proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the proposed rules is Article 103.0033 of the Code of Criminal Procedure.

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

§175.1. Purpose and Scope.

(a) The purpose of this rule is to provide notice to counties and municipalities of the scope and components of the Collection Improvement Program (CIP) model developed by the Office of Court Administration pursuant to Article 103.0033 of the Code of Criminal Procedure and the standards that will be used to determine whether a county or municipality is complying with the CIP requirements.

(b) The CIP is designed to improve a defendant's compliance with the payment of costs, fees, and fines that have been ordered by a court, without imposing an undue hardship on the defendant or the defendant's dependents. The CIP components should not be interpreted to conflict with or undermine the provision to defendants of full procedural and substantive rights under the constitution and laws of this state and of the United States.

(c) The CIP does not alter a judge's legal authority or discretion to design payment plans of any amount or length of time; to convert costs, fees, and fines into community service or other non-monetary compliance options as prescribed by law; to waive costs, fees, and fines; or to reduce the total amount a defendant owes at any time after the assessment date; or to adjudicate a case for non-compliance at any time.

(d) The CIP applies to criminal cases in which the defendant is ordered to pay costs, fees, and fines under a payment plan. The CIP does not apply to cases in which: 1) the court has determined that the defendant is unable to pay any portion of the costs, fees, and fines without undue hardship to the defendant or the defendant's dependents; 2) the court, at the time of assessment, authorizes discharge of the costs, fees, and fines through non-monetary compliance options; or 3) the defendant has been placed on deferred disposition or has elected to take a driving safety course.

(e) Although cases in which the court has ordered a defendant to satisfy his or her obligation regarding costs, fees, and fines through community service or other non-monetary compliance options are not subject to the CIP requirements, a judge may use local program staff to assist the court with monitoring a defendant's compliance with these court orders.

§175.2. Definitions.

(a) "Assessment date" is the date on which a defendant is ordered or otherwise obligated to pay costs, fees, and fines. When a defendant remits partial payment of a citation without appearing in person, the assessment date is the date the partial payment is received.

(b) "Collection Improvement Program" or "CIP" means the program described in this chapter.

(c) "Contact information" means the defendant's home address and home or primary contact telephone number, and email address, if any; at least two personal contacts and their telephone number, mailing address or email address; and the date the information is obtained.

(d) "Discretionary income" means the amount of a defendant's net (after-tax) household income minus the amount of all required payments and the cost of items that are essential for the defendant and the defendant's dependents. Required payments are those which would result in a penalty or other adverse impact if payment is not made, including, but not limited to, loan, credit card, and car and health insurance payments; court mandated payments, such as child support and victim restitution payments; and fees for drug testing, rehabilitation programs, and community supervision. Items that are essential for the defendant and the defendant's dependents are those which are necessary to ensure the well-being of the defendant and defendant's dependents, including, but not limited to, transportation, food, medicine and medical services or supplies, housing, child care, and clothing.

(e) "Household income" means the defendant's income and the defendant's spouse's income that is available to the defendant.

(f) "Jurisdiction" means a county or municipality that is subject to this chapter.

(g) "Local program" means a program implemented by a jurisdiction pursuant to Art. 103.0033 of the Code of Criminal Procedure.

(h) "Non-monetary compliance option" means an alternative method of satisfying the assessment of costs, fees, and fines other than through the payment of money. This includes those methods provided in Arts. 43.09 and 45.049 of the Code of Criminal Procedure, and any other alternative within the judge's discretion.

(i) "OCA" means the Office of Court Administration of the Texas Judicial System.

(j) "Payment ability information" means the defendant's household income, expenses, account balances in financial institutions, debt balances and payment amounts, number of dependents, and any other information necessary to calculate the defendant's discretionary income. The payment ability information provided by the defendant to local program staff is presumed to be current unless the defendant notifies the court or local program staff that resources or circumstances have changed and a review is requested.

(k) "Payment plan" means a schedule of one or more payment(s) to be made at designated interval(s) by the defendant who does not pay all costs, fees, and fines at the time they are assessed and payment is requested. A judge's order that payment of costs, fees, and fines is due at a future date constitutes a payment plan regardless of whether the order requires one payment in full or several payments at designated intervals.

(l) "Spouse" means the person to whom the defendant is married, including a person who is a party to an informal marriage.

§175.3. Collection Improvement Program Components.

(a) Components for Local Program Operations.

(1) Dedicated Local Program Staff. Each program must designate at least one employee whose job description contains an essential job function of CIP program activities. The local program activities may be assigned to one individual employee or distributed among two or more employees. The local program activities need not require 40 hours per week of an employee's time, but must be a priority.

(2) Payment Plan Compliance Monitoring. Local program staff must monitor the defendants' compliance with the terms of their payment plans and document the ongoing monitoring by either an updated payment due list or a manual or electronic tickler system.

(3) Application or Contact Information.

(A) Payment Plans Set by Judge Prior to Referral to the Local Program. If the judge has established a payment plan for the defendant prior to referring the case to the local program, local program staff must obtain from the defendant a statement on a form provided by local program staff whether the defendant has the ability to pay the costs, fees, and fines under the payment plan terms ordered by the judge without financial hardship to the defendant or the defendant's dependents. If the defendant states that the defendant has the ability to pay without undue hardship to the defendant and the defendant's dependents, the defendant must provide contact information and local program staff must document it. If the defendant does not state that the defendant has the ability to pay without undue hardship, local program staff must also collect payment ability information from the defendant. All required statements, contact information documentation, and payment ability information must be signed and obtained within one month of the assessment date.

(B) Other Cases. For all other cases, the local program must collect from the defendant a signed application for a payment plan that includes both contact information and payment ability information. The required information must be obtained within one month of the assessment date.

(4) Verification of Contact Information. Within five days of receiving the contact information, local program staff must verify both the home and primary contact telephone number. Verification may be conducted by reviewing written proof of the contact information, by telephoning the personal contacts, or by using a verification service. Verification must be documented by identifying the person conducting it and the date of the verification.

(5) Defendant Interviews.

(A) Within 14 days of receiving an application or receiving a case in which the judge has set a payment plan before referring the case to the program and the defendant has indicated that the defendant does not have the ability to pay the costs, fees, and fines under the payment plan terms ordered by the judge without undue hardship to the defendant or the defendant's dependents, local program staff must conduct an in-person or telephone interview with the defendant to review payment ability information. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(B) Within 14 days of receiving a case in which the judge has set a payment plan before referring the case to the program and the defendant has indicated that the defendant has the ability to pay the costs, fees, and fines under the payment plan terms ordered by the judge without undue hardship to the defendant or the defendant's dependents, local program staff must conduct an in-person or telephone interview with the defendant to review the terms of the payment plan set by the judge. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(6) Referral to Court for Review of Defendant's Ability to Pay.

(A) Referral to Court. If a defendant interview or other information collected by local program staff indicates that the defendant may be unable to pay the costs, fees, and fines assessed by the judge without undue hardship to the defendant or the defendant's dependents, or that the defendant may be unable to pay the costs, fees, and fines assessed by the judge within the time period ordered by the court without undue hardship to the defendant or the defendant's dependents, local program staff must refer the case to the court for the judge to determine if appropriate non-monetary compliance options or waiver or partial waiver of costs, fees or fines are appropriate.

(B) Presumption of Inability to Pay. For purposes of local program staff determining whether a defendant's case needs to be referred back to the court under subparagraph (A) of this paragraph, a defendant is presumed to be unable to pay any portion of the costs, fees, and fines assessed by the judge without undue hardship to the defendant or the defendant's dependents if:

(i) the defendant is required to attend school pursuant to the compulsory school attendance law in Sec. 25.085 of the Texas Education Code;

(ii) the defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; or

(iii) the defendant or the defendant's dependent receives assistance under the following:

(I) a food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;

(II) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786;

(III) the medical assistance program under Chapter 32, Human Resources Code; or

(IV) the child health plan program under Chapter 62, Health and Safety Code.

(C) Other Cases. Local program staff may refer to the court cases in which the defendant is not presumed to be unable to pay under subparagraph (B) of this paragraph but that local program staff have received information indicating that the defendant may not have the ability to pay the costs, fees, and fines assessed by the judge without undue hardship to the defendant or the defendant's dependents or may be unable to pay the costs, fees, and fines assessed by the judge within the time period ordered by the court without undue hardship to the defendant or the defendant's dependents.

(D) Information Regarding Non-Monetary Compliance Options. If local program staff determines that a case must be referred to the court under subparagraph (A) of this paragraph, local program staff should collect and provide to the court information regarding non-monetary compliance options that may be available, if any, that may enable the defendant to discharge all or part of the defendant's costs, fees, and fines.

(E) Judicial Discretion. None of these provisions should bind judges or influence judicial discretion regarding the determinations of whether to waive or reduce costs, fees, and fines for any defendant; to impose non-monetary compliance options to

satisfy costs, fees or fines; or the assessment of costs, fees or fines, sentencing, or other disposition decisions.

(7) Payment Plans.

(A) Documentation. Payment plans must be documented by notation in the judgment or court order, on a docket sheet, by written or electronic record, or by other means enabling later review.

(B) Payment Guidelines. The following are guidelines for local program staff to use in cases referred to the local program by the court for review and establishment of appropriate payment terms based on the defendant's ability to pay. A judge is not required to follow these guidelines in setting a payment plan.

(i) Payment plans should include the payment amount, the designated interval, and the number of payments that the defendant will make to pay the defendant's court-ordered costs, fees, and fines.

(ii) Generally, payment plans should not require the defendant to pay more than 20 percent of the defendant's discretionary income per month.

(8) Telephone Contact for Past-Due Payments. Within one month of a missed payment, a telephone call must be made to the defendant who has not contacted local program staff. In every telephone contact for past due payment, local program staff must provide the defendant with instructions about what to do if the defendant is unable to make payments. This telephone contact must also include information about the availability of non-monetary compliance options and how the defendant may request a hearing for the judge to consider the defendant's ability to pay and options available for the defendant to satisfy the judgment. Telephone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(9) Written Notice for Past-Due Payments. Within one month of a missed payment, a written notice must be sent to the defendant who has not contacted the local program. Written notice may be made by regular or certified mail, e-mail, text message or other electronic means. Every written notice for past due payment must provide the defendant with instructions about what to do if the defendant is unable to make payments. The written notice must also include information about the availability of non-monetary compliance options and how the defendant may request a hearing for the judge to consider the defendant's ability to pay and options available for the defendant to satisfy the judgment. Written notice may be sent by an automated system, but an electronic report or manual documentation of the written notice must be available on request.

(10) Final Contact Attempt. Local program staff must send a final written notice by regular or certified mail to the defendant within one month of the written notice described in paragraph (9) of this subsection prior to reporting the case to the court as non-compliant. The written notice must include the same information required in paragraph (9) of this subsection and include reasonable steps the defendant can take to avoid the defendant's case being reported to the court as non-compliant. The written notice must also notify the defendant of the defendant's right to avoid jail time for nonpayment if the defendant is unable to pay the amount owed without undue hardship to the defendant and the defendant's dependents. An electronic report or manual documentation of the written notice must be available on request. The local program should not report the case back to the court as non-compliant until at least one month after the final contact attempt to provide the defendant time to discuss with local program staff new payment plan terms or alternative non-monetary compliance options for the court to consider. This paragraph does not interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

(11) Delinquent Cases. Each local program must have a component designed to improve collection of balances more than 60 days past due.

(12) Proper Reporting. The local program must report its collection activity data to OCA at least annually in a format approved by OCA, as described in §175.4.

(b) Exceptions to Defendant Communications Rules. Exceptions to the defendant communications rules described in this subsection are limited to those cases in which timely access to the defendant in order to obtain the required application or contact information is not possible, and efforts to obtain an application or contact information are documented, as provided in paragraphs (1) and (2) of this subsection.

(1) Attempt to Obtain Application or Contact Information. An attempt to obtain an application or contact information described in subsection (a)(3) of this section is made either by mailing an application or contact information form or by obtaining the information via the telephone within one week of the assessment date. An electronic report or manual documentation of the attempt must be available on request. Should the defendant not return a completed application or contact information form and the post office not return the application or contact information form as undeliverable, the local program must make a second attempt to contact the defendant with any existing available information within one month of the first attempt. An electronic report or manual documentation of the second attempt must be made available on request.

(2) Application or Contact Information Is Obtained. Should a completed application or contact information form be returned to the local program by the defendant as the result of an attempt described in paragraph (1) of this subsection, it will be considered timely and all other communication timing requirements described in subsection (a)(4) and (5) of this section are based on the date the local program receives the application or contact information form.

(c) Computation of Time. In computing any period of time under these rules, when the last day of the period falls on a Saturday, Sunday, legal holiday, or other day on which the office is not open for business, then the period runs until the end of the next day on which the office is open for business.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) of the Code of Criminal Procedure requires that each local program submit a written report to OCA at least annually that includes updated information regarding the local program, with the content and form to be determined by OCA. Reporting under Art. 103.0033 of the Code of Criminal Procedure and this chapter is not the same as reporting of judicial statistics under Sec. 71.035 of the Government Code and different rules for reporting and waiver apply.

(b) Reporting Format and Account Setup. OCA has implemented a web-based Online Collection Reporting System for local programs or jurisdictions to enter information into the system. For good cause shown by a jurisdiction, OCA may grant a temporary waiver from timely online reporting. Local program participants or jurisdictions must provide OCA with information for the online reporting system to enable OCA to establish the local program reporting system account. The information must include the local program name, program start date, start-up costs, the type of collection and case management software programs used by the local program, the entity to which the local program reports (e.g., judge, district clerk's office, sheriff, etc.), the name and title of the person who manages the daily operations of

the local program, the mail and e-mail addresses and telephone and fax numbers of the local program, the courts serviced by the local program, and contact information for the local program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Report. By the 60th day following the fiscal year end, each local program or jurisdiction must report the following information:

(A) Number of full-time and part-time local program employees;

(B) Total local program expenditures;

(C) Salary expenditures for the local program;

(D) Fringe benefit expenditures for the local program;

(E) Areas other than court collections for which the local program provides services;

(F) Local and contract jail statistics and average cost per day to house a defendant; and

(G) A compilation of 12 months of the monthly reporting information described in paragraph (3) of this subsection, if not reported each month as requested.

(2) Monthly Reports. By the 20th day of the following month, each local program or jurisdiction is requested to provide the following information regarding the previous month's local program activities:

(A) Number of cases in which costs, fees, and fines were assessed;

(B) Number of cases in which local program staff referred the case to the court under §175.3(a)(6) for review of the defendant's ability to pay;

(C) For assessed court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed or other non-monetary compliance options; the dollar amount waived because of the defendant's inability to pay, and the dollar amount waived for reasons other than the defendant's inability to pay;

(D) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed or other non-monetary compliance options; and

(E) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

§175.5. Compliance Review Standards.

(a) Statutory Basis. In accordance with Art. 103.0033(j) of the Code of Criminal Procedure, OCA must periodically review local jurisdictions' compliance with the components described in §175.3(a).

(b) Cases Eligible for Compliance Review. For purposes of this section, "eligible case" means a criminal case in which a judgment has been entered by a trial court. The term does not include cases in which: 1) the court has determined that the defendant is unable to pay any portion of the costs, fees, and fines without undue hardship to the defendant or the defendant's dependents; 2) the court, at the time of assessment, authorizes discharge of the costs, fees, and fines through non-monetary compliance options; 3) the defendant has been placed on deferred disposition or has elected to take a driving safety course; or 4) the defendant is incarcerated, unless the defendant is released and payment is requested.

(c) Compliance Review Methods. OCA must use random selection to generate an adequate sample of eligible cases to be reviewed, and must use the same sampling methodology as used for local programs with similar automation capabilities.

(d) Compliance Review Standards. OCA must use the following standards in the compliance review:

(1) Standards for Components in §175.3(a)(1), (2), (11), and (12). A county is in compliance with these components when either 90% of all courts in the county, or all courts in the county except one court, have satisfied all four requirements. Partial percentages are rounded in favor of the county. A municipality must satisfy all four requirements in order to be in compliance.

(2) Standards for Components in §175.3(a)(3) - (10). A jurisdiction is in substantial compliance with a component when at least 80% of the eligible cases at that stage of collection have satisfied the requirements of the component. A jurisdiction is in partial compliance with a component when at least 50% of the eligible cases at that stage of collection have satisfied the requirements of the component. In order for a jurisdiction to be in compliance with these components, the jurisdiction cannot be in less than partial compliance with any component, may be in partial compliance with a maximum of one component, and must be in substantial compliance with all of the other applicable components.

§175.6. Waivers.

(a) Statutory Basis. Article 103.0033 of the Code of Criminal Procedure provides that OCA may determine that it is not cost-effective to implement a local program in a county or municipality and grant a waiver to the requesting entity.

(b) Criteria for Granting Waivers. OCA will grant a blanket waiver from implementation when the requesting entity demonstrates that:

(1) The estimated costs of implementing the local program are greater than the estimated additional revenue that would be generated by implementing the local program, and a compelling reason exists for submitting the waiver request after the entity's implementation deadline. The requesting jurisdiction and CIP staff must each submit documentation supporting the cost and revenue projections to the Administrative Director of OCA for determination; or

(2) The county contains within its borders a correctional facility operated by or under contract with the Texas Department of Criminal Justice; and has a population of 50,000 or more only because the inmate population of all correctional facilities is included in that population.

(c) Temporary Waivers. OCA will consider a request to grant a temporary waiver for good cause that could not have been reasonably anticipated. Such temporary waivers may be granted after a compliance review to allow a local program to correct deficiencies discovered during the compliance review.

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

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603112

Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 463-1682

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SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.5

Statutory Authority

The repeals are proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the proposed repeals is Article 103.0033 of the Code of Criminal Procedure.

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

§175.1. Source, Purpose and Scope.

§175.2. Definitions.

§175.3. Collection Improvement Program Components.

§175.4. Content and Form of Local Government Reports.

§175.5. Audit Standards.

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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Maria Elena Ramon
General Counsel
Texas Judicial Council
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For further information, please call: (512) 463-1682

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SUBCHAPTER B. IMPLEMENTATION SCHEDULE AND WAIVERS

1 TAC §175.6, §175.7

Statutory Authority

The repeals are proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the proposed repeals is Article 103.0033 of the Code of Criminal Procedure.

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

§175.6. Implementation Schedule.

§175.7. Waivers.

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

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General Counsel
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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.19

The Texas State Securities Board proposes an amendment to §115.19, concerning Texas crowdfunding portal registration and activities. Subsection (c)(3) would be amended to permit a registered portal to handle investor funds if the funds are held in a segregated account pursuant to a corresponding amendment to §139.25(f), which is being concurrently proposed.

When a portal maintains a segregated account, it must make certain disclosures to investors. These disclosures are not required of general dealers who use segregated accounts in connection with crowdfunding offerings since an equivalent disclosure provision would not be included in §139.25. Additionally, subsection (e) of §115.19 would be amended to add mandatory recordkeeping requirements when a segregated account is used by a portal. The more comprehensive recordkeeping rule (§115.5) applicable to general dealers already requires a general dealer to keep these records.

Clint Edgar, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow Texas crowdfunding portals to handle investor funds for certain small securities offerings where engaging an escrow agent may be difficult or cost prohibitive. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to

adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

§115.19. Texas Crowdfunding Portal Registration and Activities.

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

(c) Prohibited activities. A Texas crowdfunding portal shall not:

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

(3) hold, manage, possess or otherwise handle investor funds or securities, except through the use of a segregated account if permitted under §139.25(f) of this title (relating to Intrastate Crowdfunding Exemption). When a segregated account is used to hold investor payments, the portal must disclose this to prospective purchasers and investors along with a statement that the portal, in administering the segregated account, must:

(A) be responsible for the prudent processing, safeguarding, and accounting for funds entrusted to the portal by the investors and the issuer;

(B) act to the advantage of and in the best interests of the investors and the issuer; and

(C) ensure that all requirements of the Account Agreement between the portal and the issuer are met before funds are disbursed from the segregated account;

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

(d) (No change.)

(e) Recordkeeping.

(1) (No change.)

(2) A portal shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made through the Internet website and to transactions where the portal receives compensation:

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

(C) any agreements and/or contracts between the portal and an issuer, prospective purchaser, [~~or~~] investor, bank or other depository institution;

(D) - (G) (No change.)

(H) ledgers (or other records) that reflect all assets and liabilities, income and expense, [~~and~~] capital accounts, and escrow or segregated accounts; and

(I) (No change.)

(3) - (7) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2016.

TRD-201603031
John Morgan
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 305-8301

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes an amendment to §139.25, concerning intrastate crowdfunding exemption. Subsection (f) would be amended to permit a segregated account to be used in lieu of an escrow account when the maximum offering amount in a crowdfunding offering is $100,000 or less. Definitions for "escrow account" and "segregated account" are included as well as requirements for how registered dealers or crowdfunding portals would handle the funds in the segregated accounts. If a portal is involved in the segregated account, additional disclosure statements would be mandated by an amendment to §115.19(c)(3), which is being concurrently proposed.

When a segregated account is created in connection with a securities offering, the proposed amendment to subsection (j) would require the issuer to file with the Securities Commissioner a copy of the written agreement between it and the dealer or portal that governs the segregated account. This filing would occur when the issuer makes its other notice filings to claim the exemption. The agreement defines the responsibilities of the parties with respect to the segregated account. It must identify the bank or other depository institution where the funds will be held and provide the account number. All authorized signatories on the segregated account must be persons registered with the Securities Commissioner.

The funds in the segregated account must be separate from any other account used by the dealer or portal. To prohibit commingling of funds from different offerings or other monies, a separate segregated account must be set up for each securities offering in which such an account is used. Guidance on the recordkeeping requirements for segregated accounts will be added to the agency's website.

Clint Edgar, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to facilitate certain small securities offerings by businesses in the state by removing a potential obstacle to using the intrastate crowdfunding exemption. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sec-

tion in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-7 and 581-14.

§139.25. Intrastate Crowdfunding Exemption.

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

(f) Escrow or segregated account to safeguard investor and issuer funds.

(1) All payments for purchases of securities offered under this section are directed to and deposited in an escrow account or a segregated account, if a segregated account is permitted under paragraph (2) of this subsection. The payments must [~~with a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas, and will~~] be held in an escrow account or a segregated account until the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. Investors will receive a return of all their subscription funds if the target offering amount is not raised by the time stated in the disclosure statement.

(2) A segregated account may be used in lieu of an escrow account if the maximum offering amount is $100,000 or less.

(3) For purposes of this subsection:

(A) An "escrow account" is one administered by an independent escrow agent who is a bank or other depository institution.

(B) A "segregated account" is one established by a registered general dealer or a Texas crowdfunding portal pursuant to a written agreement ("Account Agreement") with the issuer and provides that the registered general dealer or portal will act on behalf of the issuer and investors to hold funds raised from investors in a specific securities offering until such time as those funds can be disbursed in accordance with paragraph (1) of this subsection. The Account Agreement must identify the bank or other depository institution and account number where the funds will be held. All signatories on the segregated account must be persons registered with the Securities Commissioner.

(4) The escrow account or segregated account must be in a bank or other depository institution located in Texas and organized and subject to regulation under the laws of the United States or under the laws of Texas.

(5) A separate account must be set up for each securities offering in which a segregated account is used in lieu of an escrow account. The Account Agreement entered into in connection with a segregated account, shall include requirements that the dealer or portal must, and the account shall be administered in accordance with the following principles requiring the dealer or portal to:

(A) be responsible for prudent processing, safeguarding, and accounting for funds entrusted to it by investors and the issuer;

(B) act to the advantage of and in the best interests of the investors and the issuer; and

(C) ensure that all requirements of the Account Agreement between the portal and issuer are met before funds are disbursed from the segregated account.

(6) The issuer shall inform all prospective purchasers and investors if a segregated account is to be used to hold investor payments. Additionally, a portal must make the disclosures mandated by §115.19(c)(3).

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

(j) Notice filing. Before using any publicly available Internet website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner:

(1) Form 133.17, Crowdfunding Exemption Notice;

(2) the disclosure statement, required by subsection (i) of this section; [~~and~~]

(3) the summary of the offering, required by subsection (h)(2)(B) of this section; and[~~.~~]

(4) if investor funds are to be deposited into a segregated account as permitted by subsection (f) of this section, a copy of the written Account Agreement entered into between the issuer and the registered general dealer or Texas crowdfunding portal that will hold investor funds in the securities offering.

(k) - (m) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2016.

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John Morgan
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 305-8301

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.110

The Texas Racing Commission proposes an amendment to 16 TAC §319.110, Health Certificate. The section relates to health inspection requirements that must be met for a horse to be allowed to enter the premises of a licensed racetrack. The proposed amendment deletes the existing requirements relating to equine infectious anemia tests and health certificates and instead substitutes a general requirement that a horse entering an

association's grounds must be accompanied by a current certificate of veterinary inspection and also meet any other health inspection requirements established by the Texas Animal Health Commission (TAHC). The change will allow the Texas Racing Commission to follow the requirements of the TAHC without requiring a rule amendment each time TAHC changes its rules. Consistent with the substantive change in the rule, the Commission proposes to broaden the rule's title to reflect that it addresses more than just health certificates.

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

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be to ensure that horse health inspection standards at the racetracks are consistent with TAHC's statewide standards.

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

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

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

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

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §6.061, which requires the Commission to adopt rules addressing the safety of conditions on a racetrack.

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

§319.110. Requirements to Enter Association Grounds [~~Health Certificate~~].

To be admitted on to an association's grounds, a horse must be accompanied by a current certificate of veterinary inspection and meet any other health inspection requirements established by the Texas Animal Health Commission. [~~have:~~]

[~~(1) a current negative test for equine infectious anemia conducted in accordance with rules of the Texas Animal Health Commission; and~~]

[~~(2) a health certificate issued in the 45-day period preceding the horse's arrival.~~]

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 June 17, 2016.

TRD-201603086

Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER KK. COMMISSIONER'S RULES CONCERNING COMPLIANCE INVESTIGATIONS IN CONNECTION WITH STATE-FUNDED EDUCATION PROGRAM GRANTS

19 TAC §102.1401

The Texas Education Agency (TEA) proposes new §102.1401, concerning educational programs. The proposed new section would establish provisions for TEA compliance investigations in connection with state education grant programs.

TEA currently lacks an explicit rule framework for state education grant compliance investigations, corrective actions, and sanctions. Given sufficient statutory authority to adopt rules in this area and in order to ensure fiscal responsibility in connection with state grant funds and appropriate implementation of state grant program requirements, the TEA proposes new 19 TAC §102.1401, Compliance Investigations. The new section would outline the framework for compliance investigations, corrective actions, and sanctions the TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse.

The proposed new section would require cooperation by state grant recipients, including the submission of required documentation and information, with ongoing compliance investigations.

The proposed new section would indirectly necessitate via compliance investigations that school districts and charter schools maintain documentation of compliance with existing state grant requirements as prescribed by the TEA through requests for application for state grants.

FISCAL NOTE. Von Byer, general counsel, has determined that for the first five-year period the new section is in effect there are no additional costs for state or local government as a result of enforcing or administering the new section. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Byer has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be ensuring fiscal responsibility in connection with state grant funds and appropriate implementation of state grant program requirements. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins July 1, 2016, and ends August 1, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 1, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §7.028(a)(2), which authorizes the agency to monitor compliance with state grant requirements, and §39.056(a), which authorizes the commissioner to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §7.028(a)(2) and §39.056(a).

§102.1401. Compliance Investigations.

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

(1) Compliance investigation--An investigation by the Texas Education Agency (TEA) of a state education grant recipient to determine compliance with the statutory or rule requirements of a state education program. A compliance investigation is not a special accreditation investigation subject to the provisions of Texas Education Code (TEC), §39.057 and §39.058.

(2) Corrective action--An action required by the TEA, after issuance of a final compliance investigation report, of a state education grant recipient to remove an Out-of-Compliance Status, which may include, but is not limited to, the following:

(A) refunding of a portion of grant funds by the state education grant recipient to the TEA in an amount determined by the TEA to the extent the state education grant recipient failed to meet the requirements of a state education grant provision; and

(B) addressing the state education grant recipient's failure to meet the requirements of a state education grant provision.

(3) Out-of-Compliance Status--A status determined by the TEA in a final compliance investigation as described in subsection (g) of this section that a state education grant recipient has not met the requirements of an applicable state education grant provision or as provided in subsection (e) of this section.

(4) State education grant--A grant of funds authorized by the State of Texas to implement a state education program.

(5) State education grant recipient--An entity that receives state education grant funds to implement a state education program.

(6) State education program--A program authorized and funded by the State of Texas to facilitate the education of children.

(b) The TEA may initiate a compliance investigation at its discretion or upon receipt of a complaint from a person or entity other than the TEA.

(c) The TEA may undertake a compliance investigation on site, as a desk review, or as a combination of both.

(d) The TEA shall provide written notice to a state education grant recipient of an impending compliance investigation.

(e) The refusal of a state education grant recipient to cooperate with a compliance investigation may result in the assignment of an Out-of-Compliance Status by the TEA to the state education grant recipient. An Out-of-Compliance Status assigned due to lack of cooperation with a compliance investigation may be removed at the TEA's discretion upon its determination that a state education grant recipient has provided the information the TEA requested.

(f) Pursuant to §157.1121(6) of this title (relating to Applicability), a compliance investigation is subject to the procedures set out in Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). A final compliance investigation report and/or corrective action is not subject to further appeal, including any appeal otherwise available under TEC, §7.057.

(g) The TEA will provide any final compliance investigation report and/or corrective action plan to the superintendent/chief executive officer and the governing board of the state education grant recipient that is the subject of such final compliance investigation report, along with any recommendations of the TEA regarding any necessary improvements or sources of aid.

(h) Upon receipt of additional information from the state education grant recipient regarding completion of its corrective action plan, the TEA will review the information. If the information demonstrates completion or substantial completion of the corrective action plan, the TEA will remove the Out-of-Compliance Status and notify the state education grant recipient of the removal of the Out-of-Compliance Status.

(i) An Out-of-Compliance Status may bar the receipt of future discretionary state education grant funds and may disqualify future discretionary state education grant applications.

(j) The commissioner may, at the commissioner's discretion, waive the effects of an Out-of-Compliance Status.

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 June 20, 2016.

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

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, 227.20

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20, concerning provisions for educator preparation candidates. The sections establish requirements for admission to an educator preparation program (EPP). The proposed amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20 would include changes to provide clarification to questions that Texas Education Agency (TEA) staff has received from EPPs and applicants to EPPs. In addition, the proposed amendments would clarify minimum standards for all EPPs, allow for flexibility, and ensure consistency among EPPs in the state.

The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs. The proposed amendments would include changes to provide clarification to questions that TEA staff has received from EPPs and applicants to EPPs after revisions to the chapter were adopted by the SBEC in December 2015.

General Provisions

In accordance with the TEC, §21.044, language to require EPPs to provide information regarding the performance over time of the EPP was added to 19 TAC §227.1(c) in December 2015. After the adoption of the amendment, EPPs asked how many years of performance data needed to be provided. The SBEC proposes adding language that would specify five years of performance data be provided by EPPs to clarify the new standard and ensure consistency among EPPs in the state.

Definitions

After the definition of *applicant* was added to 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on this definition. The SBEC proposes that the definition of *applicant* be amended to clarify that an applicant is an individual seeking admission to an EPP for "any class of certificate." This proposed amendment would clarify the definition and ensure consistency among EPPs in the state.

The SBEC proposes that the definition of *candidate* in 19 TAC §227.5 be amended to align the definition with the same definition that will be proposed at a later time in 19 TAC Chapters 228, 229, and 230. The SBEC also proposes that the definitions for *certification category* and *certification class* be added in 19 TAC §227.5 so that the definitions align with the language used in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter D, Types and Classes of Certificates Issued, and 19 TAC Chapter 233, Categories of Classroom Teaching Certificates. The definitions would include "also known as certification field" so that the common term for categories and classes can continue to be used by TEA staff and EPPs. To align the definitions across all chapters, the SBEC proposes that these changes be made in 19 TAC §227.5 with conforming changes made throughout the chapter.

In accordance with the TEC, §21.0441, language to require an applicant to an EPP to pass an appropriate content matter examination to be eligible for an exception to the minimum GPA requirement was added to 19 TAC §227.5 in December 2015. After the adoption of the amendment, EPPs asked for clarification regarding the difference between a content matter examination and a content certification examination. The SBEC proposes that a definition for *content certification examination* be added to this section so that the term can be used in the appropriate sections of this chapter. The proposed definition would also align with the definition used in other chapters of the TAC.

After the definition of *contingency admission* was amended in 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on which admission requirements needed to be met for an applicant to be considered for contingent admission. The SBEC proposes that the definition of *contingency admission* be amended to clarify that an applicant must meet all of the admission requirements specified in 19 TAC §227.10 with the exception of a pending degree being conferred.

After the definition of *post-baccalaureate program* was added to 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on the difference between a post-baccalaureate program at an institution of higher education (IHE) and an alternative certification program at an IHE. The SBEC proposes that the definition of *post-baccalaureate program* be amended to clarify that a post-baccalaureate program is designed for individuals who are seeking certification and an additional degree while an alternative certification program at an IHE is designed for individuals who are only seeking certification.

The SBEC proposes that the definition of *internship* be removed from 19 TAC §227.5 because this term is not used in 19 TAC Chapter 227. The remaining definitions would be renumbered as necessary.

Admission Criteria

The SBEC proposes a minor technical edit to the language in 19 TAC §227.10(a)(3) to clarify that the minimum grade point average (GPA) requirement is for admission into an EPP.

After the language in 19 TAC §227.10(a)(3)(A) was amended in the December 2015 adoption, EPPs asked for clarification on which documentation should be used to determine the admission GPA. The SBEC proposes that the language be amended to clarify that an official transcript is to be used to determine the admission GPA.

After the language in 19 TAC §227.10(a)(3)(A)(ii)(I) was added in the December 2015 adoption, EPPs asked for clarification on how an EPP should determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled. The SBEC proposes that the language be amended to clarify that an EPP may use transcripts from previously attended IHEs to determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled.

After the language in 19 TAC §227.10(a)(3)(A)(ii)(II) was added in the December 2015 adoption, EPPs asked for clarification on whether an EPP could use grades for coursework from an IHE that were earned after an applicant had been conferred a degree but the applicant was not currently enrolled in the IHE from which

the grades were earned. The SBEC proposes that the language be amended to clarify that an EPP may use grades from an applicant's most recent transcript to determine the admission GPA for the last 60 hours of coursework if an applicant earned grades for coursework after the applicant's most recent degree.

After the language in 19 TAC §227.10(a)(3)(B)(ii) was added in the December 2015 adoption, EPPs and applicants to programs asked for clarification on the eligibility criteria for the 10% exception to the minimum GPA requirement. The SBEC proposes that the language be amended to clarify that an applicant to a teacher preparation program must pass the appropriate content certification examination to meet the subject matter requirement of the TEC, §21.0441. The SBEC also proposes that the language be amended so that TEA staff can administratively approve requests for an applicant who has previously been enrolled in an EPP to register for a content certification examination unless the applicant is seeking to be readmitted to the EPP that had previously granted approval to attempt the content certification examination.

After the language in 19 TAC §227.10(a)(3)(B)(ii) was added in the December 2015 adoption, EPPs and applicants to programs also asked for clarification on the eligibility criteria for the 10% exception to the minimum GPA requirement as it applied to applicants for programs that lead to certification in a class other than classroom teacher. Because the SBEC does not currently have appropriate subject matter examinations for the student services, principal, and superintendent certificate classes, the SBEC proposes adding 19 TAC §227.10(a)(3)(D) to identify the GRE® (Graduate Record Examinations) revised General Test as the appropriate subject matter examination for an applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher. TEA staff would present annual recommendations to the SBEC for passing scores that are equivalent to a 2.5 GPA for the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE®. The SBEC-approved scores would be published on the TEA website.

After the language in 19 TAC §227.10(a)(4)(D) was amended in the December 2015 adoption, EPPs and applicants asked for clarification on the procedures that TEA staff would use to allow an applicant who had previously enrolled in an EPP and wanted to register for a content certification examination for the purpose of admission into an EPP. The SBEC proposes that the language be amended so that TEA staff can administratively approve requests by an applicant who has previously been enrolled in an EPP to register for a content certification examination unless the applicant is seeking to be readmitted to the EPP that had previously granted approval to attempt the content certification examination.

After the language in 19 TAC §227.10(a)(5) was amended in the December 2015 adoption, EPPs asked for clarification on the requirements for an applicant to demonstrate basic skills in reading, written communication, and mathematics. The SBEC proposes that the language be amended to clarify that an applicant needs to meet the Texas Success Initiative (TSI) requirement (which is currently a passing score on the TSI Assessment offered by the College Board) or one of the exemptions, exceptions, or waivers listed in the Texas Higher Education Coordinating Board rule 19 TAC §4.54 (which includes an associate's or higher degree from an accredited IHE).

After the language in 19 TAC §227.10(a)(6) was amended in the December 2015 adoption, EPPs asked for clarification on the English language proficiency requirement for applicants seeking career and technical education (CTE) certifications that do not require a bachelor's degree. The SBEC proposes that the language be amended to clarify that the equivalent of a high school diploma that was earned through an accredited high school in the United States can be used to meet the English language proficiency admission requirement for CTE certifications that do not require a degree from an IHE. EPPs and applicants also asked for clarification on the English language proficiency requirement for applicants to undergraduate university programs. The SBEC proposes that language be added to clarify that the English language proficiency required for admission to the IHE can be used to meet the English language proficiency admission requirement of an EPP.

The SBEC proposes that the language in 19 TAC §227.10(b) be amended to clarify that EPPs may adopt additional requirements that are not in conflict with those required in 19 TAC §227.10. Also, technical edits would be made in 19 TAC §227.10 for clarity.

Contingency Admission

The SBEC proposes that the language in 19 TAC §227.15(b) be amended to clarify that an applicant's acceptance of an offer for contingent admission to an EPP needs to be in writing.

During the public comment period of the December 2015 adoption of revisions to 19 TAC Chapter 227, the SBEC received a suggestion to require an EPP to notify the TEA of contingent admissions within five business days. TEA staff agreed with the suggestion, but because this additional clarification may have been considered a substantive change at adoption, this clarification was added to the draft reporting requirements in 19 TAC Chapter 229, which were discussed at the December 2015 SBEC meeting. The SBEC proposes that language be added as 19 TAC §227.15(c) to require an EPP to notify the TEA of contingent admissions within seven calendar days. The remaining subsections would be relettered accordingly.

After the language in 19 TAC §227.15(e) was amended in the December 2015 adoption, EPPs asked for clarification on whether post-baccalaureate programs and alternative certification programs at an IHE may admit candidates who had earned an undergraduate degree from the same IHE. The SBEC proposes that the language be amended to clarify that a post-baccalaureate program or an alternative certification program at an IHE may admit candidates who had been provided coursework or training by the IHE prior to contingent admission if the coursework or training was provided as part of the undergraduate degree.

Formal Admission

The SBEC proposes similar changes in 19 TAC §227.17 that were described as recommendations for 19 TAC §227.15.

Incoming Class Grade Point Average

After the language in 19 TAC §227.19(a)(2)(A) was added in the December 2015 adoption, EPPs asked for clarification on how an EPP should determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled. The SBEC proposes that the language be amended to clarify that an EPP may use transcripts from previously attended IHEs to determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled.

After the language in 19 TAC §227.19(a)(2)(B) was added in the December 2015 adoption, EPPs asked for clarification on whether an EPP could use grades for coursework from an IHE that were earned after an applicant had been conferred a degree but the applicant was not currently enrolled in the IHE from which the grades were earned. The SBEC proposes that the language be amended to clarify that an EPP may use grades from an applicant's most recent transcript to determine the admission GPA for the last 60 hours of coursework if an applicant earned grades for coursework after the applicant's conferred degree.

Implementation Date

The SBEC proposes that the language in 19 TAC §227.20 be amended so that the subchapter applies to an applicant who is admitted to an EPP on or after January 1, 2017. In the previous two adoptions, the difference between the effective date of the rule and the implementation date of the rule ranged from three to seventeen days. The proposed implementation date would provide EPPs with more time (approximately ten weeks) between the effective date of the rules and the implementation date.

The proposed amendments would have no new procedural and reporting implications. However, EPPs will be required to upload data on individuals who are admitted as candidates into the educator certification online system (ECOS) within seven calendar days from the formal date of admission. SBEC currently requires EPPs to upload data on individuals who are admitted as candidates into ECOS, but there is no deadline for when the upload needs to occur. The proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed amendments. There is no effect on local economy; therefore, no local employment statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the development of clear, minimum EPP admission criteria that would ensure educators are prepared to positively affect the performance of the diverse student population of this state.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins July 1, 2016, and ends August 1, 2016. The SBEC will take registered oral and written comments on the proposed amendments of 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20 at the August 5, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *sbecrules@tea.texas.gov.* All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 1, 2016.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.044(a), which requires the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and to specify the minimum academic qualifications required for a certificate; §21.044(g)(3), which requires EPPs to provide certain information on EPP performance; §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for EPPs; §21.049(a), which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; and §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031, 21.044(a) and (g)(3), 21.0441, 21.049(a), and 21.050(a).

§227.1. General Provisions.

(a) It is the responsibility of the education profession as a whole to attract applicants and to retain educators who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) Educator preparation programs should inform all applicants that:

(1) pursuant to the Texas Education Code (TEC), §22.083, candidates must undergo a criminal history background check prior to employment as an educator; and

(2) pursuant to the TEC, §22.0835, candidates must undergo a criminal history background check prior to clinical teaching.

(c) Educator preparation programs (EPPs) shall inform all applicants, in writing, of the following:

(1) the admission requirements as specified in this chapter;

(2) the requirements for program completion as specified in Chapter 228 of this title (relating to Educator Preparation Requirements); and

(3) in accordance with TEC, §21.044(e)(3):

(A) the effect of supply and demand forces on the educator workforce in this state; and

(B) the performance over time of the EPP <u>for the past five years</u>.

§227.5. Definitions.

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

(1) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(3) Applicant--An individual seeking admission to an educator preparation program for any class of certificate.

(4) Candidate--An individual who has been formally or contingently admitted to an educator preparation program; also referred to as an enrollee or participant [~~seeking certification~~].

(5) Certification category--A certificate type within a certification class; also known as certification field.

(6) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certification), that has defined characteristics; also known as certification field.

(7) [~~(5)~~] Clinical teaching--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training).

(8) Content certification examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program or certification as an educator.

(9) [~~(6)~~] Contingency admission--Conditional admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria) except[~~, pending~~] graduation and degree conferred from an accredited institution of higher education.

(10) [~~(7)~~] Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more classes of certificates.

(11) [~~(8)~~] Formal admission--Admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(12) [~~(9)~~] Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(13) [~~(10)~~] Post-baccalaureate program--An educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree from an accredited institution of higher education and are seeking an additional degree [~~that must be approved by the State Board for Educator Certification to recommend candidates for certification~~].

~~[(11) Internship--A one-year supervised professional assignment at a public school accredited by the TEA or a TEA-recognized private school that may lead to completion of a standard certificate.]~~

(14) [~~(12)~~] Semester credit hour--One semester credit hour is equal to 15 clock-hours at an accredited institution of higher education.

§227.10. Admission Criteria.

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.[~~:~~]

(1) For [~~for~~] an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education.[~~;~~]

(2) For [~~for~~] an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited institution of higher education.[~~;~~]

(3) For [~~for~~] an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant [~~into an EPP~~] shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited institution of higher education:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited institution of higher education was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited institution of higher education:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited institution of higher education at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(II) from which the most recent bachelor's degree or higher from an accredited institution of higher education was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited institution of higher education (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) An exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience

demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the Texas Education Code, §21.0441(b), an applicant must pass [~~perform at a satisfactory level on~~] an appropriate content certification [~~matter~~] examination as specified in paragraph (4)(C) and (D) of this subsection for each subject in which the applicant seeks certification prior to admission. Applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification [~~matter~~] examination if the applicant is not seeking admission to the same EPP that previously granted test approval [~~as specified in paragraph (4)(D) of this subsection under procedures approved by Texas Education Agency (TEA) staff~~].

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited institution of higher education is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® (Graduate Record Examinations) revised General Test. The equivalent scores will be determined by the State Board for Educator Certification and will be published annually on the Texas Education Agency (TEA) website.

(4) For [~~for~~] an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on a comparable content certification examination administered by a vendor on the TEA-approved vendor list published by the commissioner of education on the TEA website for the calendar year during which the applicant seeks admission; or

(D) for an applicant [~~applicants~~] who has [~~have~~] not previously been admitted into an EPP, a passing score on a [~~pre-admission~~] content certification examination administered by a TEA-approved vendor. An applicant [~~Applicants~~] who has [~~have~~] previously been admitted into an EPP may request permission to register for a [~~pre-admission~~] content certification examination if an applicant is not seeking admission to the same EPP that previously granted test approval. [~~under procedures approved by TEA staff;~~]

(5) An applicant must demonstrate [~~demonstration of~~] basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).[~~;~~]

(6) An applicant must demonstrate [~~demonstration of~~] the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited institution of higher education may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited institution of higher education or an accredited high school in the United States.[~~;~~]

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited institution of higher education at which the applicant is enrolled.

(7) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.[~~; and~~]

(8) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt requirements in addition to and [~~that do~~] not in conflict with those [~~explicitly~~] required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class [~~field~~], unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries).

§227.15. Contingency Admission.

(a) An applicant may be accepted into an alternative certification program or post-baccalaureate program on a contingency basis pending receipt of an official transcript showing degree conferred, as specified in §227.10(a)(2) of this title (relating to Admission Criteria), provided that:

(1) the applicant is currently enrolled in and expects to complete the courses and other requirements for obtaining, at a minimum, a bachelor's degree at the end of the semester in which admission to the program is sought;

(2) all other admission requirements specified in §227.10 of this title have been met;

(3) the EPP must notify the applicant of the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification; and

(4) the applicant must accept the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(b) The date of contingency admission shall be effective upon the applicant's written acceptance of the offer of contingency admission.

(c) An EPP must notify the Texas Education Agency within seven calendar days of a candidate's contingency admission.

(d) [~~(c)~~] An applicant admitted on a contingency basis may begin program training and may be approved to take a certification examination, but shall not be recommended for a probationary certificate until the bachelor's degree or higher from an accredited institution of higher education (IHE) has been conferred.

(e) [~~(d)~~] Except as provided by this section, an alternative certification program or post-baccalaureate program, prior to admission on a contingency basis, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate. A post-baccalaureate or alternative certification program at an IHE may admit an applicant if coursework and training was provided by the same IHE as part of the degree to be conferred.

(f) [~~(e)~~] The contingency admission will be valid for only the fall, spring, or summer semester for which the contingency admission was granted and may not be extended for another semester. The end of each semester shall be consistent with the common calendar established by the Texas Higher Education Coordinating Board.

§227.17. Formal Admission.

(a) For an applicant to be formally admitted to an educator preparation program (EPP), the applicant must meet all the admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(b) For an applicant to be formally admitted to an EPP, the EPP must notify the applicant of the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(c) For an applicant to be considered formally admitted to the EPP, the applicant must accept the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(d) The date of formal admission shall be effective upon the applicant's written acceptance of the offer of formal admission.

(e) An EPP must notify the Texas Education Agency within seven calendar days of a candidate's formal admission.

(f) [~~(e)~~] Except as provided by §227.15 of this title (relating to Contingency Admission), an alternative certification program or post-baccalaureate program, prior to formal admission, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate. A post-baccalaureate or alternative certification program at an institution of higher education (IHE) may admit an applicant if coursework and training was provided by the same IHE as part of a previous degree that was conferred.

§227.19. Incoming Class Grade Point Average.

(a) The overall grade point average (GPA) of each incoming class admitted between September 1 and August 31 of each year by an educator preparation program (EPP), including an alternative certification program, may not be less than 3.00 on a four-point scale or the equivalent. In computing the overall GPA of an incoming class, an EPP may include:

(1) the GPA of each person in the incoming class based on all coursework previously attempted by the person at an accredited institution of higher education (IHE):

(A) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(B) from which the most recent bachelor's degree or higher from an accredited IHE [~~institution of higher education~~] was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(2) the GPA of each person in the incoming class based only on the last 60 semester credit hours of all coursework attempted by the person at an accredited IHE [~~institution of higher education~~]:

(A) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP may use grades from all coursework previously attempted by a person at the most recent accredited IHE(s), starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(B) from which the most recent bachelor's degree or higher from an accredited IHE [~~institution of higher education~~] was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(b) A person seeking career and technical education certification is not included in determining the overall GPA of an incoming class.

§227.20. Implementation Date.

This subchapter applies to an applicant who is admitted to an educator preparation program on or after January 1, 2017 [~~March 1, 2016~~].

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 June 20, 2016.

TRD-201603118
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

22 TAC §174.11

The Texas Medical Board (Board) proposes amendments to §174.11, concerning On-Call Services.

The amendment to §174.11 amends and adds language referring to Chapter 177 (relating to Business Organizations, also proposed for amendment in this issue of the *Texas Register)* and newly proposed Subchapter E titled "Physician Call Coverage Medical Services," which provides physicians guidance and

sets forth the minimum requirements relating to on-call services and agreements. The proposed amendment to relocate the substantive requirements related to the topic of "on-call" services to Chapter 177 results from the Board's meetings with stakeholders who expressed the need for more clarity with respect to the application of the rule and whether it applied to all physicians or just those physicians practicing in the area of telemedicine. The removal of the substantive requirements for "on-call" services from Chapter 174 of this title (relating to Telemedicine), and relocation of the call coverage topic to Chapter 177 of this title will alleviate such confusion and provide more clarity as to the rule's applicability.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to improve all physicians' understanding of the rules relating to call coverage and clearly provide guidance and parameters necessary for allowing physicians to provide continuity of care to patients in Texas while protecting patient health and welfare, through the elimination of the strict rule of reciprocity and relocation of the call coverage rule to Chapter 177, Subchapter E of this title.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: *rules.development@tmb.state.tx.us.* A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§174.11. On-Call [~~On-call~~] Services.

Physicians, who [~~are of the same specialty and provide reciprocal services, may~~] provide on-call telemedicine medical services must meet the requirements set forth under Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services) [~~for each other's active patients~~].

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS
SUBCHAPTER C. JOINTLY OWNED ENTITIES

22 TAC §177.16

The Texas Medical Board (Board) proposes amendments to §177.16, concerning Physician Assistants.

The amendments eliminate subsection (e) and amend subsection (f) in order to align with a recent 3rd Court of Appeals decision, which invalidated part of the rule relating to the grandfathering clause and entities solely owned by physician assistants. The rule as written in 2011 was pursuant to HB 2098 (82nd Regular Session) which amended §162.053 and §204.209 of the Texas Occupations Code and stated that "an ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired, and the former law is continued in effect for that purpose." Accordingly, the amendments to this section correct portions of the rule that were invalidated by the 3rd Court of Appeals decision and bring the rule in line with the intent of HB 2098.

The amendment to the title of Chapter 177, Business Organizations, adds the word "Agreements" to reflect the proposed addition of new Subchapter E, so that the title will read "Business Organizations and Agreements".

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are accurate and consistent with statutes.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: *rules.development@tmb.state.tx.us.* A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§177.16. Physician Assistants.

(a) Corporations.

(1) Pursuant to §22.0561 of the Business Organizations Code, a physician and a physician assistant may form a corporation to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer of the corporation;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) own individually or in combination with other physician assistants more than a minority ownership interest in an entity created under this subsection; or

(F) have an ownership interested that equals or exceeds the ownership interest of any physician owner.

(b) Partnerships.

(1) Pursuant to §152.0551 of the Business Organizations Code, physicians and physician assistants may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be a general partner or participate in the management of the partnership;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the partnership; or

(F) have an ownership interested that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(c) Professional Associations and Professional Limited Liability Companies.

(1) Pursuant to §301.012 of the Business Organizations Code, physicians and physician assistants may form and own a professional association or professional limited liability company to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer in the professional association or professional limited liability company;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the professional association or professional limited liability company;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the professional association or professional limited liability company; or

(F) have an ownership interested that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(d) All physicians and physician assistants who jointly own an entity must annually submit a joint form to the Board providing date of formation of the entity, each licensee's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title (relating to Fees and Penalties).

~~[(e) Physician assistants who solely own an entity or jointly own an entity with a non-physician must annually submit a form to the Board providing the date of formation of the entity, each person's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title.]~~

(e) ~~[(f)]~~ Restrictions on ownership interests, shall apply only to those entities formed on or after June 17, 2011. An ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired. ~~[However, if the ownership interests of an entity changes, or an entity contracts with a new supervising physician to provide services, then the restrictions on ownership shall apply to the entity.]~~

(f) ~~[(g)]~~ This section shall not apply to pain management clinics owned and operated pursuant to Chapter 195 of this title (relating to Pain Management Clinics).

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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SUBCHAPTER E. PHYSICIAN CALL COVERAGE MEDICAL SERVICES

22 TAC §§177.18 - 177.20

The Texas Medical Board (Board) proposes new Subchapter E, Physician Call Coverage Medical Services, §§177.18 - 177.20.

The proposed new rules are made in response to stakeholders' requests for an expanded call coverage model that would allow more options for providing continuity of care to patients during a regular treating physician's temporary absence, so that reciprocity and the same specialty practice area are no longer strictly required for call coverage practice. The purpose of adding the language to Chapter 177 is also to provide clarity with respect to the application of the rules to all physicians providing call coverage, not just physicians providing telemedicine care in Texas.

The amendment to the title of Chapter 177, Business Organizations, adds the word "Agreements" to reflect the proposed addition of new Subchapter E, so that the title will read "Business Organizations and Agreements".

New Subchapter E, "Physician Call Coverage Medical Services," is added, with three new sections: §§177.18, 177.19, and 177.20.

New §177.18, concerning Purpose and Scope, sets forth the purpose, scope and applicability of Subchapter E.

New §177.19, concerning Definitions, defines the "Act" and the "Board" as it used throughout Subchapter E.

New §177.20, concerning Call Coverage Minimum Requirements, sets forth specific minimum requirements for physician call coverage agreements generally, and further to delineate the parameters and requirements for two call coverage models: "Non-Reciprocal Call Coverage Model", and "Reciprocal Call Coverage Model."

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to create an expanded call coverage model that allows increased options for providing safe and quality medical care to Texas citizens during a treating physician's temporary absence. The public benefit further anticipated as a result of enforcing the sections will be to provide improved guidance to all physicians regarding minimum requirements for all physician call coverage being provided in Texas, which will improve patient safety and quality of medical care.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with these rules as proposed will include costs associated with preparing a call coverage agreement. The effect on small or micro businesses will include costs associated with preparing a call coverage agreement. However, because the new rules will allow expanded call coverage for physicians' patients, the anticipated economic costs may be offset by potential industry growth, as it will create opportunities for new business arrangements and/or opportunities.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: *rules.development@tmb.state.tx.us.* A public hearing will be held at a later date.

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§177.18. Purpose and Scope.

(a) Purpose. Pursuant to §153.001 of the Act, the Board is authorized to adopt rules relating to the practice of medicine. The purpose of this subchapter is to set forth minimum requirements relating to a physician's provision of call coverage services for another physician's established patients. Advances in technology have enabled a more expansive model of call coverage, requiring that minimum standards be adopted so as to better protect and promote the health and safety of the public while accounting for such technological advances. In setting forth these rules, the board recognizes that a call coverage model outside of the traditional office setting between physicians who are not of the same specialty and do not provide reciprocal call coverage for each other can provide effective and safe patient care, contingent upon the physician meeting the standard of care for the treatment provided under an agreement, and minimum standards being in place that correspond to the level of care being provided. Such standards will allow increased access to healthcare, while maintaining accountability for communication between physicians, in order to provide continuity and coordination of care, thereby protecting patient safety and health.

(b) Scope. This chapter applies to all physicians providing call coverage in Texas, regardless of the nature and scope of technology being used to provide care to patients through the call coverage relationship.

§177.19. Definitions.

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

(1) Act--The Texas Medical Practice Act, Texas Occupations Code Annotated, Title 3 Subtitle B.

(2) Board--Texas Medical Board.

§177.20. Call Coverage Minimum Requirements.

(a) Generally.

(1) Physicians may provide medical services through a call coverage agreement (CCA) to established patients of a physician who requests the coverage. A covering physician who enters into a CCA is responsible for meeting the standard of care for patient care provided during such call coverage.

(2) The covering physician is required to relay a report to the physician who requested the coverage regarding the care provided. The covering physician may satisfy the report requirement described in this subsection by updating the patient's medical record, sending a written report, or providing the information to the physician who requested the coverage through other methods. The duty to provide the report is the sole, exclusive obligation of the covering physician, and cannot be delegated to or satisfied by the patient or patient representative providing a report or otherwise recounting the encounter to the physician who requested coverage. The physician who requested the call coverage must make the report provided by the covering physician a part of the patient's medical record.

(b) Call Coverage Models.

(1) Non-Reciprocal Call Coverage Model. For physicians who enter into a CCA and are not of the same specialty or similar specialties, or do not require reciprocal medical call coverage services for the covering physician's patients through the CCA, the CCA must be in writing and at a minimum include terms that:

(A) establish a covering physician's responsibility for meeting the standard of care in providing call coverage for the patients of the physician requesting coverage;

(B) provide a list of all of the physicians that may provide the call coverage under the CCA;

(C) require that at the time of the service provided, the covering physician have access to the necessary medical records related to the patient who is being treated under the CCA;

(D) for non-emergency care provided for a diagnosis previously made by the physician who requested call coverage, require the covering physician to furnish a report to the physician requesting

the call coverage within 7 days from the end of each call coverage period;

(E) for non-emergency care provided for an injury, illness, or disease not previously diagnosed by the physician who requested call coverage, require the covering physician to furnish a report to the physician who requested the call coverage within 72 hours from the end of each call coverage period; and

(F) for emergency care provided, require the covering physician to furnish a report to the physician who requested call coverage within an appropriate time period according to the circumstances of the emergency situation.

(2) Reciprocal Call Coverage Model.

(A) For physicians who enter a CCA and are of the same specialty or similar specialties and require reciprocal medical call coverage services for the covering physician's patients, the CCA may be oral or written.

(B) Terms of the CCA at a minimum must establish the covering physician's responsibility for meeting the standard of care for patient care provided during such call coverage and relaying a report to the physician who requested the coverage regarding such patient care provided within an appropriate amount of time from the conclusion of each call coverage period.

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

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Texas Medical Board
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CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The Texas Medical Board (Board) proposes amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

The amendments include adding language to subsection (c) to clarify that the requirements related to a licensee's submission of pre-ISC material also applies to written statements by witnesses. Subsection (e) is amended to clarify the type of evidence that may and may not be presented during the ISC proceeding, which better comports with the board's current procedures. Subsection (g) is amended to remove the word "witness" and add clarifying language about who may testify outside the presence of the licensee. Subsection (h) is amended to add additional language relating to the type of untimely evidence the panel may refuse to consider.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are clear, unambiguous and align with the board's current procedures.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: *rules.development@tmb.state.tx.us.* A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of Texas Occupations Code Chapter 164.

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

§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

(a) After referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC before an ISC Panel, composed of two or more board representatives to be held after proper notice to the licensee. One board representative must be a public member. If the matter is before the Medical Board, at least one board representative must be a physician member.

(b) Requests to reschedule the ISC by a licensee must be in writing and shall be referred to the Hearings Counsel for consideration. To avoid undue disruption of the ISC schedule, the Hearings Counsel should grant a request only after conferring with the Hearings Coordinator and strictly applying the following guidelines:

(1) A request by a licensee to reschedule an ISC must be in writing and may be granted only if the licensee provides satisfactory evidence of the following requirements:

(A) A request received by the agency within five business days after the licensee received notice of the date of the ISC, must provide details showing that:

(i) the licensee has a conflicting event that had been scheduled prior to receipt of notice of the ISC;

(ii) the licensee has made reasonable efforts to reschedule such event but a conflict cannot reasonably be avoided.

(B) A request received by the agency more than five business days after the licensee received notice of the date of the ISC must provide details showing that an extraordinary event or circumstance has arisen since receipt of the notice that will prevent the licensee from attending the ISC. The request must show that the request is made within five business days after the licensee first becomes aware of the event or circumstance.

(2) A request by a licensee to reschedule an ISC based on the failure of the agency to send timely notice before the date scheduled for the ISC, as required by §164.003 of the Act, shall be granted, provided the request is received by the agency within five business days after the late notice is received by the licensee.

(c) Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee including, but

not limited to, written statements by witnesses. Information must be received from the licensee at least five business days prior to the ISC for complaints filed before September 1, 2011. For complaints filed with the board on or after September 1, 2011, the information must be received at least 15 days prior to the date of the ISC.

(d) An ISC may be conducted by only one panelist if:

(1) the ISC is related to an order of the board, such as to show compliance, a probation appearance, or a request for termination or modification, or

(2) the affected licensee waives the requirement that at least two panelists conduct the ISC. In such situations, the panelist may be either a physician, physician assistant, or acupuncturist (depending on the licensee involved) or a member who represents the public.

(e) The board representatives shall allow:

(1) the board staff to present a summary of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a formal hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a formal hearing;

(3) presentation of evidence by the board staff and the licensee[~~,~~] which, in the discretion of the board representatives, is relevant to the proceeding. This evidence may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials. Explanatory materials may include: [~~which in the discretion of the board representatives are relevant to the proceeding;~~]

(A) written statements by witnesses that were included in the licensee's responsive material described in subsection (c) of this section; and

(B) presentation of oral or written statements by complainant or a victim of an alleged sexual or assaultive offense by a licensee.

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written testimony by TxPHP representative, compliance officer, or other board staff to describe the status of a licensee's compliance with a PHP contract, board order(s), if there are allegations of non-compliance, or applicable laws and rules;

[~~(6) presentation of oral or written statements or testimony by witnesses;~~]

[~~(7) questioning of the witnesses in a manner prescribed by the panel;~~]

(7) [~~(8)~~] questioning of the licensee;

(8) [~~(9)~~] closing statement by the licensee;

(9) [~~(10)~~] closing statement by the board's staff; and

(10) [~~(11)~~] upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.

(f) The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(g) Notwithstanding subsection (f) of this section, the board representatives may allow a complainant, or a victim of an alleged sexual or assaultive offense by licensee, [~~witness~~] to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(h) The board representatives may refuse to consider any written witness statement or evidence not submitted in a timely manner without good cause. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or recommend an additional administrative penalty for the late submission.

(i) A board attorney, who has not been involved with the preparation of the case, shall be designated as the Hearings Counsel and shall be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the ISC. The Hearings Counsel shall be permitted to ask questions of participants in the ISC to clarify any statement made by the participant. The Hearings Counsel shall provide to the ISC panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the licensee have an opportunity to present information related to the case.

(j) At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(k) The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with the Act, §164.007(c).

(l) On request by a licensee, the board shall make a recording of the ISC. The request must be submitted in writing, and received by the Board at least 15 days prior to the date of the ISC. Deliberations of the ISC panel shall be excluded from any such recording. The media format of the recording shall be determined by the board. The recording is part of the investigative file and may not be released to a third party unless authorized under the Act. The board may charge the licensee a fee to cover the cost of recording the proceeding. Licensees and their representatives may not independently record an ISC.

(m) The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(n) At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected licensee, the licensee's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations. The Hearings Counsel may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(o) The board representatives may:

(1) make recommendations to dismiss the complaint or allegations. The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time;

(2) make recommendations regarding an agreed order and propose resolution of the issues to the licensee to be reduced to writing

and processed in accordance with §187.19 of this chapter [~~title~~] (relating to Resolution by Agreed Order);

(3) defer the ISC, pending further investigation;

(4) direct that a formal Complaint be filed with SOAH;

(5) recommend to the President of the board that a Disciplinary Panel be convened to consider the temporary suspension or restriction of the licensee's license;

(6) recommend the imposition of an administrative penalty pursuant to §§187.75 - 187.82 of this chapter (relating to Procedural Rules); or

(7) recommend that a remedial plan be issued to resolve the complaint pursuant to §187.9 of this chapter (relating to Board Actions).

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

Filed with the Office of the Secretary of State on June 15, 2016.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 305-7016

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §199.6

The Texas Medical Board (Board) proposes new §199.6, concerning Enhanced Contract or Performance Monitoring.

New §199.6 delineates the criteria and requirements for the agency's identification of and monitoring of certain contracts. This new section is added in accordance with the passage of SB 20 (85th Regular Session) which amended Chapter 2261 of the Texas Government Code.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with state law.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: *rules.development@tmb.state.tx.us.* A public hearing will be held at a later date.

The new section is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§199.6. Enhanced Contract or Performance Monitoring.

(a) A contract for the purchase of goods or services that has a value exceeding $1 million shall be considered to be a contract requiring enhanced monitoring pursuant to Texas Government Code, §2261.253.

(b) The board shall be informed and provided information about such contract.

(c) The agency's procurement manager or staff shall immediately inform the Executive Director and the board should any serious risk or issue arises, during the contract term, with respect to a contract monitored under this section.

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

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CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

22 TAC §200.3

The Texas Medical Board (Board) proposes an amendment to §200.3, concerning Practice Guidelines for the Provision of Complementary and Alternative Medicine.

The amendment corrects an incorrect reference to the "board of medical examiners."

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are accurate and reflect the actual name of the agency.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§200.3. Practice Guidelines for the Provision of Complementary and Alternative Medicine.

A licensed physician shall not be found guilty of unprofessional conduct or be found to have committed professional failure to practice medicine in an acceptable manner solely on the basis of employing a health care method of complementary or alternative medicine, unless it can be demonstrated that such method has a safety risk for the patient that is unreasonably greater than the conventional treatment for the patient's medical condition. The Texas Medical Board [~~Texas State Board of Medical Examiners~~] will use the following guidelines to determine whether a physician's conduct violates the Medical Practice Act, §§164.051-.053 in regard to providing complementary and alternative medical treatment.

(1) Patient Assessment. Prior to offering advice about complementary and alternative health care therapies, the physician shall undertake an assessment of the patient. This assessment should include but not be limited to, conventional methods of diagnosis and may include non-conventional methods of diagnosis. Such assessment shall be documented in the patient's medical record and be based on performance and review of the following listed in subparagraphs (A) - (D) of this paragraph:

(A) an appropriate medical history and physician examination of the patient;

(B) the conventional medical treatment options to be discussed with the patient and referral input, if necessary;

(C) any prior conventional medical treatments attempted and the outcomes obtained or whether conventional options have been refused by the patient;

(D) whether the complementary health care therapy could interfere with any other recommended or ongoing treatment.

(2) Disclosure. Prior to rendering any complementary or alternative treatment, the physician shall provide information to the patient that includes the following with the disclosure documented in the patient's records:

(A) the objectives, expected outcomes, or goals of the proposed treatment, such as functional improvement, pain relief, or expected psychosocial benefit;

(B) the risks and benefits of the proposed treatment;

(C) the extent the proposed treatment could interfere with any ongoing or recommended medical care;

(D) a description of the underlying therapeutic basis or mechanism of action of the proposed treatment purporting to have a reasonable potential for therapeutic gain that is written in a manner understandable to the patient; and

(E) if applicable, whether a drug, supplement, or remedy employed in the treatment is:

(i) approved for human use by the U.S. Food and Drug Administration (FDA);

(ii) exempt from FDA preapproval under the Dietary Supplement and Health Education Act (DSHEA); or

(iii) a pharmaceutical compound not commercially available and, therefore, is also an investigation article subject to clinical investigation standards as discussed in paragraph (7) of this section.

(3) Treatment Plan.

(A) The physician may offer the patient complementary or alternative treatment pursuant to a documented treatment plan tailored for the individual needs of the patient by which treatment progress or success can be evaluated with stated objectives such as pain relief and/or improved physical and/or psychosocial function. Such a documented treatment plan shall consider pertinent medical history, previous medical records and physical examination, as well as the need for further testing, consultations, referrals, or the use of other treatment modalities.

(B) The treatment offered should:

(i) have a favorable risk/benefit ratio compared to other treatments for the same condition;

(ii) be based upon a reasonable expectation that it will result in a favorable patient outcome, including preventive practices; and

(iii) be based upon the expectation that a greater benefit for the same condition will be achieved than what can be expected with no treatment.

(4) Periodic Review of Treatment. The physician may use the treatment subject to documented periodic review of the patient's care by the physician at reasonable intervals. The physician shall evaluate the patient's progress under the treatment prescribed, ordered or administered, as well as any new information about etiology of the complaint in determining whether treatment objectives are being adequately met.

(5) Adequate Medical Records. In addition to those elements addressed in paragraph (1)(A) - (D) of this section, a physician implementing complementary and alternative therapies shall keep accurate and complete medical records to include:

(A) any diagnostic, therapeutic and laboratory results;

(B) the results of evaluations, consultations and referrals;

(C) treatments employed and their progress toward the stated objectives, expected outcomes, and goals of the treatment;

(D) the date, type, dosage, and quantity prescribed of any drug, supplement, or remedy used in the treatment plan;

(E) all patient instructions and agreements;

(F) periodic reviews;

(G) documentation of any communications with the patient's concurrent healthcare providers informing them of treatment plans.

(6) Therapeutic Validity. All physicians must be able to demonstrate the medical, scientific, or other theoretical principles connected with any healthcare method offered and provided to patients.

(7) Clinical Investigations. Physicians using conventional medical practices or providing complementary and alternative medicine treatment while engaged in the clinical investigation of new drugs and procedures (a.k.a. medical research, research studies) are obligated to maintain their ethical and professional responsibilities. Physicians shall be expected to conform to the following ethical standards:

(A) Clinical investigations, medical research, or clinical studies shall be part of a systematic program competently designed, under accepted standards of scientific research, to produce data that are scientifically valid and significant;

(B) A clinical investigator shall demonstrate the same concern and caution for the welfare, safety and comfort of the patient

involved as is required of a physician who is furnishing medical care to a patient independent of any clinical investigation; and

(C) A clinical investigator shall have patients sign informed consent forms that are compliant with federal regulations, if applicable, and that indicate that the patients understand that they are participating in a clinical trial or investigational research.

(8) If the provisions set out in paragraphs (1) - (5) of this section are met, and if all treatment is properly documented, the board will presume such practices are in conformity with the Medical Practice Act, §§164.051-.053.

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.10, concerning Provisionally Licensed Psychologists. The proposed amendment is necessary due to unforeseen limitations with the Board's shared database system. More specifically, the Board's database system will not allow licensing staff to place the transcript requirement at issue in this rule change, in the initial application module for some applicants and the approved application module for others. The transcript requirement must appear in the same application module for all applicants, otherwise staff will be unable to track the 90 day deadline required by Board rule §463.2.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to *brenda@tsbep.texas.gov.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.10. Provisionally Licensed Psychologists.

(a) Application Requirements.

(1) An application for provisional licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements), an official transcript which indicates that the applicant has received a doctoral degree in psychology. Additionally, the applicant must meet the requirements of §501.255 of the Psychologists' Licensing Act.

(2) An application for provisional licensure as a psychologist may be filed up to sixty days prior to the date the applicant's doctoral degree is officially conferred, but remains subject to Board rule §463.2 of this title (relating to Application Process). [~~Furthermore, an applicant may be approved to sit for examinations prior to the Board receiving an official transcript, but no license will be granted until the Board receives an official transcript meeting the requirements of this rule.~~]

(b) Degree Requirements.

(1) The applicant's transcript must state that the applicant has a doctoral degree that designates a major in psychology. Additionally, the doctoral degree must be from a program accredited by the American Psychological Association or from a regionally accredited institution.

(2) The substantial equivalence of a doctoral degree received prior to January 1, 1979, based upon a program of studies whose content is primarily psychological means a doctoral degree based on a program which meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or provisionally licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons who have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Board evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: Learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(3) Any person intending to apply for provisional licensure under the substantial equivalence clause must file with the Board an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that in paragraph (2)(A) - (J) of this subsection have been met.

(c) An applicant for provisional licensure as a psychologist who is accredited by Certificate of Professional Qualification in Psychology (CPQ) or the National Register or who is a specialist of ABPP will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score, and submission of three acceptable reference letters. All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

(d) Trainee Status for Provisional Applicants.

(1) An applicant for provisional licensure who has not yet passed the EPPP and Jurisprudence Examination, but who otherwise meets all provisional licensing requirements and is seeking to acquire the supervised experience required by §501.252(b)(2) of the Psychologists' Licensing Act, may practice under the supervision of a Licensed Psychologist as a provisional trainee for not more than two years.

(2) A provisional trainee status letter shall be issued to an applicant upon proof of provisional licensing eligibility, save and except proof of passage of the EPPP and Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A provisional trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The two years period for provisional trainee status shall not be tolled by any suspension of the provisional trainee status.

(5) Following official notification from the Board upon passage of the EPPP and Jurisprudence Examination, or the expiration of two years, whichever occurs first, an individual's provisional trainee status shall terminate.

(6) This subsection, along with all of its subparts, shall take effect on September 1, 2016.

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 June 13, 2016.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.2, concerning Supervision. The proposed amendment will ensure that the Board's standards for the supervision of LSSP interns and trainees comport with both federal law and nationally recognized standards of practice as required by Tex. Occ. Code Ann. §501.260(c).

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701 or via email to *brenda@tsbep.texas.gov.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) A licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include remote or electronic means if:

(A) adequate supervision can be provided through remote or electronic means;

(B) the difficulties in providing full-time in-person supervision place an unreasonable burden on the delivery of psychological services; and

(C) no more than fifty percent of the supervision takes place through remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.252(b)(2), or 501.260(b)(3) of the Act must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements, or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Board. A licensee shall inform all supervisees of any Board order restricting their license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing their supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) An individual subject to this subsection may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure with this Board, to supervise others in the delivery of psychological services.

(6) For provisional trainees, a supervisor must provide at least one hour of individual supervision per week and may reduce the amount of weekly supervision on a proportional basis for provisional trainees working less than full-time.

(7) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists and Licensed Psychological Associates must be under the supervision of a Licensed Psychologist and may not engage in independent practice.

(2) A Provisionally Licensed Psychologist who is licensed in another state to independently practice psychology and is in good standing in that state, and who has applied for licensure as a psychologist may during the time that the Board is processing the applicant's

application for licensure as a psychologist, practice psychology without supervision. However, upon notification from the Board that an applicant has not met the qualifications for licensure as a psychologist, the
provisionally licensed psychologists must obtain supervision within 30 days in order to continue to practice.

(3) A provisionally licensed psychologist may, as part of a period of supervised experience required for full licensure with this Board, supervise others in the delivery of psychological services.

(4) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology, who has a minimum of three years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign educational documents completed for students by the supervisee, including [~~student progress reports for which the supervisee is providing psychological or counseling services,~~] student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required by Board rule 463.9, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

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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Darrel D. Spinks
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Texas State Board of Examiners of Psychologists
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER K. DEFINITION, TREATMENT, AND DISPOSITION OF SPECIAL WASTE FROM HEALTH CARE-RELATED FACILITIES

25 TAC §§1.132 - 1.137

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§1.132 - 1.137, concerning the definition, treatment, and disposition of special waste from health care-related facilities.

BACKGROUND AND PURPOSE

The rule amendments provide language and offer clarification to enhance the understanding of the rules, as well as to update outdated references, terminology, and methods. Government Code, §2001.039 requires a review of rules, including an assessment of whether the reasons for initially adopting the rules continue to exist. Chapter 1, Subchapter K of Title 25 of the Texas Administrative Code was originally adopted in 1989, and amendments were made in 1991 and 1994. Additionally, the department has reviewed §§1.131 - 1.137 and has determined that the reasons for adopting the rules continue to exist because the rules on this subject are needed. However, there are no changes being proposed to §1.131 in this rulemaking.

SCOPE OF THE PROPOSED RULES

The scope of the proposed rules encompasses the following provisions of the rules in Subchapter K of Chapter 1, Miscellaneous Provisions, relating to special waste from health care-related facilities:

§1.132 Definitions.

§1.133 Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously approved by the Texas Department of Health.

§1.134 Application.

§1.135 Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

§1.136 Approved Methods of Treatment and Disposition.

§1.137 Enforcement.

SECTION-BY-SECTION SUMMARY

Amendments to §1.132, Definitions, are proposed to update references to the department; define the terms cremation, executive commissioner, and fetal tissue; remove the definition for the term cremated remains; update references to Texas Commission on Environmental Quality (TCEQ); correct a mathematical unit for "$\log_{10}$;" and necessitates the renumbering of paragraphs.

Amendments to §1.133, Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health, are proposed to update references to the department and a legal reference.

Amendments to §1.134, Application, are proposed to update references to facilities providing mental health and intellectual disability services; and add freestanding emergency medical care facilities to the list of health care-related facilities to which this rule applies.

Amendments to §1.135, Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities, are proposed to update references to the department and correct a mathematical unit to "$\log_{10}$"

Amendments to §1.136, Approved Methods of Treatment and Disposition, are proposed to update references to the department; update terminology regarding the Texas Administrative Code; update references to TCEQ and its rules; clarifying disposition methods for fetal tissue; clarifying disposition methods for fetal tissue and other tissues that are products of spontaneous or induced human abortion; and clarifying that disposition methods for anatomical remains are established in 25 TAC §479.4.

Amendments to §1.137, Enforcement, are proposed to reflect the Executive Commissioner's role in rulemaking; remove home and community support services agencies from the list of the department's regulatory programs; and add end-stage renal disease facilities and freestanding emergency medical centers to the list of the department's regulatory programs.

FISCAL NOTE

Renee Clack, Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Ms. Clack has also determined that the department has identified a potential fiscal impact but does not have information sufficient to quantify the impact as the proposed changes to the rules reflect disposition methods that were previously available. It is presumed that there was a cost to all of the previously available disposition methods and the department has no information to suggest that the cost of implementing the proposed changes would result in any greater cost to small and micro businesses or to persons who are required to comply with the rules.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Clack has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adopting and enforcing these rules will be enhanced protection of the health and safety of the public.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Allison Hughes, Health Facilities Rules Coordinator, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 2822, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6775 or by email to allison.hughes@dshs.state.tx.us. Please specify "Comments on special waste from health care-related facilities" in the subject line. The department intends by this section to invite public comment on each of the amendments to the rules. Comments are accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, Health and Safety Code, §12.001, and Health and Safety Code, §1001.075, which authorize the Executive

Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The amendments are also authorized by Health and Safety Code, §81.004, which authorizes the Executive Commissioner to adopt rules necessary for the effective administration of Health and Safety Code, Chapter 81, concerning the control of communicable disease; by Health and Safety Code, Chapter 241, concerning the licensing of hospitals; by Chapter 243, concerning the licensing of ambulatory surgical centers; by Chapter 244, concerning the licensing of birthing centers; by Chapter 245, concerning the licensing of abortion facilities; by Chapter 251, concerning the licensing of end stage renal disease facilities; by Chapter 254, concerning the licensing of freestanding emergency medical care facilities; and by Chapter 773, concerning the licensing of emergency medical services. Review of the rules implements Government Code, §2001.039.

The amendments implement Government Code, Chapter 531; and Health and Safety Code, Chapters 12, 81, 241, 243, 244, 245, 251, 254 and 773.

§1.132. Definitions.

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

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

(3) Approved alternate treatment process--A process for waste treatment which has been approved by the department [~~Texas Department of Health~~] in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(4) - (17) (No change.)

(18) Cremation--The irreversible process of reducing tissue or remains to ashes or bone fragments through extreme heat and evaporation.

[~~(18) Cremated remains--The bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the pathological waste.~~]

(19) - (26) (No change.)

(27) Executive Commissioner--In this title, Executive Commissioner means the Executive Commissioner of the Health and Human Services Commission.

(28) Fetal Tissue--A fetus, body parts, organs or other tissue from a pregnancy. This term does not include the umbilical cord, placenta, gestational sac, blood or body fluids.

(29) [~~(27)~~] Grave--A space of ground in a burial park that is used, or intended to be used for the permanent interment in the ground of pathological waste.

(30) [~~(28)~~] Grinding--That physical process which pulverizes materials, thereby rendering them as unrecognizable, and for sharps, reduces the potential for the material to cause injuries such as puncture wounds.

(31) [~~(29)~~] Immersed--A process in which waste is submerged fully into a liquid chemical agent in a container, or that a sufficient volume of liquid chemical agent is poured over a containerized waste, such that the liquid completely surrounds and covers the waste item(s) in the container.

(32) [~~(30)~~] Incineration--That process of burning SWFHCRF in an incinerator as defined in 30 TAC Chapter 101 under conditions in conformance with standards prescribed in 30 TAC Chapter 111 by the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~].

(33) [~~(31)~~] Interment--The disposition of pathological waste by cremation, entombment, burial, or placement in a niche.

(34) [~~(32)~~] $\log_{10}$ [~~Log[sub]10[/sub]~~]--Logarithm to the base ten.

(35) [~~(33)~~] $\log_{10}$ [~~Log[sub]10[/sub]~~] reduction--A mathematically defined unit used in reference to level or degree of microbial inactivation. A 4 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction represents a 99.99% reduction in the numbers of active microorganisms, while a 6 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction represents a 99.9999% reduction in the numbers of active microorganisms.

(36) [~~(34)~~] Mausoleum--A structure or building of most durable and lasting fireproof construction used, or intended to be used, for the entombment pathological waste.

(37) [~~(35)~~] Microbial inactivation--Inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 6 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction or greater; and inactivation of Bacillus subtilis endospores or Bacillus stearothermophilus endospores at a 4 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction or greater.

(38) [~~(36)~~] Microbiological waste--Microbiological waste includes:

(A) discarded cultures and stocks of infectious agents and associated biologicals;

(B) discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;

(C) discarded live and attenuated vaccines, but excluding the empty containers thereof;

(D) discarded, used disposable culture dishes; and

(E) discarded, used disposable devices used to transfer, inoculate or mix cultures.

(39) [~~(37)~~] Moist heat disinfection--The subjection of:

(A) internally shredded waste to moist heat, assisted by microwave radiation under those conditions which effect disinfection; or

(B) unshredded waste in sealed containers to moist heat, assisted by low-frequency radiowaves under those conditions which effect disinfection, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(40) [~~(38)~~] Niche--A recess or space in a columbarium used, or intended to be used, for the permanent interment of the cremated remains of pathological waste.

(41) [~~(39)~~] Parametric controls--Measurable standards of equipment operation appropriate to the treatment equipment including, but not limited to pressure, cycle time, temperature, irradiation dosage, pH, chemical concentrations, or feed rates.

(42) [~~(40)~~] Pathological waste--Pathological waste includes but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, regardless of the period of gestation, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(43) [~~(41)~~] Saturated--Thoroughly wet such that liquid or fluid flows freely from an item or surface without compression.

(44) [~~(42)~~] Sharps--Sharps include, but are not limited to the following materials:

(A) when contaminated:

(i) hypodermic needles;

(ii) hypodermic syringes with attached needles;

(iii) scalpel blades;

(iv) razor blades, disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures;

(v) intravenous stylets and rigid introducers (e.g., J wires);

(vi) glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides;

(vii) broken glass from laboratories; and

(viii) tattoo needles, acupuncture needles, and electrolysis needles;

(B) regardless of contamination:

(i) hypodermic needles; and

(ii) hypodermic syringes with attached needles.

(45) [~~(43)~~] Shredding--That physical process which cuts, slices, or tears materials into small pieces.

(46) [~~(44)~~] Special waste from health care-related facilities--A solid waste which if improperly treated or handled may serve to transmit an infectious disease(s) and which is comprised of the following:

(A) animal waste;

(B) bulk blood, bulk human blood products, and bulk human body fluids;

(C) microbiological waste;

(D) pathological waste; and

(E) sharps.

(47) [~~(45)~~] Steam disinfection--The act of subjecting waste to steam under pressure under those conditions which effect disinfection. This was previously called steam sterilization.

(48) [~~(46)~~] Thermal inactivation--The act of subjecting waste to dry heat under those conditions which effect disinfection.

(49) [~~(47)~~] Unrecognizable--The original appearance of the waste item has been altered such that neither the waste nor its source can be identified.

§1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services.

(a) Exemptions.

(1) (No change.)

(2) These sections do not apply to:

(A) (No change.)

(B) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affiliated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Code [~~Codes~~] 289;

(C) - (F) (No change.)

(b) Minimum parametric standards for waste treatment technologies previously approved by the department [~~Texas Department of Health~~].

(1) - (5) (No change.)

§1.134. Application.

These sections apply to special waste from health care-related facilities generated by the operation of the following publicly or privately owned or operated health care-related facilities, including but not limited to:

(1) - (11) (No change.)

(12) freestanding emergency medical care facilities;

(13) [~~(12)~~] funeral establishments;

(14) [~~(13)~~] home and community support services agencies;

(15) [~~(14)~~] hospitals;

(16) [~~(15)~~] long term care facilities;

(17) [~~(16)~~] facilities providing mental health and intellectual disability services, [~~mental health and mental retardation facilities,~~] including but not limited to hospitals, schools, and community centers;

(18) [~~(17)~~] minor emergency centers;

(19) [~~(18)~~] occupational health clinics and clinical laboratories;

(20) [~~(19)~~] pharmacies;

(21) [~~(20)~~] pharmaceutical manufacturing plants and research laboratories;

(22) [~~(21)~~] professional offices, including but not limited to the offices of physicians, [~~and~~] dentists, and acupuncturists;

(23) [~~(22)~~] special residential care facilities;

(24) [~~(23)~~] tattoo studios; and

(25) [~~(24)~~] veterinary clinical and research laboratories.

§1.135. Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

All manufacturers of commercially-available alternate technologies, equipment, or processes designed or intended for the treatment of special waste from health care-related facilities, except those meeting the standards of §1.133(b) of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services), shall apply to the department [~~Texas Department of Health (department)~~] on forms prescribed by the department for approval of said technologies, equipment, or processes to ensure that established performance standards are met.

(1) Levels of microbial inactivation.

(A) (No change.)

(B) All manufacturers of commercially-available alternate technologies, equipment, or processes designed and intended for the treatment of special waste from health care-related facilities shall provide specific laboratory evidence that demonstrates:

(i) inactivation of representative samples of vegetative bacteria, mycobacteria, lipophilic/hydrophilic viruses, fungi, and parasites at a level of 6 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction or greater, as determined by the department; and

(ii) inactivation of Bacillus stearothermophilus endospores or Bacillus subtilis endospores at a level of 4 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction or greater, as determined by the department.

(C) - (E) (No change.)

(2) Documentation requirements.

(A) (No change.)

(B) Documentation must be submitted to the department [~~Texas Department of Health, Bureau of Environmental Health~~] on [~~those~~] forms provided by the department.

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

§1.136. Approved Methods of Treatment and Disposition.

(a) Introduction. The following treatment and disposition methods for special waste from health care-related facilities are approved by the department [~~Texas Board of Health (board)~~] for the waste specified. Where a special waste from a health care-related facility is also subject to the sections in Chapter 289 of this title (relating to Radiation Control), the sections in Chapter 289 shall prevail over the sections in this subchapter [~~undesignated head~~]. Disposal of special waste from health care-related facilities in sanitary landfills or otherwise is under the jurisdiction of the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] and is governed by its rules found in 30 TAC Chapter 326 (relating to Medical Waste Management) and Chapter 330 (relating to Municipal Solid Waste) [~~Title 30, Texas Administrative Code, Chapter 330~~].

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

(3) Microbiological waste. Microbiological waste shall be subjected to one of the following methods of treatment and disposal.

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

(D) Discarded disposable culture dishes shall be subjected to one of the following methods of treatment and disposal.

(i) All discarded, unused disposable culture dishes shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [~~Title 30, Texas Administrative Code, Chapter 330~~].

(ii) (No change.)

(E) (No change.)

(4) Pathological waste. Pathological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy shall be subjected to one of the following methods of treatment and disposal:

(i) body parts, other than fetal tissue:

(I) interment;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) moist heat disinfection, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(V) chlorine disinfection/maceration, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill; or

(VI) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) tissues, other than fetal tissue [~~or fetuses~~]:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) organs, other than fetal tissue:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iv) bulk human blood and bulk human body fluids removed during surgery, labor and delivery, autopsy, embalming, or biopsy:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;[.]

(v) fetal tissue, regardless of the period of gestation:

(I) interment;

(II) cremation;

(III) incineration followed by interment; or

(IV) steam disinfection followed by interment.

(B) The products of spontaneous or induced human abortion shall be subjected to one of the following methods of treatment and disposal:

(i) fetal tissue, [~~body parts, tissues, or organs~~] regardless of the period of gestation:

~~*(I)* grinding and discharging to a sanitary sewer system;~~]

(I) [~~(II)~~] incineration followed by interment [~~deposition of the residue in a sanitary landfill~~];

(II) [~~(III)~~] steam disinfection followed by interment;

(III) [~~(IV)~~] interment; or

(IV) cremation;

~~*(V)* moist heat disinfection followed by deposition in a sanitary landfill;~~]

~~*(VI)* chlorine disinfection/maceration followed by deposition in a sanitary landfill; or~~]

~~*(VII)* an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;~~]

(ii) blood and body fluids:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) any other tissues, including placenta, umbilical cord and gestational sac:

(I) grinding and discharging to a sanitary sewer system;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(C) Discarded laboratory specimens of blood and/or tissues shall be subjected to one of the following methods of treatment and disposal:

(i) grinding and discharging into a sanitary sewer system;

(ii) steam disinfection followed by deposition in a sanitary landfill;

(iii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iv) incineration followed by deposition of the residue in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(D) Anatomical remains shall be disposed of in a manner specified by §479.4 of this title (relating to Final Disposition of the Body and Disposition of Remains). [~~subjected to one of the following methods of treatment and disposal:~~]

~~*(i)* interment;~~]

~~*(ii)* incineration followed by interment; or~~]

~~*(iii)* steam disinfection followed by interment.~~]

(5) Sharps.

(A) All discarded unused sharps shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [~~Title 30, Texas Administrative Code, Chapter 330~~].

(B) (No change.)

(b) Records. The facility treating the wastes shall maintain records to document the treatment of the special waste from health care-related facilities processed at the facility as to method and conditions of treatment in accordance with 30 TAC [~~Title 30, Texas Administrative Code,~~] Chapter 326 [~~330~~].

(c) (No change.)

§1.137. Enforcement.

The appropriate regulatory programs of the department shall incorporate the definition and methodology contained in these provisions into their respective general program rules and shall formulate and present for the Executive Commissioner's [~~board's~~] consideration such additional rules as are necessary for the internal collection, storage, handling, movement, and treatment of special waste from health care-related facilities generated within or by the following facilities or activities:

(1) abortion clinics;

(2) ambulatory surgical centers;

(3) birthing centers;

(4) emergency medical service providers;

(5) end stage renal disease facilities;

(6) freestanding emergency medical care facilities;

[~~(5) home and community support services agencies;~~]

(7) [~~(6)~~] hospitals;

(8) [~~(7)~~] special residential care facilities; and

(9) [~~(8)~~] tattoo studios.

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 June 20, 2016.

TRD-201603119
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 776-6972

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER B. CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS

25 TAC §§169.41 - 169.48

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos.

BACKGROUND AND PURPOSE

Texas Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §§2152.051 - 2152.054, provided the Executive Commissioner of the Health and Human Services Commission with the authority to adopt standards for the operation of circuses, carnivals, and zoos, prescribe qualifications for its inspection agents, and prescribe the amount of each fee required by this chapter. Senate Bill (SB) 219, 84th Texas Legislature, Regular Session, 2015, repealed Texas Occupations Code, Chapter 2152. Therefore, §§169.41 - 169.48 are no longer required due to the repeal of the authorizing statute.

SECTION-BY-SECTION SUMMARY

The repeal of §§169.41 - 169.48 is necessary because SB 219 repealed Texas Occupations Code, Chapter 2152, which was the legal mandate for these rules.

FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed because the sections are no longer necessary. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed repeal of the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the proposed repeal of the sections. There will be no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Garcia has determined that for each year of the first five years the repeal of the sections is in effect, the public will benefit from the adoption of the repeals. The public benefit anticipated is to eliminate possible confusion caused by outdated policies and procedures being presented in the rules and by rules for which there is no longer statutory authority being located in the Texas Administrative Code.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the 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 Government Code, §2007.043.

COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The repeals are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to make decisive actions on rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§169.41. Purpose.
§169.42. Definitions.
§169.43. Facilities for Housing the Animals.
§169.44. Transportation of Animals.
§169.45. Food and Water Requirements in Transit.
§169.46. Care in Transit.
§169.47. Licenses.
§169.48. State Inspection Agents.

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 June 15, 2016.

TRD-201603037
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 776-6972

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PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §§477.1, 477.2, 477.4, 477.5, 477.7

The Anatomical Board of the State of Texas (Board) proposes to amend §§477.1, 477.2, 477.4, 477.5, and 477.7, concerning the rules and procedures for the distribution of cadavers and/or anatomical specimens to recognized search organizations.

The Board's proposed amendments are to implement Health and Safety Code §691.030 and §692A.011 as amended by Senate Bill 1214 in the 84th Legislative Session. The amendments to §691.030 and §692A.011 provide that the use of cadavers and/or anatomical specimens by recognized search organizations must be coordinated through the Anatomical Board of the State of Texas.

The amendment to §477.1 defines the term "search organizations" to be organizations described in §691.030(a)(3) of the Health and Safety Code.

Amendments to §477.2 necessitate that search organizations meet the requirements described in §691.030(a)(3) of the Health and Safety Code.

Amendments to §477.4 set forth the circumstances under which a cadaver or anatomical specimen may be transferred to a recognized search organization.

Amendments to §477.5 relate to the procedure for a recognized search organization to request transfer of cadavers and/or anatomical specimens, the procedure for approval of the transfer, availability of cadavers and/or anatomical specimens, and the procedure for return of cadavers and/or anatomical specimens.

The amendment to §477.7 requires a recognized search organization receiving cadavers and/or anatomical specimens to file a yearly cadaver procurement and use report.

Vaughan Lee, Chairman of the State Anatomical Board, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed.

Dr. Lee has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit as a result of enforcing or administering the sections is to effectively regulate the disposition of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Stephen Luk, Secretary-Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The proposed amendments are authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 477.

§477.1. Definition and Jurisdiction of the Board.

(a) Definitions [~~Definition~~].

(1) Whenever the terms human "body" or "bodies" or "parts of human body" or "parts of human bodies" are used in Chapters 477 - 485, the terms include anatomical specimens, defined as parts of a human corpse in §691.001 of the Health and Safety Code.

(2) Whenever the term "search organization" is used in Chapters 477 - 485, the term includes search and rescue organizations and recovery teams that use human remains detection canines as described in §691.030(a)(3) of the Health and Safety Code.

(b) (No change.)

§477.2. Institutional Requirements.

(a) Institution accreditation. Institutions applying to be authorized to receive and hold bodies, or parts thereof, must show evidence of accreditation by the accrediting board for that profession. This applies to tissue banks authorized to receive donations under Chapter 692A of the Health and Safety Code[~~, Chapter 692A~~]. Search organizations must show evidence that they fulfill the requirements described in §691.030(a)(3) of the Health and Safety Code.

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

§477.4. Transport, Importation and Exportation of Bodies.

(a) Transport of Bodies. The transfer and transport of bodies or anatomical specimens from one institution to another, or for export from the state, shall be done in an appropriate, secured vehicle operated by a licensed funeral establishment, ambulance service, member institution, search organization, or public carrier. A label with the statement "CONTENTS DERIVED FROM DONATED HUMAN TISSUE" shall be affixed to the container in which the body or anatomical specimen is transported. Violations may result in revocation of authorization to receive and hold bodies.

(b) Transfer to search organizations. Cadavers and anatomical specimens may be transferred to search organizations or forensic science programs if:

(1) the deceased donated his body in compliance with Section 691.028 of the Health and Safety Code and at the time of the donation authorized use for search organizations or forensic science programs;

(2) the body was donated in compliance with Chapter 692A of the Health and Safety Code and the person authorized to make the donation under Section 692A.009 authorized use for search organizations or forensic science programs;

(3) the body was received by a member institution because it had not been claimed.

(c) [~~(b)~~] Importation. Notification of the intent to import a body or bodies from outside of the State of Texas shall be given to the board in writing. Such bodies shall fall under the jurisdiction of the board upon entering the State of Texas, and all rules regulating such material shall apply.

(d) [~~(c)~~] Exportation. No body under the jurisdiction of the board including donations to tissue banks authorized by Health and Safety Code, Chapter 692A, shall be shipped out of the State of Texas, unless permission in writing for such shipment has been granted by the board acting through its secretary-treasurer. If the secretary-treasurer is an employee of the institution that is to make the shipment, secondary approval must be given by the chair.

(1) The board may grant approval of exportation of a body if it or its secretary-treasurer or chair determines that:

(A) a written request has been received from an institution that is in the approved categories described in §479.1(a) of this title (relating to Institutions Authorized to Receive and Hold Bodies) that describes the need for the body and the facilities available for holding the body.

(B) the supply of bodies exceeds the needs of the institutions in this state; and

(C) the donor authorized out-of-state shipment.

(2) If, in the opinion of the appropriate official of the holding institution or the secretary-treasurer, a site visit to the requesting institution is desirable or necessary, such a visit shall be made and a report made to the secretary-treasurer before approving the transfer. The expenses incurred by such a site visit shall be reimbursed by the potential receiving institution before application is considered.

(e) [~~(d)~~] Proscription of local removal. Bodies shall not be removed or relocated from the designated premises of the institution or individual which have been authorized by this board to receive, hold, or dispose of bodies without the written permission of the secretary-treasurer.

(f) [~~(e)~~] Violation of this rule. Should it appear that an organization, institution, or individual may be in violation of any section regarding the transportation of a body, the board shall proceed as required by §483.1 of this title (relating to Hearing Procedures).

§477.5. Transfer of Bodies.

(a) Application for transfer. Institutions or search organizations desiring the transfer of a body [~~to their institution~~] must make written request to the secretary-treasurer of the board. Reasons for the need for a body must be stated.

(b) (No change.)

(c) Availability. While the secretary-treasurer of the board shall make diligent efforts to locate a source of bodies for transfer, final authorization for such transfer shall be dependent on the willingness of a member institution to provide the required body or bodies. Costs of the body and for transportation shall be borne by the institution or search organization receiving the transferred body.

(d) Disposal of transferred bodies. Unless other suitable arrangements have been made and approved by the secretary-treasurer or the board in advance, transferred bodies on which dissection has been completed shall be returned to the institution originally providing the body for final disposition within one calendar year.

(e) Extension. The secretary-treasurer may approve extensions beyond the one calendar year time limit. Written requests for an extension must be submitted prior to the expiration of the term, and reasons for the extension must be stated.

§477.7. Board Forms.

(a) (No change.)

(b) Yearly cadaver procurement and use report. Each institution which has received, directly or by transfer, and/or used a body during the prior year shall complete, sign and file with the secretary-treasurer the yearly cadaver procurement and use report prescribed by the board. This report shall be filed not later than August 31 of each year for the prior annual period August 1 through July 31. Tissue banks and search organizations receiving donations as authorized by Health and Safety Code Chapter 692A will file a cadaver procurement and transfer form as prescribed by the board.

(c) (No change.)

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

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TRD-201603138
Stephen Luk
Secretary-Treasurer
Anatomical Board of the State of Texas
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For further information, please call: (214) 648-5469

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CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §§479.1 - 479.3, 479.5

The Anatomical Board of the State of Texas (Board) proposes to amend §§479.1 - 479.3 and 479.5, concerning the rules and procedures for the distribution of cadavers and/or anatomical specimens to recognized search organizations.

The Board's proposed amendments are to implement Health and Safety Code §691.030 and §692A.011 as amended by Senate Bill 1214 in the 84th Legislative Session. The amendments to §691.030 and §692A.011 provide that the use of cadavers and/or anatomical specimens by recognized search organizations must be coordinated through the Anatomical Board of the State of Texas.

Amendments to §479.1 allow recognized search organizations and forensic science programs to receive and hold cadavers and/or anatomical specimens.

Amendments to §479.2 relate to the procedure for a search organization to apply to receive and hold cadavers and/or anatomical specimens. This section also relates to the inspection of the facilities of a search organization.

Amendments to §479.3 allow recognized search organizations and forensic science programs to use anatomical specimens in specific field locations provided that certain conditions are met.

Amendments to §479.5 provide a limited exception to Texas Penal Code §42.10 for recognized search organizations and forensic science programs to use human cadaveric materials for training purposes under strict circumstances.

Vaughan Lee, Chairman of the State Anatomical Board, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed.

Dr. Lee has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit as a result of enforcing or administering the sections is to effectively regulate the disposition of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Stephen Luk, Secretary-Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The proposed amendments are authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 479.

§479.1. Institutions Authorized to Receive and Hold Bodies.

(a) Approved categories. Institutions or organizations authorized by the board to receive and hold bodies include accredited medical schools or colleges, dental schools or colleges, health science centers, hospitals, schools of mortuary science, chiropractic schools or colleges, osteopathic medical schools or colleges, search organizations, and forensic science programs. Tissue banks receiving donations under Health and Safety Code, Chapter 692A may only transfer those donations to institutions in approved categories.

(b) (No change.)

§479.2. Application and Inspection of Facilities.

(a) (No change.)

(b) Search organizations applying for authorization to receive and hold bodies have additional requirements:

(1) documents demonstrating authorization by a sponsoring local or county law enforcement agency for the search organization's use of human remains detection canines;

(2) documents demonstrating the search organization's exemption from federal taxation under 501(c) of the Internal Revenue Code of 1986;

(3) documents demonstrating the search organization's protocols for the handling and storage of bodies or parts thereof.

(c) [~~(b)~~] Inspection.

(1) The inspection team.

(A) New facilities. An inspection subcommittee of the board, composed of at least two members of the board, shall visit all new facilities, including any existing facilities that have undergone major renovation. Such inspections shall be made within 60 days of the receipt of a request for inspection.

(B) Inspection. Approved facilities. All approved facilities shall be reinspected from time to time on a periodic basis not more [~~less~~] than every five years by at least one member of the board from an institution other than the facility being inspected. Search organizations and forensic science programs utilizing WBP specimens shall be reinspected from time to time on a periodic basis not more than every three years. Advance notice of such reinspections shall be given.

(C) Facilities where deficiencies have been cited. All facilities which have been disapproved, or where a deficiency has been cited on inspection or reinspection, may be visited by a reinspection subcommittee composed of at least one member of the board from an institution other than the facility being reinspected. This reinspection, when deemed necessary, shall be made within 60 days of notice to the secretary-treasurer that the corrections have been accomplished. Advance notice of such reinspections shall be given.

(2) Reports of inspection and reinspection.

(A) Approved facilities. Where the inspection subcommittee finds no reason to deny approval of the inspected facilities, they so report in writing to the secretary-treasurer. Upon acceptance of the report by a majority of the board, the secretary-treasurer shall notify the institution concerned of such approval of its facilities and authorize it to receive and hold bodies.

(B) Disapproved facilities.

(i) Needed corrections cited in writing. When the inspection subcommittee notes deficiencies which require remedy before approval can be granted, they shall so report, in detail, in writing to the secretary-treasurer of the board, who shall notify the institution promptly of these deficiencies. It would be well if the inspection subcommittee discussed deficiencies found with the concerned institution personnel before departing from the site.

(ii) Requirement for immediate action. When an institution is advised of deficiencies uncovered by an inspection subcommittee, it is obligated to effect immediate correction of the deficiency or deficiencies. Delay in effecting the required corrections will delay granting approval of new facilities and may threaten continued approval of existing facilities.

(iii) Suspension of authorization. Unnecessary delay in making required correction(s) of deficiencies uncovered by inspection or reinspection may, by majority vote of the board, result in denial or withdrawal of approval of the facility and withholding or suspension of authorization to receive and hold bodies. Shall an organization, institution, or individual object to such determination by the board, it may request a hearing pursuant to §483.1 of this title (relating to Hearing Procedures).

(3) Costs of inspection and reinspection. All costs attendant on the program of inspection and reinspection shall be borne by the board.

§479.3. Standards for Facilities.

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

(c) Public welfare.

(1) Visibility. All areas where human bodies are handled must not be visible from the outside of the building or so located that the public has ready visibility of transport, preparation, or dissection in progress.

(2) Accessibility. All areas used for receipt and preparation, storage, or dissection of human bodies must be unaccessible and inadmissible to the general public and all unauthorized personnel. All areas must have appropriate locks. Only personnel concerned with the preparation of cadavers should have access to storage and preparation areas. Storage areas should be securely locked at all times when bodies are not being placed in or removed from storage. Search organizations and forensic science programs may use anatomical specimens in field locations provided that those locations are not accessible to the public, and access is restricted to search organization personnel while the anatomical specimens are in use.

§479.5. Abuse of a Corpse.

(a) Definition. Abuse of a corpse is defined in Texas Penal Code §42.10. In the code dissection in an authorized institution by authorized persons is specifically exempted from this provision. The board has determined:

(1) dissection of human cadaveric materials in health science, and related, education and research, and activities found by the board to be related to dissection (see paragraph (2) of this subsection) are a special privilege and are legally authorized for members and students of the health, and related, professions for the purpose of the advancement of knowledge in these fields. Exercise of this authority is accompanied by solemn obligations to conduct all activities related to such dissection with respect and dignity. Authorized dissection shall take place under supervision of trained and qualified persons, and only in specified locations that have been approved by the board and which meet the standards set forth in §479.3 of this title (relating to Standards for Facilities). Bodies [~~bodies~~], or parts of a body, shall not be removed from the specified locations without permission of the board or of an authorized representative of the board;

(2) the following activities are integrally related to dissection:

(A) procurement of bodies:

(i) removal from the place of death, hospital, morgue, medical examiner's office, or mortuary; and transfer to a proper site for embalming;

(ii) transfer to storage site or dissecting facility approved by the board;

(B) distribution of bodies: removal from one storage site and transfer to another approved facility designated by the board;

(C) handling of bodies:

(i) embalming;

(ii) placement in storage;

(iii) removal from storage;

(iv) placement on dissecting table in a facility designated approved by the board;

(D) dissection: cutting or otherwise separating body components for the purpose of demonstrating or investigating structural relationships of tissues, organs, or systems.

(E) use of bodies in biomedical research: removal of body parts or constituents and subjection thereof to further manipulation for the purpose of advancing scientific knowledge;

(F) disposal of remains:

(i) removal from the dissecting table;

(ii) transfer to crematory or burial site;

(iii) cremation or burial;

(iv) final disposition of cremains.

(3) use of human cadaveric materials in training human remains detection canines and other forensic science procedures are a special privilege and are legally authorized for active members of search organizations and forensic science programs. Exercise of this authority is accompanied by solemn obligations to conduct all activities related to such training with respect and dignity. Authorized activities shall take place under supervision of trained and qualified persons, and only in specified locations that have been approved by the board and which meet the standards set forth in §479.3 of this title (relating to Standards for Facilities).

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 21, 2016.

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Stephen Luk
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Anatomical Board of the State of Texas
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For further information, please call: (214) 648-5469

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1, 23.3, 23.5

The Texas Department of Public Safety (the department) proposes amendments to §§23.1, 23.3, and 23.5, concerning Vehicle Inspection Station and Vehicle Inspector Certification. The amendments to §23.1 and §23.3 are intended to clarify that the issuance of a certification is conditional upon the criminal background check. The amendment to §23.5 addresses the rule's reference to Article 42.12(3g), Code of Criminal Procedure, which is repealed by House Bill 2299, 84th Legislative Session, effective January 1, 2017. The bill creates new Article 42A.054 to replace 42.12(3g).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater clarity and consistency with legislative changes.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.1. New or Renewal Vehicle Inspection Station Applications.

(a) Applicants for new or renewal vehicle inspection station certification must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspection station application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspection station application must include, but is not limited to, the items listed in paragraphs (1) - (3) of this subsection:

(1) Criminal history disclosure of all convictions and deferred adjudications for each owner or designee engaged in the regular course of business as a vehicle inspection station;

(2) Proof of ownership and current status as required by the department. Such proof includes, but is not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts; and

(3) All fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The vehicle inspection station new and renewal application fee is nonrefundable.

(d) If an incomplete new or renewal vehicle inspection station application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspection station applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn and a new application must be submitted.

(f) A new or renewal vehicle inspection station application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter and the Texas vehicle inspection program's instructions.

(3) All fees have been paid pursuant to the Act.

(4) All requests for additional information have been satisfied.

(g) The vehicle inspection station certificate will expire on August 31 of the odd numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspection station certification issued by the department is conditional upon the receipt of criminal history record information.

(i) [~~(h)~~] For a new or renewal vehicle inspection station application to be approved, the owner must:

(1) be at least 18 years of age;

(2) provide proof of identification as required by the department;

(3) not be currently suspended or revoked in the Texas vehicle inspection program;

(4) complete department provided training;

(5) have a facility that meets the standards for the appropriate class set forth in this chapter;

(6) have equipment that meets the standards set forth in §23.13 of this title (relating to Equipment Requirements for All Classes of Vehicle Inspection Stations); and

(7) meet all other eligibility criteria under the Act or this chapter.

(j) [~~(i)~~] Certificate holders of vehicle inspection stations must submit a new application, including applicable fees, in order to change a location, or make a change of ownership.

(k) [~~(j)~~] Applicants for new or renewal vehicle inspection station certification must apply for one of the classes defined in paragraphs (1) - (3) of this subsection:

(1) Public--A station open to the public performing inspections on vehicles presented by the public. Stations open to the public will not be issued a fleet vehicle inspection station license unless such stations are currently certified as a public vehicle inspection stations;

(2) Fleet--A station not providing vehicle inspection services to the public; or

(3) Government--A station operated by a political subdivision, or agency of this state.

§23.3. New or Renewal Vehicle Inspector Applications.

(a) Applicants for a new or renewal vehicle inspector certificate must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspector application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspector application must include, but is not limited to, the items listed in paragraphs (1) and (2) of this subsection:

(1) criminal history disclosure of all convictions and deferred adjudications of the vehicle inspector applicant; and

(2) all fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The new or renewal vehicle inspector application fee is nonrefundable.

(d) If an incomplete new or renewal vehicle inspector application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspector applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn.

(f) A new or renewal vehicle inspector application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter, and the Texas vehicle inspection program's instructions.

(3) All fees have been paid pursuant to the Act.

(4) All requests for additional information have been satisfied.

(g) The new or renewal vehicle inspector certificate will expire on August 31 of the even numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspector certification issued by the department is conditional upon the receipt of criminal history record information.

(i) [~~(h)~~] For a new or renewal vehicle inspector application to be approved the applicant must:

(1) be at least 18 years of age;

(2) hold a valid driver license to operate a motor vehicle in Texas;

(3) not be currently suspended or revoked in the Texas vehicle inspection program;

(4) complete department provided training as outlined in this chapter;

(5) pass with a grade of not less than 80, an examination on the Act, this chapter, and regulations of the department pertinent to the Texas vehicle inspection program;

(6) successfully demonstrate ability to correctly operate the testing devices; and

(7) meet all other eligibility criteria under the Act or this chapter.

§23.5. Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.

(a) Vehicle inspection stations and vehicle inspectors are entrusted with ensuring the safety and fitness of vehicles traveling on the roads of Texas. Vehicle inspection stations and vehicle inspectors have constant access to and are responsible for the lawful disposition of government documents. For these reasons, the department has determined that the offenses contained within this section relate directly to the duties and responsibilities of vehicle inspection stations and vehicle inspectors certified under Texas Transportation Code, Chapter 548. The types of offenses listed in this section are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and any such offenses regardless of the code in which they appear.

(b) The offenses listed in paragraphs (1) - (9) of this subsection are intended to provide guidance only, and are not exhaustive of either the types of offenses that may relate to vehicle inspections or the operation of a vehicle inspection station or those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The disqualifying offenses also include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of a disqualifying offense un-

der the laws of this state. Such offenses also include the "aggravated" or otherwise heightened versions of the offenses listed in paragraphs (1) - (9) of this subsection. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in vehicle inspections or the operation of a vehicle inspection station, the department may find that a conviction not described in this section also renders a person unfit to hold a certificate as a vehicle inspector or vehicle inspection station owner. In particular, an offense that is committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or an offense that is facilitated by licensure as an owner or inspector, will be considered related to the occupation and will render the person unfit to hold the certification.

(1) Arson, Criminal Mischief, and Other Property Damage or Destruction (Texas Penal Code, Chapter 28).

(2) Robbery (Texas Penal Code, Chapter 29).

(3) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30).

(4) Theft (Texas Penal Code, Chapter 31).

(5) Fraud (Texas Penal Code, Chapter 32).

(6) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36).

(7) Perjury and Other Falsification (Texas Penal Code, Chapter 37).

(8) Criminal Homicide (Texas Penal Code, Chapter 19).

(9) Driving Related Intoxication Offenses (Texas Penal Code, Chapter 49).

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3(g) or Article 42A.054, is permanently disqualifying.

(d) A felony conviction for an offense not listed or described in this section that does not relate to the occupation is disqualifying for five years from the date of conviction, pursuant to Texas Occupations Code, §53.021(a)(2).

(e) A Class A misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for five years from the date of conviction.

(f) A Class B misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for two years from the date of conviction.

(g) For purposes of this section, a person is convicted of an offense when an adjudication of guilt or an order of deferred adjudication for the offense is entered against the person by a court of competent jurisdiction.

(h) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a vehicle inspection station certificate holder or vehicle inspector:

(1) The extent and nature of the person's past criminal activity.

(2) The age of the person when the crime was committed.

(3) The amount of time that has elapsed since the person's last criminal activity.

(4) The conduct and work activity of the person before and after the criminal activity.

(5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release.

(6) Letters of recommendation from:

(A) prosecutors, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; or

(C) any other person in contact with the convicted person.

(7) Evidence the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(8) Any other evidence relevant to the person's fitness for the certification sought.

(i) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or 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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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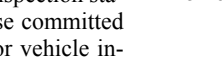

SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC

§23.41 and §23.42 is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 1, 2016, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes amendments to §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. The amendments reflect changes to the attached graphics, including the addition of the center mounted brake light as a required component of the vehicle inspection procedure for stop lamps, along with general updates relating to the vehicle inspection program required by Transportations Code, Chapter 548.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with recent legislative changes and with federal regulations governing vehicle safety equipment.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. Passenger (Non-Commercial) Vehicle Inspection Items.

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)
Figure: 37 TAC §23.41(b)
[~~Figure: 37 TAC §23.41(b)~~]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) may be confirmed by any appropriate combination of the items detailed in this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (2) are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

§23.42. Commercial Vehicle Inspection Items.

(a) All items of inspection enumerated in this section must be inspected in accordance with the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations Manual prior to the issuance of a passing vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 6.
Figure: 37 TAC §23.42(b)

[~~Figure: 37 TAC §23.42(b)~~]

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 June 17, 2016.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) proposes amendments to §23.62, concerning Violations and Penalty Schedule. These amendments reflect updates to language relating to Denial, Revocation, or Suspension of Certificate required by Transportation Code, §548.405.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be consistency with recent legislative changes.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548, and §548.405.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 and §548.405, are affected by this proposal.

§23.62. Violations and Penalty Schedule.

(a) As provided in Texas Transportation Code, §548.405, and in accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) Pursuant to Texas Transportation Code, §548.405(h) and (i), the department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.
Figure: 37 TAC §23.62(b) (No change.)

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(I) Failure to post hours of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station

interface device, or failing to transmit complete and accurate data in the manner required by the department.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emission testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report [~~certificate~~].

(L) Violating a prohibition described in §23.57 [~~§28.57~~] of the title (relating to Prohibitions).

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. [~~After expiration of a period of suspension, reinstatement must be requested by submitting a written application to the department.~~] In addition, to meet all qualifications for the certificate, the certificate holder must [~~the conditions detailed in paragraphs (1) - (4) of this subsection must be met~~]:

[~~(1) all qualifications for appointment;~~]

(1) [~~(2)~~] pass [~~passing~~] the complete written and demonstration test when required;

(2) [~~(3)~~] submit [~~submitting~~] the certification fee if certification has expired during suspension; and

(3) [~~(4)~~] pay [~~paying~~] all charges assessed related to the administrative hearing process, if applicable.

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

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D. Phillip Adkins
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Texas Department of Public Safety
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SUBCHAPTER H. MISCELLANEOUS VEHICLE INSPECTION PROVISIONS

37 TAC §23.82

The Texas Department of Public Safety (the department) proposes the repeal of §23.82, concerning Acceptance of Out-of-State Vehicle Inspection Certificates. This provision was rendered unnecessary by Transportation Code, §548.256 as amended by House Bill 1888, 84th Legislative Session.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be consistency with recent legislative changes.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548 and §548.256.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 and §548.256, are affected by this proposal.

§23.82. Acceptance of Out-of-State Vehicle Inspection Certificates.

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 June 17, 2016.

TRD-201603072

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER I. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES--SPECIAL CONDITIONS

37 TAC §§23.91 - 23.94

The Texas Department of Public Safety (the department) proposes new §§23.91 - 23.94, concerning Military Service Members, Veterans, and Spouses--Special Conditions. This proposal implements the requirements of Occupations Code, Chapter 55, as amended by Senate Bill 1307, 84th Legislative Session, requiring the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with legislative requirements and potentially greater occupational opportunities military service members, military veterans, and military spouses.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Occupations Code, §55.02 which authorizes a state agency that issues a license to adopt rules to exempt an individual who holds a license issued by the agency from an increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

Texas Government Code, §411.004(3), and Occupations Code, §55.02, are affected by this proposal.

§23.91. Exemption from Penalty for Failure to Renew in Timely Manner.

An individual who holds a certificate issued under the Act is exempt from any increased fee or other penalty for failing to renew the certificate in a timely manner if the individual establishes to the satisfaction of the department the individual failed to renew the certificate in a timely manner because the individual was serving as a military service member.

§23.92. Extension of Certificate Renewal Deadlines for Military Members.

A military service member who holds a certificate issued under the Act, is entitled to two (2) additional years to complete:

(1) Any continuing education requirements; and

(2) Any other requirement related to the renewal of the person's certificate.

§23.93. Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) An individual who is a military service member, military veteran, or military spouse may apply for a certificate under this section if the individual:

(1) Holds a current certificate issued by another jurisdiction with licensing requirements substantially equivalent to the Act's requirements for the certificate; or

(2) Within the five (5) years preceding the application date held a certificate in this state.

(b) The department may accept alternative demonstrations of professional competence in lieu of existing experience, training, or educational requirements.

§23.94. Definitions.

For purposes of this subchapter, the terms 'military service member', 'military veteran', and 'military spouse' have the meanings provided in Texas Occupations Code, §55.001.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) proposes amendments to §27.1, concerning Right of Review. These amendments are necessary to reflect current procedures for the personal review of criminal history record information.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rules will be publication of the current procedures for the personal review of criminal history record information.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Angie Kendall, Texas Department of Public Safety, Law Enforcement Support, 5805 N. Lamar Blvd., Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to grant access to criminal history record information to the person who is the subject of the information; and §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department.

Texas Government Code, §§411.004(3), 411.083(b)(3), and 411.086 are affected by this proposal.

§27.1. Right of Review.

(a) It is the policy of the Texas Department of Public Safety (the department) that a person may access and receive a copy of criminal history record information maintained by the department that relates to the person upon payment of a fee as authorized by Texas Government Code, §411.088. [~~A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the Special Correspondence Bureau of the FBI at (304) 625-3878 to review or correct those records.~~] In this section, "criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal criminal charges and their dispositions. This term does not include identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system or driving record information maintained by the department under Texas Transportation Code, Chapter 521, Subchapter C. A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the FBI's Special Correspondence Bureau at (304) 625-3878 to request a copy of their national criminal history record information to review.

(b) A person may schedule a fingerprinting appointment by visiting www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm [~~A person may personally appear at 108 Denson Drive, Austin, Texas 78752 during normal business hours and request their criminal history record information as detailed in this subsection:~~]

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized. [~~The person must present a government issued photo identification document, be fingerprinted by a designee of the department to establish identification and provide the items detailed in this paragraph:~~]

[~~(A) the person's complete name (Last, First, Middle), including any other names used by the person; and~~]

[~~(B) the person's sex, race and date of birth (Month, Day, Year).~~]

(2) Fee. The person must pay the $25 fee via credit card, business check or money order at the time services are rendered. Personal checks and cash are not accepted. [~~The person must remit a personal check, money order, or cash in the amount of $24.95 ($9.95 fingerprint acquisition fee and $15 Texas Record Check Fee per fingerprint submission).~~]

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveIdForFingerprinting.pdf [~~Results will be available for pick up within two business days at 108 Denson Drive, Austin, Texas 78752.~~]

(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days. [~~If a person needs a certified letter to accompany the criminal history response it will be provided upon request.~~]

(c) A person may appear at 108 Denson Drive, Austin, Texas 78752 during department business hours and request to be fingerprinted to obtain their criminal history record information. [~~A person may find appointment and DPS fingerprinting locations, by visiting www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm and provide the items detailed in this subsection:~~]

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized.

[~~(A) the person's complete name (Last, First, Middle), including any other names used by the person; and~~]

[~~(B) the person's sex, race and date of birth (Month, Day, Year).~~]

(2) Fee. The person must pay the $25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted. [~~The person may pay the $24.95 online or over the phone via credit card. In addition, the person may wait to submit payment until the time of fingerprinting via personal check or money order. Cash and credit cards are not accepted at field locations.~~]

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveIdForFingerprinting.pdf [~~At the field location, the person must present a government issued photo identification document and be fingerprinted by a designee of the department to establish identification.~~]

(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days. [~~The criminal history results and a certified letter will be delivered to the address designated during scheduling within 7 to 10 business days.~~]

(d) A person residing out of state can submit their fingerprints by completing the forms and following the instructions for "Fingerprints Submitted By Mail" at www.dps.texas.gov/internetforms/Forms/CR-63.pdf. [~~:~~]

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized. [~~Identification. When attending a law enforcement agency or FAST Provider near you, the person must present a government issued photo identification document and be fingerprinted by a designee of the department to establish identification.~~]

(2) Fee. The person must pay the $25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted. [~~Results. The criminal history results and a certified letter will be delivered to the address designated during scheduling within 10 to 14 business days.~~]

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveIdForFingerprinting.pdf [~~Illegible prints or incomplete information. Fingerprint cards with illegible prints or incomplete information will be returned to the address provided.~~]

(4) Results. Criminal history results will be delivered to the designated address within 10 to 14 business days.

(e) If a person believes criminal history record information maintained by the department [~~relating to the person~~] is incorrect or incomplete, the person may visit: www.dps.texas.gov /admin-

istration/crime_records/pages/errorresolution.htm and complete the required forms.

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 June 17, 2016.

TRD-201603074
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 424-5848

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CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

37 TAC §28.24, §28.31

The Texas Department of Public Safety (the department) proposes amendments to §28.24 and §28.31, concerning CODIS Responsibilities of the Director. Amendments to §28.24 are necessary to ensure compliance with Texas Government Code, §411.147. The amendment to §28.31 is necessary to correct an incorrect reference to statute.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be an increase in public safety by assisting the criminal justice and law enforcement communities in the investigation or prosecution of offenses in which biological evidence is recovered.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Jennifer Howard, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752 or jennifer.howard@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.144(a), which authorizes the director by rule to establish procedures for a DNA laboratory or criminal justice agency in the collection, preservation, shipment, analysis, and use of DNA sample for forensic DNA analysis in a manner that permits the exchange of DNA evidence between DNA laboratories and the use of the evidence in a criminal case and §§411.144(e), 411.147(a), and 411.152(a).

Texas Government Code, §§411.004(3), 411.144(a) and (e), 411.147(a), and 411.152(a) are affected by this proposal.

§28.24. DNA Records Access.

(a) The director may release a DNA sample, analysis, profile, or record, only:

(1) to a criminal justice agency for criminal justice or law enforcement identification purposes;

(2) to a court for a judicial proceeding, if otherwise admissible under law;

(3) to a criminal defendant for defense purposes, if related to the case in which the defendant is charged; or

(4) if personally identifiable information is removed, for:

(A) a population statistics database;

(B) forensic identification research and forensic protocol development; or

(C) quality control.

(b) The director may only release a DNA sample[, ~~analysis or record~~] to a criminal justice or law enforcement agency [~~laboratory~~] for criminal justice or law enforcement purposes through:[.]

(1) the agency's laboratory;

(2) a laboratory used by the agency; or

(3) a laboratory directed by a valid court order.

(c) The director shall maintain a record of requests made under this section. The director may release a record of the number of requests made for a defendant's DNA record and the name of the requesting person.

(d) A file, fingerprint, or other identifying record submitted to the director by Texas Juvenile Justice Department [~~TJJD~~] or a local juvenile probation department under this chapter and relating to or identifying a juvenile shall be maintained separately from adult records. This subsection does not apply to storage or use of a DNA record in the DNA database.

§28.31. Court Order.

If any person subject to this chapter fails or refuses to comply with this chapter or with Government Code, Chapter 411, Subchapter G [~~H~~], the director may request a district or county attorney or the attorney general to seek compliance with the act through a court order.

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

Filed with the Office of the Secretary of State on June 15, 2016.

TRD-201603042
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 31, 2016
For further information, please call: (512) 424-5848

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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 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.3

The Texas Judicial Council withdraws proposed amendments to §§175.1 - 175.3 which appeared in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2259).

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603110
Maria Elena Ramon
General Counsel
Texas Judicial Council
Effective date: June 17, 2016
For further information, please call: (512) 463-1682

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.155

Proposed amended §159.155, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8866), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 15, 2016.

TRD-201603048

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.11

The Texas State Board of Examiners of Psychologists withdraws the proposed amendment to Board rule §465.11, Informed Consent/Describing Psychological Services which appeared in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2669).

Filed with the Office of the Secretary of State on June 13, 2016.

TRD-201602977
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 13, 2016
For further information, please call: (512) 305-7706

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

The Office of the Attorney General, Crime victims Services Division, adopts amendments to Chapter 61, Subchapter E, §§61.402, 61.403, 61.405, and 61.407, and Subchapter I, §61.801, concerning the administration of the OAG's Crime Victims' Compensation Program. The amended sections are adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3361) and will not be republished.

The amendments are adopted in order to increase the limits on compensation for loss of earnings, loss of support, child care, funeral and burial, the costs of cleaning a crime scene and to increase the limit for reimbursement amounts to law enforcement agencies for forensic assault medical examinations.

No comments were received regarding adoption of the amendments during the comment period.

SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.402, 61.403, 61.405, 61.407

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

No other code, article, or statute is affected by this 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 June 15, 2016.

TRD-201603035
Amanda Crawford
General Counsel
Office of the Attorney General
Effective date: July 5, 2016
Proposal publication date: May 13, 2016
For further information, please call: (512) 936-7940

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SUBCHAPTER I. REIMBURSEMENT TO LAW ENFORCEMENT AGENCIES FOR FORENSIC SEXUAL ASSAULT MEDICAL EXAMINATIONS

1 TAC §61.801

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

No other code, article, or statute is affected by this 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 June 15, 2016.

TRD-201603036
Amanda Crawford
General Counsel
Office of the Attorney General
Effective date: July 5, 2016
Proposal publication date: May 13, 2016
For further information, please call: (512) 936-7940

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PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. ADMINISTRATION

Introduction and Background

The Texas Facilities Commission (Commission) adopts amendments to §§111.24, 111.32, 111.40, and 111.41; the repeal of §111.30; and new §111.27 and §111.30 without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2635).

During its rule review, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Commission reviewed and considered Texas Administrative Code, Title 1, Chapter 111 for readoption, revision, or repeal in accordance with the Texas Government Code §2001.039 (West 2008). The Commission determined that the reasons for originally adopting Chapter 111 continued to exist. In addition, the Commission reviewed the rules to determine whether the rules were obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and were in compliance with the Texas Administrative Procedure Act, Texas Government Code Chapter 2001. The Commission determined that Chapter 111 required amendment as well as a new rule that was required due to the passage of Senate Bill 20 by the 84th

Legislature. Accordingly, the Commission proposed the following changes: in Subchapter B, amendment to §111.24 and new §111.27; in Subchapter C, the repeal of §111.30, a new §111.30, and amendment to §111.32; and in Subchapter D, amendments to §111.40 and §111.41. The proposed changes were published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2635).

Justification for the Rules

Section 111.24 concerning the training and education of Commission employees is amended to comply with Texas Government Code §656.048(b) which requires state agencies to adopt rules providing that before an administrator or employee of the agency may be reimbursed under Texas Government Code §656.047(b), the executive head of the agency must authorize the tuition reimbursement payment. The Commission does not currently participate in tuition reimbursement; however, the rule amendment is adopted in accordance with the statutory requirement in case the agency were to ever receive funding to participate in the future.

Section 111.27, a new rule, is adopted in accordance with Texas Government Code §2261.253(c) which states that each state agency, by rule, shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. It also requires that staff immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

The Commission adopts the repeal of §111.30 as it was determined during the rule review that the rule does not reflect the current process of the Commission nor does it provide the information required by Texas Government Code §2152.060. New §111.30 is adopted under Texas Government Code §2152.060(a) to establish methods by which consumers, service recipients and persons contracting with the state may file complaints with the Commission.

The Commission adopts amendments to §111.32, Protests/Dispute Resolution/Hearing, §111.40, Fleet Management, and §111.41, Assignment and Use of Pooled Vehicles, to make clerical changes that will enhance the clarity of the rules.

The Commission received no comments concerning the proposal.

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §111.24, §111.27

Statutory Authority

The amendment and new rule are adopted under Texas Government Code §656.048, which requires a state agency to adopt rules related to training and education of its employees; Texas Government Code §2261.253(c), which requires a state agency to adopt rules related to enhanced contract monitoring; and Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the adopted amendment and new rule are Texas Government Code §656.048 and §2261.253.

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 June 17, 2016.

TRD-201603104
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: July 7, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 475-2400

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SUBCHAPTER C. COMPLAINTS AND DISPUTE RESOLUTION

1 TAC §111.30

Statutory Authority

The repeal is adopted under Texas Government Code §§2001.004(1), 2001.039(c), and 2152.060(a).

Cross Reference to Statute

The statutory provision affected by the adopted repeal is Texas Government Code §2152.060.

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 June 17, 2016.

TRD-201603105
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: July 7, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 475-2400

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1 TAC §111.30, §111.32

Statutory Authority

The new rule and amendment are adopted under Texas Government Code §2152.060(a), which requires the Commission to establish complaint procedures by rule; Texas Government Code §2155.076, which requires state agencies to promulgate by rule vendor protest procedures; and Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the adopted new rule and amendment are Texas Government Code §2152.060 and §2155.076.

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 June 17, 2016.

TRD-201603106
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: July 7, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 475-2400

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SUBCHAPTER D. VEHICLES

1 TAC §111.40, §111.41

Statutory Authority

The amendments are adopted under Texas Government Code §2171.1045, which requires state agencies to adopt rules addressing the assignment and use of agency vehicles, and Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the adopted amendments are Texas Government Code §2171.1045.

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 June 17, 2016.

TRD-201603107
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: July 7, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 475-2400

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER P. EMERGENCY ORDERS FOR WATER UTILITIES

The Public Utility Commission of Texas (commission) adopts amendments to §22.291, relating to Purpose and Applicability; §22.292, relating to Definitions; §22.293, relating to Notification of Emergency Order; §22.295, relating to Request for Emergency Order; §22.296, relating to Additional Requirements for Emergency Rate Increases; §22.297, relating to Notice and Opportunity for Hearing; §22.298, relating to Contents of Emergency Order; and §22.299, relating to Hearing Required to Affirm, Modify, or Set Aside, and the repeal of §22.294, relating to Emergency Orders and Emergency Rates. The amendments to §§22.291 - 22.293 and 22.295 - 22.299 are adopted with changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2050). The amendments and repeal will allow the commission's procedural rules relating to emergency orders to conform to §§2, 3, 5, 6, and 8 - 10 of Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended Chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). These amendments and repeal are adopted under Project Number 45115. Consistent with 1 TAC §91.36(e), the commission also adopts amendments to Chapter 24 of the commission's rules in a separate order as part of this project.

The commission received comments on the proposed amendments and repeal from the Office of Public Utility Counsel (OPUC).

OPUC proposed deletion of the language in §22.297(d) regarding requesting a hearing to affirm, modify, or set aside an emergency order issued pursuant to §22.299. OPUC commented that TWC §13.454 appears to require a hearing, regardless of whether one is requested, and a hearing can only be avoided if it is waived. OPUC stated that, as a result, the language regarding requesting a hearing is surplusage and possibly confusing.

OPUC also commented on the language in §22.297(d)(2) that states an affected person may, consistent with the Administrative Procedure Act, Tex. Gov't Code Ann. (Vernon 2008 & Supp. 2015) (APA), request an evidentiary hearing or waive the right to a hearing. OPUC commented that the proposed language may be confusing. OPUC proposed that the rule should state that a hearing must be conducted in accordance with the APA because the proposed language could be read to state that a request for or a waiver of a hearing must be consistent with the APA.

Based on the above comments, OPUC proposed that §22.297(d) be modified to read as follows: If the commission's executive director issues an emergency order without a hearing, a hearing must be held, consistent with the APA, to affirm, modify, or set aside the emergency order, unless the person affected by the order waives the right to a hearing. The commission shall provide notice of a hearing to affirm, modify, or set aside an emergency order pursuant to §22.299 of this title (relating to Hearing Required to Affirm, Modify, or Set Aside) not later than the tenth day before the date set for the hearing, except as otherwise provided by this subchapter. The notice shall provide that an affected person may waive his or her right to a hearing, if applicable. The notice shall explain how such waiver may occur.

Commission response

The commission agrees with the concerns expressed by OPUC but declines to adopt OPUC's proposed version of §22.297(d). In particular, OPUC's proposed language states that the commission's executive director will issue an emergency order without a prior hearing, but does not acknowledge that such authority can be exercised by the commission itself. The commission finds that the adopted wording better expresses the commission's intent in adopting the amended section.

To address OPUC's concerns and better express the commission's intent, the commission makes the following modifications to the proposed §22.297 as published in the *Texas Register.* The commission amends subsection (d) to remove discussion of a person's request for a hearing. The commission also declines to adopt the proposed subsection (e) from the commission's proposed rule text as published in the *Texas Register.* These modifications reflect the fact that, regardless of whether a hearing is requested, the commission will schedule and hold a hearing to

affirm, modify, or set aside an emergency order issued without a prior hearing.

In addition, as proposed by OPUC, the commission removes "consistent with the APA" from subsection (d). Instead, the commission rearranges subsection (d)(1) and (2) to more clearly indicate when the APA does and does not apply and inserts a sentence in subsection (d)(2) stating that a hearing will be conducted in accordance with the APA. This change adopts the clarification proposed by OPUC.

Consistent with these modifications, §22.297(d), as adopted, states:

(d) If notice and opportunity for a hearing is not practicable, an emergency order may be issued under this section without a hearing.

(1) An emergency order issued without a hearing under this section is not subject to the requirements of the APA.

(2) If an emergency order is issued without a hearing under this section, the commission shall schedule a hearing to affirm, modify, or set aside the emergency order pursuant to §22.299 of this title (relating to Hearing Required to Affirm, Modify, or Set Aside). Such a hearing will be conducted in accordance with the APA. Notice of such a hearing shall be given no later than the tenth day before the date of the hearing and shall provide that an affected person may:

(A)participate in an evidentiary hearing to affirm, modify, or set aside the emergency order; and

(B) waive the right to a hearing. The notice shall explain how such waiver may occur.

The commission also adopts modifications to §22.298(6) - (7) that conform to the above discussion and reflect that waiver of a hearing to affirm, modify, or set aside an emergency order is only an issue if an emergency order is issued without a prior hearing.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes nonsubstantive changes to the wording of §22.296(d) and makes other minor modifications for the purpose of clarifying its intent.

16 TAC §§22.291 - 22.293, 22.295 - 22.299

The amendments are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§22.291. Purpose and Applicability.

(a) The purpose of this subchapter is to prescribe procedures to implement the commission's authority under the Texas Water Code to issue emergency orders or to authorize emergency rates.

(b) This subchapter applies to any request under the Texas Water Code for an emergency order or emergency rates.

§22.292. Definitions.

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

(1) Emergency order--An order which must be issued immediately for one of the reasons provided in §24.14(a) of this title (relating to Emergency Orders and Emergency Rates).

(2) TCEQ--Texas Commission on Environmental Quality.

§22.293. Notification of Emergency Order.

(a) A retail public utility that requests, obtains, or is subject to an emergency order issued by the TCEQ shall notify the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies as soon as reasonably possible by:

(1) filing with the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies a copy of the request or order; or

(2) if the request or order is not available to the retail public utility, filing with the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies a letter describing the facts and circumstances relating to the request or order.

(b) A retail public utility may comply with subsection (a) of this section by providing the information required by subsection (a) of this section as part of a request for an emergency order under §22.295 of this title (relating to Request for Emergency Order) and by providing notice, if applicable, to all other regulatory authorities having original jurisdiction over the retail public utility's rates and service policies.

(c) Upon issuance of an emergency order by the commission, the commission shall provide notice of issuance of the order to the affected retail public utility as soon as practicable. Notice of the commission's action under this subchapter is adequate if the notice or emergency order is delivered by registered or certified mail, return receipt requested, or hand-delivered, to the last known address of the retail public utility's headquarters.

(d) After a retail public utility receives notice of the issuance of an emergency order by the commission under this subchapter, the retail public utility shall provide notice of issuance of the emergency order to all affected ratepayers, the TCEQ, and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies. If the emergency order is for a rate change pursuant to §24.14(a)(4) of this title (relating to Emergency Orders and Emergency Rates), the retail public utility will provide the notice within ten days of the issuance of the emergency order or before the next billing cycle in which the new rate will be imposed, whichever is first. Otherwise, the retail public utility will provide the notice within ten days of the issuance of the emergency order. A copy of the notice shall also be filed with the commission along with a signed affidavit as proof that the notice was provided. The notice shall include:

(1) The name of the retail public utility for which the emergency order was issued, its corresponding certificate of public convenience and necessity number(s), and all relevant TCEQ issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;

(2) The address of the office for the retail public utility identified in paragraph (1) of this subsection;

(3) An emergency contact name and phone number(s) for the retail public utility identified in paragraph (1) of this subsection;

(4) The start and end date of the emergency order; and

(5) A brief statement explaining how the customers of the retail public utility identified in paragraph (1) of this subsection will be affected by the issuance of the emergency order.

(e) If a retail public utility required to provide notice pursuant to subsection (d) of this section has abandoned operation of its facilities or the owner of such a retail public utility has abandoned the system, as described in Texas Water Code §13.412(a)(1) - (2) and (f), then the retail public utility's receiver appointed pursuant to Texas Water Code §13.412 or temporary manager authorized pursuant to Texas Water Code §13.4132 shall provide notice as required by subsection (d) of this section. If no receiver or temporary manager has been appointed or authorized, commission staff shall take reasonable efforts to ensure that customers are provided the notice required by subsection (d) of this section or other reasonable notice.

§22.295. Request for Emergency Order.

(a) A person seeking an emergency order under this subchapter shall submit a written request to the commission.

(b) For a requesting person other than commission staff, the request must:

(1) be sworn;

(2) state whether the requesting person is also seeking or has obtained an emergency order from the TCEQ;

(3) state the name, address, and telephone number of the requesting person, the person submitting the request on the requesting person's behalf, and the person signing the request on the requesting person's behalf;

(4) state the name of the retail public utility, its corresponding certificate of public convenience and necessity number(s), and its corresponding TCEQ issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;

(5) contain information sufficient to identify the facility(ies) and location(s) to be affected by the order;

(6) describe the condition(s) of emergency or other condition(s) justifying the issuance of the order;

(7) allege facts to support any findings required under this subchapter;

(8) estimate the dates on which the proposed order should begin and end and the dates on which the activity proposed to be allowed, mandated, or prohibited should begin and end;

(9) describe the action sought and the activity proposed to be allowed, mandated, or prohibited;

(10) include any other statement or information required by this subchapter; and

(11) shall be signed as follows:

(A) For a corporation, the request shall be signed by an executive officer or by a corporate official who has been delegated appropriate authority by an executive officer.

(B) For a partnership or sole proprietorship, the request shall be signed by a general partner or the proprietor, respectively.

(C) For a municipality, state, federal, or other public agency, the request shall be signed by a person authorized to make the representation(s) contained in the request on behalf of the municipality or agency.

(D) A person signing a request shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the retail water or sewer system(s) or the retail public utility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For a request by commission staff, the request must:

(1) contain the items specified in subsection (b)(2) - (10) of this section; and

(2) be signed by commission staff.

§22.296. Additional Requirements for Emergency Rate Increases.

(a) If an emergency rate increase is granted pursuant to §24.14(a)(4) of this title (relating to Emergency Orders and Emergency Rates), the commission shall schedule a hearing and establish a final rate prior to the expiration of the emergency rate order. The final rate must be established and implemented no more than 15 months after the emergency rate increase takes effect.

(b) A utility is required to provide notice of the hearing to establish a final rate set pursuant to subsection (a) of this section to all customers at least ten days before the date of the hearing. A copy of the notice shall also be filed with the commission along with a signed affidavit as proof that the notice was provided.

(c) A request for an emergency rate increase must be filed by the utility in accordance with, and must contain the information required by §22.295 of this title (relating to Request for Emergency Order) and must also contain the following:

(1) the effective date of the rate increase;

(2) sufficient information to support the computation of the proposed rates; and

(3) any other information requested by the commission.

(d) A utility receiving authorization for an emergency rate increase shall provide notice of the increase to each ratepayer within ten days of issuance of the order, or before the next billing cycle in which the rate will be in effect, whichever is first. The notice shall comply with the notice requirements set forth in §22.293(d) of this title (relating to Notification of Emergency Order) and shall also contain the following:

(1) the utility's name and address, the previous rates, the emergency rates, the effective date of the rate increase, and the classes of utility customers affected; and

(2) this statement: "This emergency rate increase has been approved by the Public Utility Commission of Texas under authority granted by the Texas Water Code §13.4133 to ensure the provision of continuous and adequate service to the utility's customers. The commission is also required to schedule a hearing to establish a final rate within 15 months after the date on which the emergency rates take effect. The utility is required to provide notice of the hearing to all customers at least ten days before the date of the hearing. The additional revenues collected under this emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service."

§22.297. Notice and Opportunity for Hearing.

(a) An emergency order under this subchapter may be issued with or without notice and an opportunity for hearing in accordance with this subchapter.

(b) A law under which the commission acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an emergency order issued pursuant to the Texas Water Code, Chapter 13, Subchapter K-1 unless the law specifically requires notice for an emergency order. The commission shall give notice of the hearing as it determines is practicable under the circumstances.

(c) If notice and opportunity for a hearing is practicable, the commission shall provide the notice not later than the tenth day before the date set for the hearing.

(d) If notice and opportunity for a hearing is not practicable, an emergency order may be issued under this section without a hearing.

(1) An emergency order issued without a hearing under this section is not subject to the requirements of the APA.

(2) If an emergency order is issued without a hearing under this section, the commission shall schedule a hearing to affirm, modify, or set aside the emergency order pursuant to §22.299 of this title (relating to Hearing Required to Affirm, Modify, or Set Aside). Such a hearing will be conducted in accordance with the APA. Notice of such a hearing shall be given no later than the tenth day before the date of the hearing and shall provide that an affected person may:

(A) participate in an evidentiary hearing to affirm, modify, or set aside the emergency order; and

(B) waive the right to a hearing. The notice shall explain how such waiver may occur.

§22.298. Contents of Emergency Order.

An emergency order issued under this subchapter shall contain at least the following:

(1) the name and address of the requesting person, if any, and information sufficient to identify the facility(ies) or location(s) affected by the order;

(2) a description of the condition(s) justifying the issuance of the order;

(3) any finding(s) of fact(s) required under this subchapter;

(4) a statement of the term of the order, including the dates on which it shall begin and end, in accordance with §24.14 of this title (relating to Emergency Orders and Emergency Rates);

(5) a description of the action sought;

(6) if the order was issued without a hearing, a statement to that effect and the procedure by which a person waives a right to a hearing, and if the emergency order was issued pursuant to §24.14(a)(2) - (3) of this title, a provision setting a time and place for a hearing before the commission or SOAH; and

(7) any other statement or information required by this subchapter.

§22.299. Hearing Required to Affirm, Modify, or Set Aside.

(a) A hearing shall be held either before or after the issuance of each emergency order, unless all persons affected by the order waive the right to a hearing. Notice of a hearing to affirm, modify, or set aside an emergency order shall be given in accordance with §22.297(d) of this title (relating to Notice and Opportunity for Hearing).

(b) A hearing to affirm, modify, or set aside an emergency order under this subchapter is subject to the APA.

(c) In a hearing to affirm, modify, or set aside an emergency order under this subchapter, the applicant shall be given the opportunity to:

(1) present evidence under oath;

(2) present rebuttal evidence under oath; and

(3) cross-examine witnesses under oath.

(d) If no hearing is held before the issuance of an emergency order, the commission or the executive director shall set a time and place for a hearing to be held before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued. For emergency orders issued pursuant to §24.14(a)(2) or §24.14(a)(3) of this title (relating to Emergency Orders and Emergency Rates) without a hearing, the order shall set a time and place for a hearing before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued.

(e) At a hearing required under this section, or within a reasonable time after the hearing, the commission shall affirm, modify, or set aside the emergency order.

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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Adriana Gonzales
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For further information, please call: (512) 936-7293

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16 TAC §22.294

The repeal is adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §24.14, relating to Emergency Orders and Emergency Rates, and §24.22, relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871, with changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2054). The amendments will allow the commission's procedural rules relating to emergency orders to conform to §§2, 3, 5, 6, and 8 - 10 of Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). The amendments will also allow provisions relating to notice of ratemaking proceedings in §24.22 to implement §5 and §6 of SB 1148, which grant the commission the authority to delegate to the State Office of Administrative Hearings (SOAH) the responsibility and authority to give reasonable notice of hearings in Class A and Class B rate cases. These amendments are adopted under Project Number 45115. Consistent with 1 TAC §91.36(e), the commission also adopts amendments to Chapter 22 of the commission's rules in a separate order as part of this project.

The commission did not receive comments on the proposed amendments.

In adopting this section, the commission makes minor modifications for the purpose of clarifying its intent.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §24.14

The amendments are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§24.14. Emergency Orders and Emergency Rates.

(a) The commission may issue emergency orders in accordance with the Texas Water Code Chapter 13, Subchapter K-1 under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

(1) to appoint a person under §24.142 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.143 of this title (relating to Operation of a Utility by a Temporary Manager), or Texas Water Code §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the Office of the Texas Attorney General for the appointment of a receiver under Texas Water Code §13.412.

(2) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate retail water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or inactions.

(3) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if discontinuance of service or serious impairment in service is imminent or has occurred.

(4) to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate retail water or sewer service to the utility's customers pursuant to Texas Water Code §13.4133:

(A) for a utility for which a person has been appointed under Texas Water Code §13.4132 to temporarily manage and operate the utility; or

(B) for a utility for which a receiver has been appointed under Texas Water Code §13.412.

(5) to compel a retail public utility to make specified improvements and repairs to the water or sewer system(s) owned or operated by the utility pursuant to Texas Water Code §13.253(b):

(A) if the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area;

(B) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission; and

(C) if the retail public utility has provided financial assurance under Texas Health and Safety Code §341.0355 or Texas Water Code Chapter 13.

(6) to order an improvement in service or an interconnection pursuant to Texas Water Code §13.253(a)(1) - (3).

(b) The commission may establish reasonable compensation for temporary service ordered under subsection (a)(3) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(c) For an emergency order issued pursuant to subsection (a)(4) of this section and in accordance with §22.296 of this title (relating to Additional Requirements for Emergency Rate Increases):

(1) the commission shall coordinate with the TCEQ as needed;

(2) an emergency rate increase may be granted for a period not to exceed 15 months from the date on which the increase takes effect;

(3) the additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service;

(4) the effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission;

(5) any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission;

(6) the utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.31 of this title (relating to Cost of Service); and

(7) during the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(d) The costs of any improvements ordered pursuant to subsection (a)(5) of this section may be paid by bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

(e) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.

(f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days.

(g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued pursuant to subsection (a)(4) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §24.22

The amendments are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.

(a) Purpose. This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice pursuant to TWC §13.187 or §13.1871.

(b) Contents of the application. An application to change rates pursuant to TWC §13.187 or §13.1871 is initiated by the filing of a rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities pursuant to subsection (c) of this section.

(1) The application shall include the commission's rate filing package form and include all required schedules.

(2) The application shall be based on a test year as defined in §24.3(71) of this title (relating to Definitions of Terms).

(3) For an application filed pursuant to TWC §13.187, the rate filing package, including each schedule, shall be supported by pre-filed direct testimony. The pre-filed direct testimony shall be filed at the same time as the application to change rates.

(4) For an application filed pursuant to TWC §13.1871, the rate filing package, including each schedule, shall be supported by affidavit. The affidavit shall be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

(5) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the date(s) of such delivery shall be filed with the commission by the applicant utility as part of the rate change application.

(c) Notice requirements specific to applications filed pursuant to TWC §13.187.

(1) Notice of the application. In order to change rates pursuant to TWC §13.187, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may intervene in the proceeding.

(C) This notice shall state the docket number assigned to the rate application. Prior to the provision of notice, the utility shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.

(d) Notice requirements specific to applications filed pursuant to TWC §13.1871.

(1) Notice of the application. In order to change rates pursuant to TWC §13.1871, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change and to the appropriate offices of each mu-

nicipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice shall be provided using the commission-approved form and shall include a description of the process by which a ratepayer may file a protest pursuant to TWC §13.1871(i).

(C) For Class B utilities, the notice shall state the docket number assigned to the rate application. Prior to providing notice, Class B utilities shall file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the following notice requirements shall apply.

(A) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county.

(B) The utility shall mail notice of the hearing to each affected ratepayer at least 20 days before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the proceeding.

(e) Line extension and construction policies. A request to approve or amend a utility's line extension and construction policy shall be filed in a rate change application under TWC §13.187 or §13.1871. The application filed under TWC §13.187 or §13.1871 must include the proposed tariff and other information requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

(f) Capital improvements surcharge. In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from the customers pursuant to a surcharge to provide funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.

(g) Debt repayments surcharge. In a rate proceeding pursuant to TWC §13.187 or TWC §13.1871, the commission may authorize collection of additional revenues from customers pursuant to a surcharge to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development

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 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to 16 TAC §25.101, relating to Certification Criteria, §25.174, relating to Competitive Renewable Energy Zones, and §25.192, relating to Transmission Service Rates with changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1312). The adopted amendments will implement Senate Bill 776, Senate Bill 933, and House Bill 1535 of the 84th Legislature (R.S.), as well as make modifications to the Competitive Renewable Energy Zones (CREZs) rule. These amendments are adopted under Project Number 45124.

The commission received comments on the proposed amendments from Apex Clean Energy Management, LLC (Apex), CPS Energy, EDF Renewable Energy, Inc., the Electric Reliability Council of Texas (ERCOT), Entergy Texas, Inc. (ETI), the Environmental Defense Fund (EDF), Golden Spread Electric Cooperative, Inc. (Golden Spread), the Lone Star Chapter of the Sierra Club (Sierra Club), Luminant Generation Company, LLC and Luminant Energy Company, LLC (collectively, Luminant), the Office of Public Utility Counsel (OPUC), the Solar Energy Industries Association (SEIA) jointly with the Texas Solar Power Association (TSPA), the Texas Competitive Power Advocates (TCPA), the Texas Industrial Energy Consumers (TIEC), and the Wind Coalition.

Reply comments were received from the Brownsville Public Utilities Board (BPUB), EDF Renewable Energy, ERCOT, Luminant, and TIEC, as well as AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Cross Texas Transmission, LLC, Electric Transmission Texas, LLC, Lone Star Transmission, LLC, Oncor Electric Delivery Company LLC, Sharyland Utilities, L.P., and Texas-New Mexico Power Company jointly (collectively, ERCOT Utilities) and the City of Garland (Garland), Denton Municipal Electric (DME), and Texas Municipal Power Agency (TMPA) jointly.

§25.101 - Certification Criteria

§25.101 - General Comments

ETI proposed improving the efficiency of the transmission line certificate of convenience and necessity (CCN) review process by extending the provision giving weight to ERCOT conclusions regarding need in CCN cases to also give weight to similar findings by other regional transmission operators (RTOs). ETI also proposed adding an option to expedite CCN proceedings for certain customer-driven projects.

In reply comments, TIEC responded that recommendations regarding determinations on need for transmission facilities by RTOs under the jurisdiction of the Federal Energy Regulatory Commission (FERC) should not be given "great weight" because the commission does not have jurisdiction over these

RTOs and therefore cannot control their planning policies as it can for ERCOT. Therefore, TIEC argued that granting the same level of deference to such RTOs is not appropriate. However, TIEC agreed with ETI that expedited proceedings for facilities to interconnect a new retail customer or merchant generators (i.e. customer-driven projects) could be appropriate under certain circumstances.

Commission Response

The purpose of the commission's amendments to this rule is to conform the rule to statutory changes. ETI's proposed changes do not pertain to the statutory changes, and therefore, the commission declines to make the changes proposed by ETI. Furthermore, the commission would require additional information and evaluation of the proposed changes in order to reach a decision on their substantive merits.

§25.101(a)(7) and (b)(4) - Tie Lines

Golden Spread offered a modification to the proposed amendment aimed at maintaining the operational independence of ERCOT from FERC-jurisdictional regions by limiting the definition of a tie line to specifically direct current (DC). Golden Spread also recommended that merchant tie lines, which it asserted are capable of importing and exporting power from ERCOT, be subject to ongoing commission oversight similar to that of power generating companies that import power from outside the state to ERCOT. TIEC acknowledged the complicated nature of the DC tie issue, and recognized the potential for reliability concerns and impacts on market prices. In reply comments, TIEC disagreed with the suggestion by Golden Spread to modify the definition of a tie line, arguing that no changes to the definition of a tie line are necessary or appropriate because the language that the commission has proposed exactly tracks the language of Public Utility Regulatory Act (PURA) §37.051(c-1).

TCPA, Luminant, and ERCOT all proposed amendments to §25.101(b)(4). TCPA and Luminant stated that the physical flows associated with exporting wind may require a careful assessment of generation deliverability for all resources under a spectrum of system conditions, and that additional analyses will likely be needed to properly understand the impact of the proposed DC ties on ERCOT system reliability, economics, and priority dispatching. Luminant asserted that managing transmission congestion in connection with approval of a large tie line is critical and to address such issues proposed the use of Constraint Management Plans (CMPs), as set forth in ERCOT Nodal Operating Guide Section 11. ERCOT stated that it supports the proposed amendments to subsections (b)(3)(A) as well as (b)(4), but requested that the commission further revise subsection (b)(4) to provide additional details on the studies that ERCOT will be required to submit with DC tie CCN applications. ERCOT also made a distinction between the proposed criteria for DC ties and the existing economic and reliability criteria for transmission lines.

TIEC disagreed in its reply comments that a CMP is necessary or appropriate to prevent imports from displacing certain generators, as Luminant and TCPA proposed. ERCOT shared Luminant's concern that integrating DC ties with the security-constrained economic dispatch (SCED) would present a host of implementation challenges that would need to be addressed. However, in its reply comments, ERCOT stated that it would be worthwhile to first conduct an assessment of the costs and benefits of a SCED solution prior to considering other alternatives such as a CMP.

In reply comments, ERCOT reiterated that SB 933 appears to require a finding of need without regard to whether the proposed tie line would be privately or publicly funded, and therefore ERCOT's comments were more narrowly focused on the nature of such a need determination. ERCOT acknowledged that some of the comments implied an understanding that a tie line CCN applicant should be required to first obtain an ERCOT study with an analysis similar to the type of study conducted for the interconnection of new generation, rather than a study of need. ERCOT noted that such a study would be appropriate only if the statutory CCN requirement is understood not to apply to all new tie lines, with the exception of the proposed Southern Cross project which is exempted from the need requirement. However, if the statute does require new tie line developers to first obtain a CCN, as ERCOT assumes, then the analysis of the reliability implications should already be addressed as part of ERCOT's need assessment. ERCOT stated that it would not oppose any clarification that an ERCOT-approved reliability assessment should be required, if desired by the commission. ERCOT also stated that PURA §37.051(c-2) gives the commission authority to impose "reasonable conditions" on the interconnection of the Southern Cross project as part of any CCN proceeding. ERCOT offered a number of issues that should be addressed before the Southern Cross project is permitted to interconnect to the ERCOT system. However, ERCOT stated that it did not understand the statute to require that any or all of these issues must be addressed as part of the Garland CCN proceeding or in this rulemaking if the commission's primary purpose in this proceeding is to establish the general requirements for tie line projects that are subject to the need determination described in PURA §37.051(c-1).

Both Luminant and ERCOT asserted that Golden Spread's proposed changes to the definition of a tie line are unnecessary, but stated that they would have no concern with Golden Spread's alternative request seeking to clarify that the term "tie line" does not include grid-switchable generation. Additionally, ERCOT disagreed in its reply comments with Golden Spread's proposed substitution of the phrase "transfer power into or out of" in place of the proposed phrase "enable traditional power to be imported into or exported out of" ERCOT. ERCOT also recommended against explicitly restricting tie line requirements to direct current ties because DC ties are not the only devices capable of moving power between asynchronous regions. Luminant provided several examples of such non-DC asynchronous interconnections in its reply comments to Golden Spread.

In Luminant's reply comments, it agreed with Golden Spread that merchant owners and operators of tie facilities should be subject to ongoing oversight by the commission and suggested that the commission should open a separate rulemaking project to consider what requirements would be appropriate.

Commission Response

In response to ERCOT's request, the commission has clarified the amendment to subsection (b)(4) to state that the study of the tie line by the ERCOT independent system operator shall, at a minimum, include an ERCOT-approved reliability assessment. The commission has not made other changes in response to these comments regarding tie lines. The amendments appropriately track the language of PURA §37.051(c-1).

§25.101(a) - (c) - Certificates of Convenience and Necessity for an Municipally-Owned Electric Utility (MOU) or Municipal Power Agency (MPA)

Golden Spread offered comments arguing that the difference between municipal borders and service territory boundaries as it relates to the reporting requirements (§25.83) of new electric transmission lines is significant, pointing out that municipal boundaries change with regularity and are not relevant to a utility's service territory. Golden Spread therefore recommended that the commission revise the language to rely on service territories in lieu of municipal boundaries.

CPS Energy stated that affected MOUs and commission staff should work together during the CCN application process in order to avoid the duplication of efforts or conflicts between commission requirements and the MOUs' city governing bodies. CPS Energy also included an exhibit demonstrating its current siting and routing process.

BPUB's reply comments to Golden Spread asserted that the proposed amendments regarding the reporting requirements of new transmission lines outside municipal boundaries are unambiguously consistent with PURA §37.051(g), and that BPUB supports the commission's orderly monitoring of new transmission construction. Garland, DME, and TMPA replied in joint comments that Golden Spread's proposed revisions to subsection (b)(3) should be rejected, because they are contrary to the plain language of the statutory provisions enacted by the Legislature in SB 776.

Commission Response

The commission recognizes that there may be potential benefits in avoiding or mitigating duplicative or conflicting processes as raised in the comments of CPS Energy. However, those issues are not necessary to implement the statutory changes in this proceeding and therefore the commission has not made changes to the proposed amendments in response to these comments. The amendments to subsection (b)(3) appropriately track the language of PURA §37.051(g) and require that MOUs/MPAs adhere to the reporting requirements of §25.83 for certain types of new electric transmission lines, and therefore the commission has not made any changes in response to the comments of Golden Spread.

§25.174 - Competitive Renewable Energy Zones

§25.174 - General Comments

Several parties commented generally on aspects of proposed amendments to §25.174 relating to the commission's authority to designate new CREZs. Apex argued that the commission can refrain from implementing additional CREZ projects after 2007, but that it does not have the ability to repeal its legislatively bestowed CREZ authority. Apex argued that the power to repeal the commission's CREZ authority lies with the Legislature; the commission cannot repudiate statutory duties or accompanying powers delegated to implement those duties, and furthermore an agency rule must be consistent with the statute to be valid. Similarly, Sierra Club asserted that the commission lacks authority to declare through rulemakings that it cannot authorize further transmission projects. Sierra Club further averred that if the commission were to administratively declare that no CREZ can be designated in the future, it would be assuming a legislative function in contradiction of Texas law. Sierra Club, SEIC, EDF, and Apex all asserted that the commission lacks the authority to declare that it cannot authorize further transmission projects under PURA §39.904(g) by changing §25.174 in a rulemaking. Similarly, the Wind Coalition argued that the proposed amendments effectively repeal PURA §39.904.

In addition, several parties commented on SB 931 of the 84th Legislative Session, which proposed to repeal PURA §39.904. EDF Renewable Energy noted that the commission proposed changes to PURA §39.904(h) in its 2015 *Scope of Competition in Electric Markets* Report, but that the Legislature chose not to enact such changes. Sierra Club asserted that the Legislature chose not to act on SB 931, and therefore any attempt by the commission to declare that no future CREZ could be authorized is inappropriate.

Several parties discussed the benefits of retaining the commission's authority to designate future CREZs. Sierra Club argued that future CREZ areas could be beneficial, perhaps supporting the U.S. Environmental Protection Agency's Clean Power Plan regulations and accommodating the expected solar generation growth contemplated in ERCOT's Long Term System Assessment. Apex cited the potential benefits of future CREZ with respect to the large amount of untapped wind capacity, current operational issues with Panhandle wind projects, pending federal emissions regulations, large-scale development of solar in west Texas, shifting energy use, and the increasing pace of coal generation retirements alongside falling natural gas prices. EDF also argued that, in the absence of a repeal of PURA §39.904 by the Legislature, the commission should not amend the rule to conflict with continuing statutory requirements, especially when previous CREZ actions have provided significant benefits.

In reply comments, TIEC argued that CREZ was a one-time mandate, and that the commission has full authority to sunset the CREZ designation process by rule to thus require all future projects to existing CREZs to show need. TIEC argued that some commenters inaccurately contended that the commission lacks the authority to sunset the CREZ process by rule. TIEC further argued that PURA §39.904(g) only requires the commission to initially designate CREZ and develop a single plan to develop transmission capacity. TIEC asserted that this provision does not represent a continuing mandate to designate additional CREZs. EDF Renewable Energy responded that TIEC's argument constitutes too narrow a reading of the statute, and that the statute does not require that all CREZs be designated at the same time, nor is the commission's authority to develop a plan bounded in time.

EDF Renewable Energy asserted that, in the Order on Rehearing adopting the 2008 CREZ Order, potential expansion was identified as a benefit of the CREZ plan and further that the commission in Project No. 34560 anticipated that the CREZ process may also be used for areas outside of ERCOT. EDF Renewable Energy argued that the commission should not adopt TIEC's retroactive declaration, and should decline TIEC's alternative recommendation, which, like the proposed amendments, would remove the commission's discretion to require a need finding for a CREZ project. EDF Renewable Energy argued that the commission should instead preserve the option to apply the need exception only in the event any future CREZ transmission projects are approved.

§25.174(a)

Sierra Club stated that it was supportive of language in §25.174(a), which it stated was clear that the second circuit on the Panhandle is a continuation of CREZ and that the original CREZ projects from 2007 are now completed. Similarly, Apex argued that it may be appropriate to recognize that the first phase of the CREZ implementation is complete, but Apex further asserted the value in maintaining the policy for potential future use, even in modified form. In reply comments, EDF

Renewable Energy also argued that it was important to codify the commission's determination that the second circuit to the Sharyland line in the Panhandle is the last CREZ project under the CREZ plan approved in 2008.

SEIA, TSPA, and EDF argued that the proposed amendments to §25.174(a) would limit the commission's ability to establish a CREZ to those projects arising from the proceedings initiated in 2007. These commenters asserted that this would ignore the commission's continuing obligations pursuant to PURA §39.904(g) and would significantly limit the commission's authority in a time of continuing technological and cost changes in renewable energy.

§25.174(b)

Apex and Sierra Club stated that they opposed the proposed amendments that strike the phrase "and in subsequent years as deemed necessary by the commission" in subsection (b), arguing that this would end any future CREZ by removing the commission's CREZ authority altogether. Sierra Club argued that this change, together with the proposed language in §25.101(b)(3)(A)(i) eliminating the current exception to a requirement for an economic cost-benefit study for CREZ transmission, would eliminate a valuable policy tool and force all future CREZ projects to pass a narrow economic test.

TIEC argued that in order to implement the commission's intent to sunset the exemption from the need criteria for transmission projects intended to serve a CREZ, subsection (b) should be amended to affirmatively ensure that all future transmission projects will require a need finding. To accomplish this, TIEC recommended striking the entirety of the language that the "commission shall consider" CREZs, and instead add proposed language to establish that the designation of CREZs shall be completed by January 1, 2009.

TCPA asserted that CREZ is a complete project, and that all future transmission should be evaluated through the standard planning process, after passing all economic or reliability evaluations. TCPA asserted that the proposed amendment in subsection (b) that removes the language referencing years subsequent to 2007 is appropriate and adequately addresses the concerns and direction expressed by the commission.

§25.174(e)(2)

Several commenters offered alternate language which attempts to better clarify the phrase, "...transmission project intended to serve CREZ" rather than striking that language completely. The Wind Coalition argued that the commission should amend the rule to make clear that this phrase has a limited and specific meaning: only those projects intended by the commission to serve a CREZ, which would be indicated in an order approving a transmission plan under PURA §39.904(g)(2). The Wind Coalition argued that this would eliminate the concern that any project in a CREZ area or any project intended by a CCN applicant could be considered a project "to serve a CREZ."

SEIA and TSPA argued that the proposed amendments conflict with statutory requirements. SEIA and TSPA asserted that PURA §39.904(h) exempts a transmission line proposed to serve a CREZ from the requirements of PURA §37.056(c)(1) and (2), which require the commission to review the adequacy of existing transmission service and the need for additional transmission service before granting a CCN. SEIA and TSPA stated that, despite language that they believe is clear in the statute, the commission's proposed repeal of the exemption of a proposed CREZ transmission line from the requirements of §25.101(b)(3)(A) and the proposed amendments in §25.174(e)(2) would require a transmission line proposed to serve a CREZ to comply with requirements of PURA §37.056(c)(1) and (2). Similarly, EDF argued that the proposed amendments would require a future applicant for a CREZ transmission line to meet the need criteria from which it should be exempt under PURA §39.904(h). EDF further asserted that the proposed amendments in §25.174(e)(2) are also inconsistent with the exemption provided by PURA §39.904(h). The Wind Coalition argued that the proposed language would erase all distinction between CREZ and non-CREZ projects in PURA §39.904(h) and that it would repeal the commission's authority to consider any future CREZ.

EDF Renewable Energy stated that it interprets the commission's objective to be that, after the Panhandle second circuit, all future CCN applications for transmission lines in a CREZ must address the need criteria in PURA §37.056(c)(1) and (2). To effectuate this, EDF Renewable Energy proposed alternative language in §25.174(e)(2) that a transmission project is intended to serve a CREZ only if it is part of a plan approved by the commission to develop transmission capacity. In its reply comments, EDF Renewable Energy noted that EDF, SEIA, and TSPA recommended that the commission take no action and simply reject the proposed amendments, seeing no need to repeal or significantly limit the current rules regarding CREZ. EDF Renewable Energy asserted that a "no action" approach is not unreasonable, but it also maintained that it is appropriate to amend §25.174(e)(2) to end any possible arguments that broadly worded language in PURA §39.904(h) confers an ongoing right to build CREZ without showing need under PURA §37.056(c)(1) and (2).

Apex argued that the proposed amendments in subsections (a) and (e)(2) are sufficient to achieve the commission's goal of affirming the completion of the projects arising from the 2008 CREZ Order. Apex asserted that going beyond this to remove the commission's CREZ authority would be an overreach of the commission's administrative authority and that such action conflicts with PURA.

SEIA, TSPA, and EDF recommended rejecting the proposed amendments to §25.101 and §25.174 that relate to the CREZ and the development of transmission projects to serve those regions.

TIEC argued that the proposed amendments could be read to allow for future designations of new CREZs without a firm end date. TIEC argued that the rule as amended leaves open the possibility that the commission could designate a new CREZ plan in a future proceeding, thus restarting the three-year window for exemptions from need contemplated in subsection (e)(1). TIEC proposed making clear that all future transmission investment demonstrate need, regardless of whether the project interconnects to a CREZ. TIEC asserted that it does not interpret PURA §39.904 as permitting any future CREZ proceedings, and that PURA §39.904(h) gives the commission permission to require a need finding for a CREZ project. TIEC argued that, in the alternative, the rule could be clarified to ensure that all projects filed outside the original three-year window from the prior CREZ designation docket be required to show need, and TIEC proposed language to this effect. In addition, TIEC noted a non-substantive typographical error in proposed subsection (e)(2).

In reply, EDF Renewable Energy argued that TIEC's recommendations are not necessary to fulfill the commission's stated intention and furthermore that to sunset CREZ affirmatively by rule is not appropriate.

Commission Response

The commission believes that its proposed amendments would appropriately affirm that the CREZ Order in Docket No. 33672 is complete, following the addition of the second circuit on the Sharyland Panhandle line, and indicate that all future transmission projects intended to serve a CREZ will be required to address the criteria in PURA §37.056(c)(1) and (2). The commission agrees with the comments of TIEC that by stating that, "the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2)," PURA §39.904(h) grants the commission discretion to require that projects intended to serve a CREZ demonstrate findings of adequacy and need. The proposed amendments to the rule exercise this discretion by requiring that these factors be demonstrated in future projects intended to serve a CREZ. In exercising this discretion, the commission has chosen not to adopt proposed alternatives that would perpetuate the exemption for projects intended to serve a CREZ from addressing PURA §37.056(c)(1) and (2). Because the commission will require that PURA §37.056(c)(1) and (2) be addressed in future transmission projects intended to serve a CREZ, the commission need not reach the issue of whether it has the legal authority to designate additional CREZs pursuant to PURA §39.904(g). In addition as recommended by TIEC, the commission has corrected a non-substantive typographical error in subsection (e)(2).

§25.192 - Transmission Service Rates

§25.192(h) - Accumulated Deferred Federal Income Tax (ADFIT)

OPUC and TIEC recommended that subsection (h) be amended to reflect an updated balance for accumulated deferred federal income tax (ADFIT), which are assets or liabilities that are characterized as the difference between book accounting and income tax accounting and represent a source of cost-free capital to the utility that also benefits shareholders. TIEC noted that the current rule requires utilities to reflect the impact of certain offsetting cost decreases or revenue increases that benefit customers when they update their rates to include new investments, and that commission staff accurately observed in its strawman that ADFIT adjustments are not included in the current transmission cost of service (TCOS) filing requirements. OPUC and TIEC argued that if the ADFIT balance is not updated, it could potentially overstate the interim transmission revenue requirement to be recovered in transmission rates, and thus result in artificially high customer rates. TIEC stated that reflecting changes to ADFIT will help to ensure that utilities do not over-earn in between full rate cases, which TIEC asserted has been a significant problem in recent years. OPUC provided language which would include ADFIT balances in subsection (h)(1).

ERCOT Utilities replied that including ADFIT inappropriately expands what is intended to be a limited proceeding to ensure timely recovery of transmission investment and could result in an increased cost of capital. They stated that the current rule has been well established for over fifteen years and that investors have come to rely on it as part of the regulatory scheme in Texas. In addition, ERCOT Utilities argued that requiring an update to ADFIT would ultimately have an adverse effect on the ability of utilities to acquire capital, and thus in the long run raise rates to end-use customers. ERCOT Utilities referenced Project Number 37519, in which they argued that the commission recognized the importance of interim TCOS to the cost of capital, explaining that the interim TCOS filings "enhance the ability of Transmission Service Providers (TSPs) to achieve their authorized rates of return and improve their cash ratios, thereby strengthening their financial positions and improving their access to capital at reasonable rates during a time of significant expansion in transmission infrastructure." They argued that for these reasons, utilities' ability to update TCOS on an interim basis has been viewed positively by the investment community, which have described the Texas regulatory environment as "supportive and constructive" and the interim TCOS mechanism as one that "enhances the predictability and stability of (a utility's) cash flows, a credit positive." ERCOT Utilities stated that the investment community has warned that a rating could be downgraded if a contentious regulatory environment were to develop in Texas over a prolonged period of time.

ERCOT Utilities stressed that each transmission and distribution service provider (TDSP) and TSP has had its rates set at least once through a full rate case since the provisions of §25.192 were adopted. Thus, the cost of equity in existing rates has been based upon a regulatory regime that has included the impact to utility revenue and finances of §25.192 as it currently exists. They argued that any significant change to the current calculation requirements reduces the revenue recovery amount and impacts the timely recovery of such revenues, increases risk, and makes it more difficult for the utilities to earn their authorized return. Furthermore, ERCOT Utilities asserted that such uncertainty would result in a total cost higher than the reduction in interim TCOS revenues due to the increased risk of recovery resulting from a higher cost of debt, raising cost for end-use customers. The ERCOT Utilities further stated that the commission has specifically provided in subsection (h)(3) that it will consider the effects of the interim updates when assessing the TSP's financial risk and rate of return in a rate case. They submitted that there is no reason to modify a robust interim TCOS mechanism, the evaluation of which is reflected in each utility's rate of return. They argued that this mechanism has allowed the utilities in Texas to fund necessary transmission projects for both traditional transmission projects during a period of increasing growth, as well as billions of dollars in CREZ transmission projects. The ERCOT Utilities concluded that, for these reasons, no change should be made to include ADFIT.

Commission Response

The purpose of the commission's amendments to this rule is to conform the rule to statutory changes. OPUC's and TIEC's proposed changes do not pertain to the statutory changes, and therefore the commission does not make any changes in response to these comments. Furthermore, the commission would require additional information and evaluation of the proposed changes in order to reach a decision on their substantive merits.

§25.192(h) - Interim Transmission Cost of Service (TCOS) Update

TIEC recommended that the commission amend subsection (h) to require that each TSP file an interim TCOS update once every 36 months. TIEC averred that TSPs currently have a unilateral discretion over the timing of filing a TCOS update, which allows TSPs to selectively file updates when they can justify a rate increase, but not when they expect a rate decrease. TIEC noted that some TSPs have continued to collect the same transmission rates from customers for decades while the underlying investments depreciate or are retired and no new investments

are made. As a result, TIEC stated that TCOS charges in Texas are likely significantly inflated relative to the utilities' actual cost of service, and this concern is particularly heightened given the recent large increases in transmission rates due to CREZ and several billion dollars of reliability upgrades in ERCOT. TIEC argued that requiring periodic TCOS updates would provide a check on these ever-increasing transmission rates. TIEC stated that a mandatory TCOS update would allow customers to realize some savings from depreciation, plant retirements, and other factors that increase utility revenues or decrease costs. TIEC noted that requiring periodic TCOS updates should not create a significant burden on either the utilities or the commission, as TCOS updates tend to be processed administratively with little or no controversy.

In reply comments, ERCOT Utilities asserted that such an amendment would increase filings made by TSPs when no adjustment to their rates is necessary. ERCOT Utilities argued that the purpose of the interim TCOS process is to reduce regulatory lag by allowing utilities to place capital expenditures into rates in a more timely manner after they become used and useful than would be possible if all rate changes needed to be processed through a full base rate case. ERCOT Utilities asserted that any rates established in an interim TCOS are subject to a prudence review, true-up, and possible refund when the utility files a full rate case. ERCOT Utilities argued that TIEC's proposal belies this process by requiring an arbitrary filing unrelated to the very purpose of the rule. They stated that the interim TCOS process is not intended to be a periodic review of a utility's transmission assets, as TIEC suggests with its proposed language. ERCOT Utilities questioned TIEC's rationale that three years is the appropriate amount of time between interim TCOS proceedings. They reasoned that while one utility could have a substantial investment during a 36-month period and file multiple interim TCOS cases, another utility could have no new transmission projects for a 36-month period. The ERCOT Utilities reasoned that including such an arbitrary requirement will needlessly increase the amount of filings made by utilities whose rates do not need to be updated, and ultimately will only increase costs to ratepayers.

ERCOT Utilities further asserted that TIEC's claim that TSP's have "unilateral discretion" over when to change rates is simply not true. They stated that each year utilities file an earnings-monitoring report, and furthermore that the commission has the authority to require a utility to file a rate case if the utility is overearning. The ERCOT Utilities added that TIEC's suggestion will increase uncertainty surrounding transmission rates. They reasserted that the interim TCOS mechanism is well established and currently viewed favorably by the capital markets, and TIEC's proposed requirement would be detrimental to the utilities and ratepayers.

Commission Response

The purpose of the commission's amendments to this rule is to conform the rule to statutory changes. TIEC's proposed changes do not pertain to the statutory changes, and therefore the commission does not make any changes in response to these comments. Furthermore, the commission would require additional information and evaluation of the proposed changes in order to reach a decision on their substantive merits.

§25.192 - General Comments Regarding Strawman Proposals

TIEC included in its comments certain changes that were proposed in the strawman but omitted from the proposed amendments, including deleting an obsolete reference to the initial implementation of §25.193, and making clarifications regarding the transmission facilities and load growth revenues that must be included in the TCOS filings.

In reply comments, ERCOT Utilities noted that the proposals made by TIEC and OPUC regarding the interim TCOS mechanism, save one, were made during the strawman process and were ultimately not included by the commission in the proposal published in the *Texas Register.* They argued that the strawman process is designed to provide the commission with comments in order to, among other things, determine the scope of the rulemaking and the issues that the commission believes should be part of the formal process. ERCOT Utilities referenced a filing in Project No. 30088 in which commission staff noted that it utilizes comments to the strawman to identify important issues and make necessary changes before a rule is formally proposed for publication. ERCOT Utilities argued that many parties commented on the Strawman's possible amendments to §25.192 and that based on those comments, the commission determined that the scope of this rulemaking should not include the proposed amendments suggested by OPUC and TIEC regarding ADFIT, ERCOT exports, filing frequency, or changes to FERC accounts. ERCOT Utilities stated that if the strawman process is to properly assist the commission in formulating the scope and content of a rulemaking, and if the commission's actions in response to that process are to be meaningful, then the commission should reject TIEC's and OPUC's comments as falling outside the scope of this rulemaking. ERCOT Utilities argued that to do otherwise would render the strawman process far less useful, greatly reduce administrative efficiency, and introduce uncertainty in developing the scope of the issues. They noted that the Texas Legislature adopted various amendments to PURA during the 84th Legislative Session, including those found in SB 933, SB 776, and HB 1535, the three bills that gave rise to the instant project, and the scope of the proposed amendments are appropriately limited to matters mandated by the Texas Legislature. ERCOT Utilities commented that more specifically, while the implementation of these amendments may require changes to the commission's rule on transmission rates found in §25.192, as that rule relates to municipally owned utilities, nothing in the referenced laws explicitly changed--or even implied that any changes were necessary - to the way the commission currently calculates interim transmission rates for other TDSPs and TSPs in ERCOT. They argued that OPUC's and TIEC's suggestions go beyond implementing the Legislature's changes to PURA, and burden an already complex rulemaking with issues not germane to the notice of these proposed rule amendments.

ERCOT Utilities added that the Legislature recently provided the commission guidance on alternative rate mechanisms through Senate Bill 744, which amended PURA §36.210 to continue periodic rate adjustments for electric utility distribution investments under PURA until 2019, and required the commission to study the gamut of alternative ratemaking mechanisms and report the results of the study to the Legislature. They argued that in view of this upcoming study, it is premature to make substantive changes to existing ratemaking mechanisms before the commission concludes its report. The ERCOT Utilities concluded that, because the Legislature has not directed proposed changes to the calculation of interim transmission rates, the commission should limit this proceeding to the statutory changes and wait until the referenced report is finalized.

The ERCOT Utilities argued additionally that OPUC's and TIEC's comments are clearly outside the scope of the proposed rule,

and modifying the rule could raise significant concerns under the notice requirements of the Texas Administrative Procedures Act (APA).

Commission Response

The purpose of the commission's amendments to this rule is to conform the rule to statutory changes. TIEC's proposed changes do not pertain to the statutory changes, and therefore the commission does not make any changes to the rule in response to these comments. Furthermore, the commission would require additional information and evaluation of the proposed changes in order to reach a decision on their substantive merits.

§25.192(h)(1) - FERC Account Balances

TIEC proposed adding language to describe the transmission facilities that are to be included in an interim update to transmission rates as those "properly recorded in FERC plant accounts 350-359." The ERCOT Utilities responded that current industry practice is to include all transmission plant that is functionalized to transmission in an interim TCOS. They pointed out that portions of FERC accounts 360-362 are functionalized to transmission and properly included in an interim TCOS, and, consistent with this practice, the interim TCOS Filing Instructions identify the FERC accounts to be included in the filing as FERC accounts 350-362 rather than only 350-359. The ERCOT Utilities stated that, additionally, transmission cost of service is described in subsection (c) as including the "commission-allowed rate of return based on FERC plant accounts 350-359 (or accounts with similar contents or amounts functionalized to the transmission function)." The ERCOT Utilities argued that if subsection (h)(1) is amended to specifically identify FERC plant accounts, it should be amended to identify FERC accounts 350-362 and include the parenthetical "(or accounts with similar contents or amounts functionalized to the transmission function)" for consistency and clarity.

TIEC additionally proposed language to require transmission revenues consistent with the proposed rates and properly recovered under subsection (e), which governs transmission rates for exports from ERCOT. In reply comments, the ERCOT Utilities commented that TIEC's proposed amendment would require revenue from the transmission of electricity out of the ERCOT region over the DC ties to be credited as a reduction in a TSP's TCOS. They argued that this change has no relation to the statutory changes and if changes to the manner in which the interim TCOS reflects revenues from ERCOT exports are necessary, the issue should be studied outside of this rulemaking. ERCOT Utilities stated that the relative costs of collection, compared to revenue received by each TDSP, may drive a collection mechanism different from the point-to-point billing that transmission and distribution providers use for other transmission charges. They commented that the ability of ERCOT to track the transaction may help to determine the manner of revenue collection, so alternatives should be explored prior to changing the way export revenues are treated in the interim TCOS filing.

Commission Response

The purpose of the commission's amendments to this rule is to conform the rule to statutory changes. TIEC's proposed changes do not pertain to the statutory changes, and therefore the commission does not make any changes to the rule in response to these comments. Furthermore, the commission would require additional information and evaluation of the proposed changes in order to reach a decision on their substantive merits.

All comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.101

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.009, which entitles an MOU to recover payments in lieu of ad valorem taxes; PURA §37.051, which requires certificates of convenience and necessity (CCNs) for MOUs or MPAs constructing transmission facilities outside of their boundaries and for persons interconnecting tie line facilities to the ERCOT transmission grid; PURA §37.058, which requires CCNs for electric generating facilities of non-ERCOT utilities; and PURA §39.904, which authorizes the commission to designate CREZs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 37.051, 37.058, and 39.904.

§25.101. Certification Criteria.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) Construction and/or extension--Shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way shall not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction and/or extension is necessary for the service, accommodation, convenience, or safety of the public.

(2) Generating unit--Any electric generating facility. This section does not apply to any generating unit that is less than ten megawatts and is built for experimental purposes only.

(3) Habitable structures--Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to: single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.

(4) Municipal Power Agency (MPA)--Agency or group created under Texas Utilities Code, Chapter 163 - Joint Powers Agencies.

(5) Municipal Public Entity (MPE)--A municipally owned utility (MOU) or a municipal power agency.

(6) Prudent avoidance--The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.

(7) Tie line--A facility to be interconnected to the Electric Reliability Council of Texas (ERCOT) transmission grid by a person, including an electric utility or MPE, that would enable additional power to be imported into or exported out of the ERCOT power grid.

(b) Certificates of convenience and necessity for new service areas and facilities. Except for certificates granted under subsection (e) of this section, the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies

with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission shall render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

(1) Change in service area. Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated.

(A) Uncontested applications: An application for a certificate under this paragraph shall be approved administratively within 80 days from the date of filing a complete application if:

(i) no motion to intervene has been filed or the application is uncontested;

(ii) all owners of land that is affected by the change in service area and all customers in the service area being changed have been given direct mail notice of the application; and

(iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions shall be approved administratively within 45 days of the filing of the application provided that:

(i) every utility whose certificated service area is affected agrees to the change;

(ii) all customers within the affected area have given prior consent; and

(iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(2) Generation facility.

(A) In a proceeding involving the purchase of an existing electric generating facility by an electric utility that operates solely outside of ERCOT, the commission shall issue a final order on a certificate for the facility not later than the 181st day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(B) In a proceeding involving a newly constructed generating facility by an electric utility that operates solely outside of ERCOT, the commission shall issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(3) Electric transmission line. All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports). This reporting requirement is also applicable to new electric transmission lines to be constructed by an MPE seeking to directly or indirectly construct, install, or extend a transmission facility outside of its applicable boundaries. For an MOU, the applicable boundaries are the municipal boundaries of the municipality that owns the MOU. For an MPA, the applicable boundaries are the municipal boundaries of the public entities participating in the MPA.

(A) Need:

(i) Except as stated below, the following must be met for a transmission line in the ERCOT power region. The applicant must present an economic cost-benefit study that includes an analysis that shows that the levelized ERCOT-wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part. Indirect costs and benefits to the transmission system may be included in the cost-benefit study. The commission shall give great weight to such a study if it is conducted by the ERCOT independent system operator. This requirement also does not apply to an application for a transmission line that is necessary to meet state or federal reliability standards, including: a transmission line needed to interconnect a transmission service customer or end-use customer; or needed due to the requirements of any federal, state, county, or municipal government body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air or water quality.

(ii) For a transmission line not addressed by clause (i) of this subparagraph, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust wholesale competition. The commission shall give great weight to:

(I) the recommendation of an organization that meets the requirement of PURA §39.151; and/or

(II) written documentation that the transmission line is needed to interconnect a transmission service customer or an end-use customer.

(B) Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

(i) whether the routes parallel or utilize existing compatible rights-of-way for electric facilities, including the use of vacant positions on existing multiple-circuit transmission lines;

(ii) whether the routes parallel or utilize other existing compatible rights-of-way, including roads, highways, railroads, or telephone utility rights-of-way;

(iii) whether the routes parallel property lines or other natural or cultural features; and

(iv) whether the routes conform with the policy of prudent avoidance.

(C) Uncontested transmission lines: An application for a certificate for a transmission line shall be approved administratively within 80 days from the date of filing a complete application if:

(i) no motion to intervene has been filed or the application is uncontested; and

(ii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing

requirements, including, but not limited to, the provision of proper notice of the application.

(D) Projects deemed critical to reliability. Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.

(4) Tie line. An application for a tie line must include a study of the tie line by the ERCOT independent system operator. The study shall include, at a minimum, an ERCOT-approved reliability assessment of the proposed tie line. If an independent system operator intends to conduct a study to evaluate a proposed tie line or intends to provide confidential information to another entity to permit the study of a proposed tie line, the independent system operator shall file notice with the commission at least 45 days prior to the commencement of such a study or the provision of such information. This paragraph does not apply to a facility that is in service on December 31, 2014.

(c) Projects or activities not requiring a certificate. A certificate, or certificate amendment, is not required for the following:

(1) A contiguous extension of those facilities described in PURA §37.052;

(2) A new electric high voltage switching station, or substation;

(3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies shall proceed without delay or prior approval of the commission and shall be reported to the commission in accordance with §25.83 of this title;

(4) The construction or upgrading of distribution facilities within the electric utility's service area;

(5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs shall be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:

(A) The modification or extension of an existing transmission line solely to provide service to a substation or metering point provided that:

(i) an extension to a substation or metering point does not exceed one mile; and

(ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(B) The rebuilding, replacement, or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or reconductoring of an existing transmission facility, provided that:

(i) no additional right-of-way is required; or

(ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.

(C) The installation, on an existing transmission line, of an additional circuit not previously certificated, provided that:

(i) the additional circuit is not greater than 230 kV; and

(ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(D) The relocation of all or part of an existing transmission facility due to a request for relocation, provided that:

(i) the relocation is to be done at the expense of the requesting party; and

(ii) the relocation is solely on a right-of-way provided by the requesting party.

(E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.

(F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air and water quality, provided that:

(i) all landowners of property crossed by the electric facilities have given prior written consent; and

(ii) the relocation, alteration, or reconstruction is responsive to the governmental request.

(6) Upgrades to an existing transmission line by an MPE that do not require any additional land, right-of-way, easement, or other property not owned by the MOU;

(7) The construction, installation, or extension of a transmission facility by an MPE that is entirely located not more than 10 miles outside of an MOU's certificated service area that occurs before September 1, 2021; or

(8) A transmission facility by an MOU placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, an MOU was contractually obligated to purchase at least 190 megawatts of capacity.

(d) Standards of construction and operation. In determining standard practice, the commission shall be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

(1) The standards of construction shall apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.

(2) For electric transmission line construction requiring the acquisition of new rights-of-way, electric utilities must include in the easement agreement, at a minimum, a provision prohibiting the new construction of any above-ground structures within the right-of-way. New construction of structures shall not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting

structures, small personal storage sheds, or similar structures. Utilities may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.

(3) Measures shall be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures shall be adapted to the specifics of each project and may include such requirements as:

(A) selective clearing of the right-of-way to minimize the amount of flora and fauna disturbed;

(B) implementation of erosion control measures;

(C) reclamation of construction sites with native species of grasses, forbs, and shrubs; and

(D) returning site to its original contours and grades.

(e) Certificates of convenience and necessity for existing service areas and facilities. For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1, 1975, unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes:

(1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.

(2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.

(3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

(f) Transferability of certificates. Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission.

(g) Certification forms. All applications for certificates of convenience and necessity shall be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

(h) Commission authority. Nothing in this section is intended to limit the commission's authority to recommend or direct the construction of transmission under PURA §§35.005, 36.008, or 39.203(e).

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 H. ELECTRICAL PLANNING
DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.174

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.009, which entitles an MOU to recover payments in lieu of ad valorem taxes; PURA §37.051, which requires certificates of convenience and necessity (CCNs) for MOUs or MPAs constructing transmission facilities outside of their boundaries and for persons interconnecting tie line facilities to the ERCOT transmission grid; PURA §37.058, which requires CCNs for electric generating facilities of non-ERCOT utilities; and PURA §39.904, which authorizes the commission to designate CREZs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 37.051, 37.058, and 39.904.

§25.174. Competitive Renewable Energy Zones.

(a) Competitive Renewable Energy Zone Transmission Projects. In considering an application for a certificate of convenience and necessity (CCN) or CCN amendment for the addition of a second 345-kilovolt (kV) circuit on the Alibates-AJ Swope-Windmill-Ogallala-Tule Canyon transmission line, the commission is not required to consider the factors under Public Utility Regulatory Act (PURA) §37.056(c)(1) and (2).

(b) Designation of Competitive Renewable Energy Zones. The designation of Competitive Renewable Energy Zones (CREZs) pursuant to PURA §39.904(g) shall be made through one or more contested-case proceedings initiated by commission staff, for which the commission shall establish a procedural schedule. The commission shall consider the need for proceedings to determine CREZs in 2007.

(1) Commission staff shall initiate a contested case proceeding upon receiving the information required by paragraph (2) of this subsection. Any interested entity that participates in the contested case may nominate a region for CREZ designation. An entity may submit any evidence it deems appropriate in support of its nomination, but it shall include information prescribed in paragraph (2)(A) - (C) of this subsection.

(2) By December 1, 2006, the Electric Reliability Council of Texas (ERCOT) shall provide to the commission a study of the wind energy production potential statewide, and of the transmission constraints that are most likely to limit the deliverability of electricity from

wind energy resources. ERCOT shall consult with other regional transmission organizations, independent organizations, independent system operators, or utilities in its analysis of regions of Texas outside the ERCOT power region. At a minimum, the study submitted by ERCOT shall include:

(A) a map and geographic descriptions of regions that can reasonably accommodate at least 1,000 megawatts (MW) of new wind-powered generation resources;

(B) an estimate of the maximum generating capacity in MW that each zone can reasonably accommodate and an estimate of the zone's annual production potential;

(C) a description of the improvements necessary to provide transmission service to the region, a preliminary estimate of the cost, and identification of the transmission service provider (TSP) or TSPs whose existing transmission facilities would be directly affected;

(D) an analysis of any potential combinations of zones that, in ERCOT's estimation, would result in significantly greater efficiency if developed together; and

(E) the amount of generating capacity already in service in the zone, the amount not in service but for which interconnection agreements (IAs) have been executed, and the amount under study for.

(3) The Texas Department of Parks and Wildlife may provide an analysis of wildlife habitat that may be affected by renewable energy development in any candidate zone, and may submit recommendations for mitigating harmful impacts on wildlife and habitat.

(4) In determining whether to designate an area as a CREZ and the number of CREZs to designate, the commission shall consider:

(A) whether renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(B) the level of financial commitment by generators; and

(C) any other factors considered appropriate by the commission as provided by PURA, including, but not limited to, the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone, and the estimated benefits of renewable energy produced in the candidate zone.

(5) The commission shall issue a final order within six months of the initiation by commission staff of a CREZ proceeding, unless it finds good cause to extend the deadline. For each new CREZ it orders, the commission shall specify:

(A) the geographic extent of the CREZ;

(B) major transmission improvements necessary to deliver to customers the energy generated by renewable resources in the CREZ, in a manner that is most beneficial and cost-effective to the customers, including new and upgraded lines identified by voltage level and a general description of where any new lines will interconnect to the existing grid;

(C) an estimate of the maximum generating capacity that the commission expects the transmission ordered for the CREZ to accommodate; and

(D) any other requirement considered appropriate by the commission as provided by PURA.

(6) The commission may direct a utility outside of ERCOT to file a plan for the development of a CREZ in or adjacent to its service area. The plan shall include the maximum generating capacity that each potential CREZ can reasonably accommodate; identify the transmission improvements needed to provide service to each CREZ; and include the cost of the improvements and a timetable for complying with all applicable federal transmission tariff requirements.

(c) Level of financial commitment by generators for designating a CREZ.

(1) A renewable energy developer's existing renewable energy resources, and pending or signed IAs for planned renewable energy resources, leasing agreements with landowners in a proposed CREZ, and letters of credit representing dollars per MW of proposed renewable generation resources, posted with ERCOT, that the developer intends to install and the area of interest are examples of financial commitment by developers to a CREZ. The commission may also consider projects for which a TSP, ERCOT, or another independent system operator is conducting an interconnection study; and any other factors for which parties have provided evidence as indications of financial commitment.

(2) A non-utility entity's commitment to build and own transmission facilities dedicated to delivering the output of renewable energy resources in a proposed CREZ to the transmission system of a TSP in Texas or a deposit or payment to secure or fund the construction of such transmission facilities by an electric utility or a transmission utility to deliver the output of a renewable generation project in Texas is an indication of the entity's financial commitment to a CREZ.

(d) Plan to develop transmission capacity.

(1) After the issuance of a final order in accordance with subsection (b)(5) of this section, entities interested in constructing the transmission improvements shall submit expressions of interest to the commission. The commission shall select the entity or entities responsible for constructing the transmission improvements, establish a schedule by which the improvements shall be completed, and specify any additional reporting requirements or other measures deemed appropriate by the commission to ensure that entities complete the ordered improvements in a timely manner.

(2) The commission shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the CREZ.

(3) In developing the transmission capacity plan, the commission may consider:

(A) the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone;

(B) the estimated cost of additional ancillary services; and

(C) any other factors considered appropriate by the commission as provided by PURA.

(e) Certificates of convenience and necessity.

(1) Not later than three years after a commission final order designating a CREZ, each TSP selected to build and own transmission facilities for that CREZ shall file all required CREZ CCN applications. The commission may grant an extension to this deadline for good cause. The commission may establish a filing schedule for the CCN applications.

(2) A CCN application for a transmission project intended to serve a CREZ, except an application filed pursuant to paragraph (1) of this subsection or subsection (a) of this section, shall address

all the criteria in PURA §37.056, including the criteria in PURA §37.056(c)(1) and (2).

(3) In determining whether financial commitment for a CREZ is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities for the CREZ, the commission shall consider the following evidence of financial commitment by renewable generators:

(A) capacity represented by installed generation located in one or more of the counties that lie in whole or in part within the CREZ;

(B) capacity represented by generation projects under construction that are located in one or more of the counties that lie in whole or in part within the CREZ and that will be operational within six months of the final order in a financial commitment proceeding. Evidence that the project will be operational within six months may include documentation showing that a construction contractor has been hired, that preliminary site work has begun, that the project financing has closed, or similar indicators of the status of the project;

(C) capacity represented by planned generation projects that are located in one or more of the counties that lie in whole or in part within the CREZ and that have a signed IA with a TSP that has been defined in subsection (a)(2)(E) of this section designated to build and own transmission facilities for that CREZ; and

(D) capacity represented by collateral posted by generators for the CREZ that complies with paragraph (7) of this subsection.

(4) Financial commitment for a CREZ is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities for the CREZ if the sum of the renewable generating capacity under any combination of paragraph (3)(A), (B), (C), and (D) of this subsection is at least 50% of the designated generating capacity for the CREZ. Fifty percent of the designated generating capacity for the Panhandle A CREZ approved by the commission in Docket Number 33672 shall be considered to be 1,595.5 MW. Fifty percent of the designated generating capacity for the Panhandle B CREZ approved by the commission in Docket Number 33672 shall be considered to be 1,196.5 MW.

(5) Installed renewable generation, renewable generation projects under construction, and planned renewable generation projects with signed IAs in the McCamey, Central, and Central West CREZs approved by the commission in Docket Number 33672 satisfy the financial commitment test set forth in paragraph (4) of this subsection for those CREZs and therefore financial commitment by renewable generators for those CREZs is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities for those CREZs. This finding of sufficient financial commitment shall be recognized in the CCN proceedings for transmission facilities for those CREZs and shall not be addressed further in those proceedings.

(6) Commission staff shall initiate a single proceeding for the commission to determine whether there is sufficient financial commitment under PURA §39.904(g)(3) by renewable generators for the Panhandle A and Panhandle B CREZs approved by the commission in Docket Number 33672 to grant CCNs for transmission facilities for those CREZs. If the commission determines that there is sufficient financial commitment for one of those CREZs, that finding shall be recognized in the CCN proceedings for transmission facilities for that CREZ, as identified in the commission's order in the proceeding initiated pursuant to this paragraph, and shall not be addressed further in the CCN proceedings. If the commission determines that the Panhandle A or Panhandle B CREZ does not satisfy the financial commitment test in paragraph (4) of this subsection, the commission may:

(A) consider other evidence of financial commitment that the commission finds relevant under PURA §39.904(g)(3);

(B) find that the financial commitment requirement for that CREZ has been met if the commission determines that significant financial commitment exists in that CREZ and that the CREZ is sufficiently interrelated with a CREZ that has satisfied the financial commitment test;

(C) delay the filing of CREZ CCN applications for that CREZ until the commission conducts a subsequent proceeding in which it finds sufficient financial commitment for that CREZ in accordance with the financial commitment provisions of this subsection; or

(D) take other appropriate action.

(7) A renewable generator that elects to post collateral pursuant to paragraph (3)(D) of this subsection shall comply with the following requirements:

(A) The renewable generator shall provide a letter of intent to post collateral in a proceeding conducted pursuant to paragraph (6) of this subsection. The renewable generator shall then post the collateral no later than 30 days after the commission issues an interim order finding sufficient financial commitment by renewable generators for the CREZ. If the renewable generators post sufficient collateral, the commission may enter a final order with findings that reflect the adequacy of the financial commitment for the CREZ. If the renewable generators do not post sufficient collateral, the commission may enter a final order with findings that reflect the inadequacy of the financial commitments for the CREZ.

(B) A renewable generator shall post collateral equal to $15,350 per MW of its planned project capacity, or $10,000 per MW if the capacity is supported by leasing agreements with landowners that convey a right or option for a period of at least 20 years to develop and operate a renewable energy project based on a conversion factor of 60 acres per MW for a wind energy project.

(C) A renewable generator planning to build a project in a CREZ shall post collateral with the TSP with which it will interconnect in the CREZ or, if the TSP with which it will interconnect has not been determined, with any TSP that has been designated to build and own transmission facilities for that CREZ.

(D) A renewable generator may post collateral by providing a cash deposit, letter of credit, or guaranty agreement from an entity with an investment-grade credit rating. A TSP shall require a renewable generator that posts a guaranty agreement to provide another form of collateral if the guarantor loses its investment-grade credit rating or declares bankruptcy. If the renewable generator does not provide another form of collateral, the commission may take appropriate action including seeking administrative penalties.

(8) A TSP that receives collateral from a renewable generator pursuant to paragraph (7) of this subsection shall handle that collateral in accordance with the following provisions.

(A) If a renewable generator signs an IA with the TSP and posts any collateral required by the TSP to secure the construction of collection facilities, the TSP shall return to the generator all collateral received from that generator.

(B) If a renewable generator does not sign an IA with the TSP and post any collateral required by the TSP to secure the construction of collection facilities within 90 days after the TSP notifies it that the transmission system is capable of accommodating the renewable generator's renewable energy facility, the TSP shall retain the collateral received from the generator as an offset to the cost of the transmission facilities the TSP constructs for the CREZ and shall take all reasonable measures to execute any non-cash collateral.

(9) In a CREZ CCN application, a TSP may propose modifications to the transmission facilities described in a CREZ order if such improvements would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.

(10) Findings in Docket Numbers 33672, 35665, and 36146 and the commission's finding in paragraph (5) of this subsection establish that the level of financial commitment is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities designated as a Default Project in ordering paragraph 1 of the Order in Docket Number 36146 and for transmission facilities designated as a Priority Project in finding of fact 136 in the Order on Rehearing in Docket Number 33672. This finding of sufficient financial commitment shall be recognized in all pending and future CCN proceedings for Default and Priority Projects and shall not be addressed further in those proceedings.

(f) Excess development in a CREZ. If the aggregate level of renewable energy capacity for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ order, and if the commission determines that the security constrained economic dispatch mechanism used in the power region to establish a priority in the dispatch of CREZ resources is insufficient to resolve the congestion caused by excess development, the commission may initiate a proceeding and may consider limiting interconnection to and/or establishing dispatch priorities regarding the transmission system in the CREZ, and identifying the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes.

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 I. TRANSMISSION AND DISTRIBUTION

DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

16 TAC §25.192

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.009, which entitles an MOU to recover payments in lieu of ad valorem taxes; PURA §37.051, which requires certificates of convenience and necessity (CCNs) for MOUs or MPAs constructing transmission facilities outside of their boundaries and for persons interconnecting tie line facilities to the ERCOT transmission grid; PURA §37.058, which requires CCNs for electric generating facilities of non-ERCOT utilities; and PURA §39.904, which authorizes the commission to designate CREZs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 37.051, 37.058, and 39.904.

§25.192. Transmission Service Rates.

(a) Tariffs. Each transmission service provider (TSP) shall file a tariff for transmission service to establish its rates and other terms and conditions and shall apply its tariffs and rates on a non-discriminatory basis. The tariff shall apply to all distribution service providers (DSPs) and any entity scheduling the export of power from the Electric Reliability Council of Texas (ERCOT) region. The tariff shall not apply to any entity engaging in wholesale storage as described by §25.501(m) of this title (relating to Wholesale Market Design for the Electric Reliability Council of Texas) (storage entity).

(b) Charges for transmission service delivered within ERCOT. DSPs, excluding storage entities, shall incur transmission service charges pursuant to the tariffs of the TSP.

(1) A TSP's transmission rate shall be calculated as its commission-approved transmission cost of service divided by the average of ERCOT coincident peak demand for the months of June, July, August and September (4CP), excluding the portion of coincident peak demand attributable to wholesale storage load. A TSP's transmission rate shall remain in effect until the commission approves a new rate. The TSP's annual rate shall be converted to a monthly rate. The monthly transmission service charge to be paid by each DSP is the product of each TSP's monthly rate as specified in its tariff and the DSP's previous year's average of the 4CP demand that is coincident with the ERCOT 4CP.

(2) Payments for transmission services shall be consistent with commission orders, approved tariffs, and §25.202 of this title (relating to Commercial Terms for Transmission Service).

(c) Transmission cost of service. The transmission cost of service for each TSP shall be based on the expenses in Federal Energy Regulatory Commission (FERC) expense accounts 560-573 (or accounts with similar contents or amounts functionalized to the transmission function) plus the depreciation, federal income tax, and other associated taxes, and the commission-allowed rate of return based on FERC plant accounts 350-359 (or accounts with similar contents or amounts functionalized to the transmission function), less accumulated depreciation and accumulated deferred federal income taxes, as applicable.

(1) The following facilities are deemed to be transmission facilities:

(A) power lines, substations, reactive devices, and associated facilities, operated at 60 kilovolts or above, including radial lines operated at or above 60 kilovolts, except the step-up transformers and a protective device associated with the interconnection from a generating station to the transmission network;

(B) substation facilities on the high side of the transformer, in a substation where power is transformed from a voltage higher than 60 kilovolts to a voltage lower than 60 kilovolts;

(C) the portion of the direct-current interconnections with areas outside of the ERCOT region (DC ties) that are owned by a TSP in the ERCOT region, including those portions of the DC tie that operate at a voltage lower than 60 kilovolts; and

(D) capacitors and other reactive devices that are operated at a voltage below 60 kilovolts, if they are located in a distribution substation, the load at the substation has a power factor in excess of 0.95 as measured or calculated at the distribution voltage level without the reactive devices, and the reactive devices are controlled by an operator or automatically switched in response to transmission voltage.

(E) As used in subparagraphs (A) - (D) of this paragraph, reactive devices do not include generating facilities.

(2) For municipally owned utilities, river authorities, and electric cooperatives, the commission may permit the use of the cash flow method or other reasonable alternative methods of determining the annual transmission revenue requirement, including the return element of the revenue requirement, consistent with the rate actions of the rate-setting authority for a municipally owned utility.

(3) For municipally owned utilities, river authorities, and electric cooperatives, the return may be determined based on the TSP's actual debt service and a reasonable coverage ratio. In determining a reasonable coverage ratio, the commission will consider the coverage ratios required in the TSP's bond indentures or ordinances and the most recent rate action of the rate-setting authority for the TSP.

(4) A municipally owned utility that is required to apply for a certificate of public convenience and necessity to construct, install, or extend a transmission facility within ERCOT pursuant to §25.101 of this title (relating to Certification Criteria) is entitled to recover, through the utility's wholesale transmission rate, reasonable payments made to a taxing entity in lieu of ad valorem taxes on that transmission facility, provided that:

(A) The utility enters into a written agreement with the governing body of the taxing entity related to the payments;

(B) The amount paid is the same as the amount the utility would have to pay to the taxing entity on that transmission facility if the facility were subject to ad valorem taxation;

(C) The governing body of the taxing entity is not the governing body of the utility; and

(D) The utility provides the commission with a copy of the written agreement and any other information that the commission considers necessary in relation to the agreement.

(5) The commission may adopt rate-filing requirements that provide additional details concerning the costs that may be included in the transmission costs and how such costs should be reported in a proceeding to establish transmission rates.

(d) Billing units. No later than December 1 of each year, ERCOT shall determine and file with the commission the current year's average 4CP demand for each DSP, or the DSP's agent for transmission service billing purposes, as appropriate, excluding the portion of coincident peak demand attributable to wholesale storage load. This demand shall be used to bill transmission service for the next year. The ERCOT average 4CP demand shall be the sum of the coincident peak of all of the ERCOT DSPs, excluding the portion of coincident peak demand attributable to wholesale storage load, for the four intervals coincident with ERCOT system peak for the months of June, July, August, and September, divided by four. As used in this section, a DSP's average 4CP demand is determined from the total demand, coincident with the ERCOT 4CP, of all customers connected to a DSP, including load served at transmission voltage, but excluding the load of wholesale storage entities. The measurement of the coincident peak shall be in accordance with commission-approved ERCOT protocols.

(e) Transmission rates for exports from ERCOT. Transmission service charges for exports of power from ERCOT will be assessed to transmission service customers for transmission service within the boundaries of the ERCOT region, in accordance with this section and the ERCOT protocols.

(1) A transmission service customer shall be assessed a transmission service charge for the use of the ERCOT transmission system in exporting power from ERCOT based on the megawatts that are actually exported, the duration of the transaction and the rates established under subsections (c) and (d) of this section. Billing intervals shall consist of a year, month, week, day, or hour.

(2) The monthly on-peak transmission rate will be one-fourth the TSP's annual rate, and the monthly off-peak transmission rate will be one-twelfth its annual rate. The peak period used to determine the applicable transmission rate for such transactions shall be the months of June, July, August, and September.

(3) The DSP or an entity scheduling the export of power over a DC tie is solely responsible to the TSP for payment of transmission service charges under this subsection.

(4) A transmission service customer's charges for use of the ERCOT transmission system for export purposes on a monthly basis shall not exceed the annual transmission charge for the transaction.

(f) Transmission revenue. Revenue from the transmission of electric energy out of the ERCOT region over the DC ties that is recovered under subsection (e) of this section shall be credited to all transmission service customers as a reduction in the transmission cost of service for TSPs that receive the revenue.

(g) Revision of transmission rates. Each TSP in the ERCOT region shall periodically revise its transmission service rates to reflect changes in the cost of providing such services. Any request for a change in transmission rates shall comply with the filing requirements established by the commission under this section.

(h) Interim Update of Transmission rates.

(1) Frequency. Each TSP in the ERCOT region may apply to update its transmission rates on an interim basis not more than once per calendar year to reflect changes in its invested capital. Upon the effective date of an amendment to §25.193 pursuant to an order in Project Number 37909, *Rulemaking Proceeding to Amend P.U.C. Subst. R. 25.193, Relating to Distribution Service Provider Transmission Cost Recovery factors (TCRF),* that allows a distribution service provider to recover, through its transmission cost recovery factor, all transmission costs charged to the distribution service provider by TSPs, each TSP in the ERCOT region may apply to update its transmission rates on an interim basis not more than twice per calendar year to reflect changes in its invested capital. If the TSP elects to update its transmission rates, the new rates shall reflect the addition and retirement of transmission facilities and include appropriate depreciation, federal income tax and other associated taxes, and the commission-authorized rate of return on such facilities as well as changes in loads. If the TSP does not have a commission-authorized rate of return, an appropriate rate of return shall be used.

(2) Reconciliation. An update of transmission rates under paragraph (1) of this subsection shall be subject to reconciliation at the next complete review of the TSP's transmission cost of service, at which time the commission shall review the costs of the interim transmission plant additions to determine if they were reasonable and necessary. Any amounts resulting from an update that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, shall be refunded with carrying costs determined as follows: for the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TSP's rates set in that complete review of the TSP's transmission cost of service, car-

rying costs shall be calculated using the same rate of return that was applied to the transmission investments included in the update. For the time period beginning with the effective date of the TSP's rates set in that complete review of the TSP's transmission cost of service, carrying costs shall be calculated using the TSP's rate of return authorized in that complete review.

(3) Future consideration of effect on TSP's financial risk and rate of return. For a TSP that has increased its rates pursuant to paragraph (1) of this subsection, the commission may, in setting rates in the next complete review of the TSP's transmission cost of service, expressly consider the effects of reduced regulatory lag resulting from the interim updates to the TSP's rates and the concomitant impact on the TSP's financial risk and rate of return.

(4) Commission processing of application. The commission shall process an application filed pursuant to paragraph (1) of this subsection in the following manner.

(A) Notice and intervention deadline. The applicant shall provide notice of its application to all parties in the applicant's last complete review of the applicant's transmission cost of service and all of the distribution service providers listed in the last docket in which the commission set the annual transmission service charges for the Electric Reliability Council of Texas. The intervention deadline shall be 21 days from the date service of notice is completed.

(B) Sufficiency of application. A motion to find an application materially deficient shall be filed no later than 21 days after an application is filed. The motion shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery, or by e-mail if agreed to by the applicant or ordered by the presiding officer. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within ten working days after the deadline for filing a motion to find an application materially deficient, the presiding officer has not filed a written order concluding that material deficiencies exist in the application, the application is deemed sufficient.

(C) Review of application. A proceeding initiated pursuant to paragraph (1) of this subsection is eligible for disposition pursuant to §22.35(b)(1) of this title (relating to Informal Disposition). If the requirements of §22.35 of this title are met, the presiding officer shall issue a notice of approval within 60 days of the date a materially sufficient application is filed unless good cause exists to extend this deadline or the presiding officer determines that the proceeding should be considered by the commission.

(5) Filing Schedule. The commission may prescribe a schedule for providers of transmission services to file proceedings to revise the rates for such services.

(6) DSP's right to pass through changes in wholesale rates. A DSP may expeditiously pass through to its customers changes in wholesale transmission rates approved by the commission, pursuant to §25.193 of this title (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)).

(7) Reporting requirements. TSPs shall file reports that will permit the commission to monitor their transmission costs and revenues, in accordance with any filing requirements and schedules prescribed by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Public Utility Commission of Texas
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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 160. MEDICAL PHYSICISTS

22 TAC §§160.1 - 160.5, 160.7 - 160.30

The Texas Medical Board (Board) adopts new Chapter 160, §§160.1 - 160.5 and 160.7 - 160.30, concerning Medical Physicists. Sections 160.1 - 160.5, 160.8, 160.9, and 160.12 - 160.30 are adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2067). The rules will not be republished. Sections 160.7, 160.10, and 160.11 are adopted with non-substantial changes. The rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR ADOPTED CHAPTER 160

Following a Sunset review of the Texas Department of Health Services (DSHS) and the Texas Board of Licensure for Professional Medical Physicists, the Texas legislature transferred the regulation of the licensing and discipline of the Medical Physicists to the Texas Medical Board through Senate Bill 202, 84th Legislature, Regular Session (2015). SB 202, which extensively revised Chapter 602 of the Texas Occupations Code authorized the Texas Medical Board to draft rules to implement Chapter 602.

Adopted new Chapter 160 is intended to implement the changes made to the structure of Occupations Code Chapter 602 as well as better align new adopted Chapter 160 with the existing rules and procedures of the Texas Medical Board, the agency charged with the regulation. The majority of the rules adopted in Chapter 160 are taken from the rules governing medical physicists in 22 Texas Administrative Code §601.1 et seq. without amendment and have simply been re-numbered for inclusion in Chapter 160. Once these rules are adopted by the Texas Medical Board it is expected that DSHS will repeal the original rules governing Medical Physicists in 22 TAC Chapter 601.

SECTION-BY-SECTION SUMMARY

Section 160.1. Purpose, describes the intended purpose of Chapter 160 and sets forth its statutory basis.

Section 160.2, Definitions, provides definitions for important terms and phrases used in Chapter 160. New terms and phrases defined include: "advisory committee," "armed forces of the United States," "license", "military service member," "military spouse," military veteran," "physician," "submit," and "training license."

Section 160.3, Meetings, establishes procedural requirements for meetings of the Medical Physicist Licensure Advisory Committee.

Section 160.4, Specialty License, describes the requirement that a person may not practice medical physics without a license in one of the medical physics specialties listed in this section, and lists the four types of licensed specialties: (1) Diagnostic Radiological Physics; (2) Medical Health Physics; (3) Medical Nuclear Physics; (4) Therapeutic Radiological Physics.

New §160.5, Exemptions from License Requirement, sets forth the exemptions from licensing under the Texas Medical Physics Practice Act. This section was brought over from the original rules without change.

Section 160.7, Qualifications for License Requirement, sets forth requirements for licensing including requirements for: fees, good character, educational requirements, examination requirements, and alternative licensing requirements for military service members.

Section 160.8, Application Procedures, sets forth application procedures for applying for a medical physicist license, including procedures for appealing a determination of ineligibility through a contested case hearing at the State Office of Administrative Hearings ("SOAH").

Section 160.9, Licensure Documentation, sets forth specific requirements for the documentation required as part of a licensure application, including the requirement that all applicants for licensure submit finger prints for the purposes of the Board obtaining criminal history record information.

Section 160.10, Training License, sets forth the requirements for what was formerly referred to in the rules as a temporary license but is now referred to as a training license.

Section 160.11, Provisional License, sets forth the requirements, procedures and rules regarding provisional licenses.

Section 160.12, License Renewal, sets forth the requirement that medical physicists licensed by the Board register biennially and the rules and procedures regarding such registration and renewal of license. This section sets out rules for dealing with delinquent and expired registration permits.

Section 160.13, Criminal History Record Information Required for Renewal, requires that applicants renewing a license submit fingerprints so that the Board may order a criminal record check. This requirement does not apply to individuals submitting requests for renewal who have submitted fingerprints for the initial issuance of a license or as part of a prior renewal.

Section 160.14, Relicensure, describes the requirement that medical physicists whose licenses have been expired for one year or longer are required to re-apply and comply with the requirements for obtaining an original license.

Section 160.15, Licenses and License Holder Duties, sets forth basic requirements related to a license holders duties in regard to providing the license on demand and notifying the board of changes in mailing address and/or employment.

Section 160.16, Continuing Education Requirements, sets forth the continuing education requirements for medical physicists, types of acceptable qualifying education, and board procedures for auditing continuing education compliance of licensed medical physicists.

Section 160.17, Medical Physicist Scope of Practice, defines the parameters of the scope of practice for the practice of medical physics and all of the medical physicist specialties.

Section 160.18, Complaints and Complaint Procedure Notification, deals with the procedure for filing complaints against medical physicists and notifying medical physicists of such complaints.

Section 160.19, Subpoenas; Confidentiality of Information, addresses the subpoena authority of the executive director of the Board and subpoenas in general. This section also deals with the confidentiality of information and materials subpoenaed or compiled by the Board and explicitly exempts such information from publication under the Texas Public Information Act.

Section 160.20, Grounds for Denial of Licensure and Disciplinary Action, sets forth the board's authority to refuse to issue a license or to discipline a licensee for specified categories of actions.

Section 160.21, Disciplinary Guidelines, applies Chapter 190 of this title (relating to Disciplinary Guidelines), to the denial of a license or discipline of a licensed medical physicist. This section states that in cases of conflict with Chapter 190 of this title, that provision of Chapter 160 will apply.

Section 160.22, Procedural Rules for Hearings, applies Chapter 187 of this title to hearings involving medical physicists.

Section 160.23, Disciplinary Process or Discipline of Medical Physicists, sets forth the actions and sanction types available to the Board if the Board finds a medical physicist has committed any of the acts set forth in §§160.20, 160.24, and 160.25 of this chapter.

Section 160.24, Code of Ethics, sets out the detailed code of ethics and professional conduct to which medical physicists are bound and subject to discipline for their violation.

Section 160.25, Impaired Medical Physicists, sets out provisions regarding the Board's ability to require a mental or physical examination of a medical physicist whom the Board believes may be impaired. This section also states that Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) shall apply to medical physicists.

Section 160.26, Compliance, applies Chapter 189 of this title (relating to Compliance Program) to medical physicists under Board disciplinary orders.

Section 160.27, Voluntary Relinquishment or Surrender of a License, applies Chapter 189 of this title to voluntary relinquishment or surrender of medical physicists' licenses.

Section 160.28, Administrative Procedure, states that Chapters 2201 and 2002 of the Act and board rules for contested case hearings apply to contested case proceedings brought by the Board and this chapter.

Section 160.29, Criminal Convictions Related to the Profession of Medical Physics, addresses the Board's ability to suspend, revoke or disqualify a person from receiving a license based on certain types of criminal convictions. The rule defines which types of criminal convictions will be considered to directly relate to the practice of medical physics and which felonies and misdemeanors indicate an inability or tendency to be unable to properly engage in the practice of medical physics. Additionally, the rule sets out mandatory revocation provisions following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 160.30, Constructions, sets out provisions dealing with the interpretation of this chapter consistent with the statutory provisions of Medical Physicist Act and Medical Practice Act, and

dealing with conflict between this chapter and provisions of the Act.

No comments were received regarding adoption of the new rules. The Medical Physicist Advisory Committee met on May 16, 2016 and suggested changes to §§160.7, 160.10, and 160.11, which were adopted by the Board at its June 10, 2016 meeting. The Board's General Counsel has advised that the changes affect no new persons, entities, or subjects, other than those given notice through publication and do not materially alter the issues raised in the notice. Accordingly, republication for comment of the adopted rules is not required. These amendments were incorporated into the adopted rules as follows.

§160.7

The changes to §160.7, relating to Qualifications for Licensure, delete language from subsection (e)(1)(C), (2)(D), (3)(C), and (4)(E) relating to approved specialty examinations required to be completed to practice in therapeutic radiological physics, medical nuclear physics, and medical health physics specialties. The deleted language involves references to a specialty examination in general medical physics which is no longer offered by the Canadian College of Physicists in Medicine. Subsection (e)(4)(E) was removed in its entirety.

Language was added to subsection (e)(3)(C) adding the specialty examination in diagnostic radiological physics offered by the Canadian College of Physicists.

§160.10

The changes to §160.10, relating to Training Licensure, modify subsection (c) by increasing the number of annual renewals from three to four. The change eliminates the executive director's discretion to issue subsequent renewals beyond the maximum of four allowed by subsection (c), by deleting subsection (d)(1) - (3). The elimination of subsequent renewals was based on recommendations by the medical physicist advisory committee. The committee discussed the issue at length and determined that four renewals of the training license provided ample time and opportunity to pass the required specialty examination. The advisory committee also described a history of certain individuals with training licenses abusing the renewal process by making multiple renewals of the training license without making any progress toward passing the specialty examination. The Board accepted the recommended changes.

§160.11

The amendment to §160.11, relating to Provisional Licenses, amends the rule by deleting subsection (c) which required the Board to issue a provisional license if certain requirements were met. The remaining subsections were re-numbered accordingly. Subsection (c) which was a mandatory provision, conflicted with the discretionary standard for provisional licenses in the Medical Physicist Act, and was removed to achieve consistency between the rules and the statute.

The adoption of §§160.1 - 160.5 and 160.7 - 160.30 is intended to achieve consistency with the amended provisions of the Occupations Code transferring the primary responsibility for licensing and regulation of medical physicists to the Texas Medical Board and converting the Texas Board of Licensure for Professional Medical Physicists to an advisory committee to the Texas Medical Board. The rules will also align the policies and procedures related to licensing and regulation of medical physicists with the Board's current policies and procedures. The rules will also serve to insure the safe practice of properly trained and qualified medical physicists. Additionally, the rules will provide an avenue for licensees to obtain treatment through the Texas Physician Health Program for health conditions that have the potential of impairing their practice of medical physics.

The new rules are adopted under the authority of Texas Occupations Code Annotated, §602.151, which authorizes the Board to adopt rules reasonably necessary to properly perform its duties under the Medical Physicist Act. The Board interprets §602.151 as authorizing the agency to adopt rules for the proper administration and enforcement of the Medical Physicist Act.

§160.7. Qualifications for Licensure.

(a) General. Except as otherwise provided, an individual applying for licensure must:

(1) submit completed application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function as a medical physicist; and

(4) be of good moral character.

(b) Eligibility. To be eligible for a license, a person must:

(1) have an earned master's or doctoral degree:

(A) from a program of study in medical physics that is accredited by the Commission on Accreditation of Medical Physics Education Programs (CAMPEP);

(B) from a regionally accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses; or

(C) from a regionally accredited college or university:

(i) in physical science (including chemistry), applied mathematics or engineering; and

(ii) have twenty semester hours (30 quarter hours) of upper division semester hour credit or graduate level physics courses, if offered:

(I) by the faculty of a Department of Physics and would be acceptable in meeting undergraduate or graduate degree requirements in physics of the offering department; or

(II) by the faculty of a program accredited in medical physics by the CAMPEP; or

(III) by the faculty of another science department and acceptable to the board.

(2) have demonstrated, to the board's satisfaction, the completion of at least two years of full-time work experience in the medical physics specialty for which the application is made.

(3) have work experience in more than one specialty to include six additional months of full-time equivalent work experience in each additional medical physics specialty for which the application is made.

(c) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week. All work experience must have been completed in the five years preceding the date of application for licensure as a medical physicist, or training license in the medical physics specialty for which application is made.

(d) International academic credit. Degrees and course work received at international universities shall be acceptable only if such course work could be counted as transfer credit by regionally accredited universities. An applicant having an international degree(s) must furnish at the applicant's own expense a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an International Credential Evaluation from the Foreign Credential Service of America (FCSA), or another similar entity as approved by the board. The degree evaluation must be sent directly to the board by the evaluation service. An applicant must submit with the application complete certified copies of academic transcripts showing proof of the degree(s) awarded (masters or doctorate) and the date it was awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

(e) Approved specialty examination. An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

(1) for the therapeutic radiological physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in therapeutic radiological physics, radiological physics or therapeutic medical physics;

(B) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in radiation oncology physics;

(2) for the medical nuclear physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in medical nuclear physics radiological physics or nuclear medical physics;

(B) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(C) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation or in molecular imaging science; or

(D) the Canadian College of Physicists in Medicine or its successor organization in nuclear medicine physics;

(3) for the diagnostic radiological physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in diagnostic radiological physics, radiological physics or diagnostic medical physics;

(B) the American Board of Medical Physics or its successor organization in diagnostic imaging physics or diagnostic radiology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in diagnostic radiology health physics;

(4) for the medical health physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in radiological physics;

(B) the American Board of Health Physics or its successor organization in health physic or comprehensive health physics;

(C) the American Board of Medical Physics or its successor organization in medical health physics; or

(D) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection.

(f) Jurisprudence Examination. Applicants for licensure must pass a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the medical physicist profession in this state. The jurisprudence examination shall be developed and administered as follows:

(1) Questions for the JP Exam may be prepared by board staff with input from the Advisory Committee and board, or contracted out to a third party vendor. Board staff shall make arrangements for a facility by which applicants can take the examination;

(2) Applicants must pass the JP exam with a score of 75 or better within three attempts, unless the Board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the licensure committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the licensure committee to allow an applicant additional attempts to take the JP exam;

(3) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner;

(4) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action;

(5) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(g) Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted medical physicist license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas medical physicist license; or

(B) within the five years preceding the application date held a medical physicist license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described by this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this section shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §160.8(a)(2) of this title (relating to Application Procedures), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the 20 day deadline in §160.8(a)(6) of this title, may be considered for permanent licensure up to five days prior to the board meeting.

(h) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall credit, with respect to an applicant who is a military service member or military veteran as defined in §160.2 of this title (relating to Definitions), verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a medical physicist license suspended or revoked by another state or a Canadian province;

(B) holds a medical physicist license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

§160.10. Training Licensure.

(a) To be eligible for a training license, a person must meet the educational requirements set out in §160.7 of this chapter (relating to Qualifications for Licensure).

(b) A training license shall be issued for each specialty for a one-year period.

(c) Each training license may be renewed annually up to four times. The licenses do not have to be for consecutive years.

(d) The application for renewal of a training license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(e) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area. The work experience must be completed in accordance with a supervision plan approved by the board, signed by both the supervisor and the training license holder. The supervision plan shall describe the duration of personal, direct and general supervision with particular attention to the aspects of the work of the training licensee that could have the greatest effect on the safety of patients, personnel or the public. The board may audit supervision plans for compliance with this section.

(f) A supervisor shall supervise no more than two training license holders or their full time equivalents, unless approved by the board.

(g) A supervisor shall assume responsibility for all of the work conducted under his or her supervision. A supervisor shall approve and sign all formal work product of the training license holder, such as reports of machine calibrations, shielding designs, treatment plan reviews, patient specific quality assurance measurements, treatment record reviews, and equipment evaluations.

(h) The application procedures set out in §160.8 of this chapter (relating to Application Procedures) shall apply.

§160.11. Provisional License.

(a) A provisional license may be issued to a person who is currently licensed or certified in another jurisdiction and who:

(1) has been licensed or certified in good standing as a practitioner of medical or radiological physics for at least two years in another jurisdiction, including a foreign county, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(2) has passed a national or other examination recognized by the board relating to the practice of medical or radiological physics;

(3) is sponsored by a person licensed as a medical physicist in Texas with whom the provisional license holder will practice under this section; and

(4) has submitted a complete and legible set of fingerprints for purpose of performing a criminal history check of the applicant for provisional license.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt of pending examination results.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license.

(e) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical physicist license or denies the provisional license holder's application for a license; or

(2) upon determination by the executive director that the provisional license holder is ineligible for licensure.

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 163. LICENSURE

22 TAC §163.2, §163.5

The Texas Medical Board (Board) adopts amendments to §163.2, concerning Full Texas Medical License, and §163.5,

concerning Licensure Documentation, without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2660). The rules will not be republished.

The amendment to §163.2 corrects a citation in subsection (d)(3) related to a reference to an applicant's eligibility requirements for alternative license procedures for military service members, veterans, and spouses. The correction clarifies that the eligibility requirements are listed in additional numbered paragraphs of subsection (d).

The amendment to §163.5 changes language under subsection (d)(4) and (5) by eliminating an applicant's requirement to report having been treated on an in- or outpatient basis for certain mental or physical illnesses that "could" have impaired the applicant's ability to practice medicine, and replacing same with language that requires an applicant to report those physical or mental illnesses that have impaired or currently impair the applicant's ability to practice medicine.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this 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 170. PAIN MANAGEMENT

22 TAC §170.3

The Texas Medical Board (Board) adopts amendments to §170.3, concerning Minimum Requirements for the Treatment of Chronic Pain. The amendments are adopted with changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1074). The changes are non-substantive. The rule will be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on November 4, 2015. The comments were incorporated into the proposed rule.

The amendment adds new language relating to limitations on the number of physicians who may prescribe to a patient dangerous and scheduled drugs for the treatment of chronic pain. The new language now allows a covering physician acting in compliance with Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services) to prescribe dangerous and scheduled drugs for the treatment of chronic pain. New language also specifies that if a patient is treated for acute chronic pain by a physician other than the physician who is party to the pain management agreement or the covering physician, that the patient must notify the primary or covering physician, at the next date of service, about the prescription. The rule sets out specific requirements for the content of this notification.

The amendments to paragraph (4)(D) modify the exception to the one pharmacy requirement of pain management agreements by eliminating the requirement that the designated pharmacy be out of stock of the drug prescribed, and substituting broader language involving "circumstances for which the patient has no control or responsibility, that prevent the patient from obtaining prescribed medications at the designated pharmacy under the agreement." The amendment includes the requirement that if such circumstances apply and a prescription is filled at a pharmacy other than the designated pharmacy, the patient inform the primary or covering physician of the circumstances and the name of the pharmacy that dispensed the medication.

SUMMARY OF COMMENTS RECEIVED

The Board received public written comments from the Texas Pain Society (TPS).

COMMENT: For proposed §170.3, TPS expressed approval of the proposed rule, but added the suggestion that the term "primary" in paragraph (4)(C) and (D) be clarified by the insertion of the words "pain management physician" immediately after the word "primary."

BOARD RESPONSE: The Board agrees that this section would clarify that "primary" refers to the primary pain management physician. The Board will therefore insert the term "pain management physician" after the term primary in paragraph (4)(C) and (D). For the sake of consistency, the words "primary pain management" will be inserted before the word physician in earlier portions of paragraph (4)(C) and (D). Accordingly, the amendments are adopted with non-substantive changes described above, inserting the term "primary pain management" and language to the proposed text to §170.3 as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1074).

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also adopted under the authority of the Texas Occupations Code Annotated, Chapter 107.

§170.3. Minimum Requirements for the Treatment of Chronic Pain.

A physician's treatment of a patient's pain will be evaluated by considering whether it meets the generally accepted standard of care and whether the following minimum requirements have been met:

(1) Evaluation of the patient.

(A) A physician is responsible for obtaining a medical history and a physical examination that includes a problem-focused exam specific to the chief presenting complaint of the patient.

(B) The medical record shall document the medical history and physical examination. In the case of chronic pain, the medical record must document:

(i) the nature and intensity of the pain;

(ii) current and past treatments for pain;

(iii) underlying or coexisting diseases and conditions;

(iv) the effect of the pain on physical and psychological function;

(v) any history and potential for substance abuse or diversion; and

(vi) the presence of one or more recognized medical indications for the use of a dangerous or scheduled drug.

(C) Prior to prescribing dangerous drugs or controlled substances for the treatment of chronic pain, a physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and consider obtaining at a minimum a baseline toxicology drug screen to determine the presence of drugs in a patient, if any. If a physician determines that such steps are not necessary prior to prescribing dangerous drugs or controlled substances to the patient, the physician must document in the medical record his or her rationale for not completing such steps.

(2) Treatment plan for chronic pain. The physician is responsible for a written treatment plan that is documented in the medical records. The medical record must include:

(A) How the medication relates to the chief presenting complaint of chronic pain;

(B) dosage and frequency of any drugs prescribed;

(C) further testing and diagnostic evaluations to be ordered, if medically indicated;

(D) other treatments that are planned or considered;

(E) periodic reviews planned; and

(F) objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function.

(3) Informed consent. It is the physician's responsibility to discuss the risks and benefits of the use of controlled substances for the treatment of chronic pain with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. This discussion must be documented by either a written signed document maintained in the records or a contemporaneous notation included in the medical records. Discussion of risks and benefits must include an explanation of the:

(A) diagnosis;

(B) treatment plan;

(C) anticipated therapeutic results, including the realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;

(D) therapies in addition to or instead of drug therapy, including physical therapy or psychological techniques;

(E) potential side effects and how to manage them;

(F) adverse effects, including the potential for dependence, addiction, tolerance, and withdrawal; and

(G) potential for impairment of judgment and motor skills.

(4) Agreement for treatment of chronic pain. A proper patient-physician relationship for treatment of chronic pain requires the physician to establish and inform the patient of the physician's expectations that are necessary for patient compliance. If the treatment plan includes extended drug therapy, the physician must use a written pain management agreement between the physician and the patient outlining patient responsibilities, including the following provisions:

(A) the physician may require laboratory tests for drug levels upon request;

(B) the physician may limit the number and frequency of prescription refills;

(C) only the primary pain management physician or another physician covering for the primary pain management physician in compliance with Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services), may prescribe dangerous and scheduled drugs for the treatment of chronic pain. For any prescriptions issued for medications to treat acute or chronic pain by a person other than the primary pain management physician or covering physician, the terms of the agreement must require that at or before the patient's next date of service, the patient notify the primary pain management physician or covering physician about the prescription(s) issued. The terms of the agreement must require that such notice include at a minimum the name and contact information for the person who issued the prescription, the date of the prescription, and the name and quantity of the drug prescribed;

(D) only one pharmacy designated by the patient will be used for prescriptions for the treatment of chronic pain, with an exception for those circumstances for which the patient has no control or responsibility, that prevent the patient from obtaining prescribed medications at the designated pharmacy under the agreement. For such circumstances, the agreement's terms must require that at or before the patient's next date of service, the patient notify the primary pain management physician or covering physician of the circumstances and identify the pharmacy that dispensed the medication; and

(E) reasons for which drug therapy may be discontinued (e.g. violation of agreement).

(5) Periodic review of the treatment of chronic pain.

(A) The physician must see the patient for periodic review at reasonable intervals in view of the individual circumstances of the patient.

(B) Periodic review must assess progress toward reaching treatment objectives, taking into consideration the history of medication usage, as well as any new information about the etiology of the pain.

(C) Each periodic visit shall be documented in the medical records.

(D) Contemporaneous to the periodic reviews, the physician must note in the medical records any adjustment in the treatment plan based on the individual medical needs of the patient.

(E) A physician must base any continuation or modification of the use of dangerous and scheduled drugs for pain management on an evaluation of progress toward treatment objectives.

(i) Progress or the lack of progress in relieving pain must be documented in the patient's record.

(ii) Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, and/or improved quality of life.

(iii) Objective evidence of improved or diminished function must be monitored. Information from family members or other caregivers, if offered or provided, must be considered in determining the patient's response to treatment.

(iv) If the patient's progress is unsatisfactory, the physician must reassess the current treatment plan and consider the use of other therapeutic modalities.

(v) The physician must periodically review the patient's compliance with the prescribed treatment plan and reevaluate for any potential for substance abuse or diversion. In such a review, the physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and consider obtaining at a minimum a toxicology drug screen to determine the presence of drugs in a patient, if any. If a physician determines that such steps are not necessary, the physician must document in the medical record his or her rationale for not completing such steps.

(6) Consultation and Referral. The physician must refer a patient with chronic pain for further evaluation and treatment as necessary. Patients who are at-risk for abuse or addiction require special attention. Patients with chronic pain and histories of substance abuse or with co-morbid psychiatric disorders require even more care. A consult with or referral to an expert in the management of such patients must be considered in their treatment.

(7) Medical records. The medical records shall document the physician's rationale for the treatment plan and the prescription of drugs for the chief complaint of chronic pain and show that the physician has followed these rules. Specifically the records must include:

(A) the medical history and the physical examination;

(B) diagnostic, therapeutic and laboratory results;

(C) evaluations and consultations;

(D) treatment objectives;

(E) discussion of risks and benefits;

(F) informed consent;

(G) treatments;

(H) medications (including date, type, dosage and quantity prescribed);

(I) instructions and agreements; and

(J) periodic reviews.

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 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.3

The Texas Medical Board (Board) adopts amendments to §171.3, concerning Physician-in-Training Permits, without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2662). The rule will not be republished

The amendments change language under subsection (c)(2)(D) and (E) by eliminating an applicant's requirement to report having been treated on an in- or outpatient basis for certain mental or physical illnesses that "could" have impaired the applicant's ability to practice medicine, and replacing same with language that requires an applicant to report those physical or mental illnesses that have impaired or currently impair the applicant's ability to practice medicine.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

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CHAPTER 183. ACUPUNCTURE

22 TAC §§183.2, 183.4, 183.5, 183.18, 183.20

The Texas Medical Board (Board) adopts amendments to §183.2, concerning Definitions; §183.4, concerning Licensure; §183.5, concerning Annual Renewal of License; §183.18, concerning Administrative Penalties; and §183.20, concerning Continuing Acupuncture Education, without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2283). The rules will not be republished.

The amendment to §183.2 adds definitions for "Military service member," "Military spouse," "Military veteran," "Active duty," and "Armed forces of the United States." These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §183.4 adds language to subsection (a)(10), Alternative Licensing Procedure, expanding subsection (a)(10) to include military service members and military veterans. The amendment also includes language allowing the executive director to waive any prerequisite to obtaining a license for an applicant described in subsection (a)(10) after reviewing the applicant's credentials. These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session), which amended Chapter 55 of the Texas Occupations Code. Subsection (a)(10)(F) adds a provision for recognizing certain training for Applicants with military experience, based on the passage of SB 0162 (83rd Legislature, Regular Session). The change to subsection (c)(2)(A) deletes the word "either" to make the sentence grammatically correct.

The amendment to §183.5 adds new subsection (h) providing that military service members who hold a license to practice in Texas are entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §183.18 deletes subsection (g) due to redundancy, as Chapters 187 and 189 relating to Procedural Rules and Compliance already address Administrative Penalties.

The amendment to §183.20 adds new subsection (w) providing that an acupuncturist, who is a military service member, may request an extension of time, not to exceed two years, to complete any continuing education requirements. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend rules to establish licensing and other fees and recommend rules necessary to administer and enforce this chapter.

No other statutes, articles or codes are affected by this 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 184. SURGICAL ASSISTANTS

22 TAC §§184.4 - 184.6, 184.8, 184.18, 184.25

The Texas Medical Board (Board) adopts amendments to §§184.4, 184.5, 184.6, 184.8, 184.18, and 184.25, concerning Surgical Assistants, without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2664).The rules will not be republished.

The amendment to §184.4, concerning Qualifications for Licensure, corrects a citation in subsection (c)(3) related to a reference to an applicant's eligibility requirements for alternative license procedures for military service members, veterans, and spouses. The correction clarifies that the eligibility requirements are listed in additional numbered paragraphs of subsection (c).

The amendment to §184.5, concerning Procedural Rules for Licensure Applicants, amends subsection (b), clarifying the determination of licensure eligibility process related to an application for surgical assistant licensure. The amendments further clarify that the procedures outlined under Chapter 187 of this title (relating to Procedural Rules) concerning determinations of licensure ineligibility apply to applications for surgical assistant licensure.

The amendment to §184.6, concerning Licensure Documentation, deletes the word "medical" to correct a reference to the category of surgical assistant licensure.

The amendment to §184.8, concerning License Renewal, deletes the word "residence", as such information is not collected by the Medical Board in the process of renewing a surgical assistant's license.

The amendment to §184.18, concerning Administrative Penalties, eliminates subsection (f) due to the language's redundancy with Chapters 187 and 189 of this title (relating to Procedural Rules and Compliance Program) which sufficiently address the process related to imposition of administrative penalties.

The amendment to §184.25, concerning Continuing Education, deletes subsection (k), due to the language's redundancy with §184.18 of this title (relating to Administrative Penalties) and Chapter 187 of this title (relating to Procedural Rules) which sufficiently address the process related to imposition of administrative penalties.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendment is also adopted under the authority of Texas Occupations Code Annotated, §§206.101, 206.203, 206.209, 206.212, 206.313 and 206.351.

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

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CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.16, §187.19

The Texas Medical Board (Board) adopts amendments to §187.16, concerning Informal Show Compliance Proceedings (ISCs), and §187.19, concerning Resolution by Agreed Order, without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2386). The rules will not be republished.

The amendment to §187.16 adds clarifying language to the notice provision in order to clearly state that the notice provided to complainants differs from the notice provided to licensees, in that the latter contains the ISC evidence, which is confidential by statute and cannot legally be disclosed to the complainant.

The amendment to §187.19 eliminates subsection (e) relating to post-ISC negotiations, via telephone or in person, between panel members, Respondents and board staff, as this provision does not comport with our current process relating to post-ISC negotiations between board members and Respondents. Additionally, such negotiation between board members (directly) and Respondents is specifically reserved and provided for during the mediation process.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this 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 188. PERFUSIONISTS

22 TAC §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28, 188.29

The Texas Medical Board (Board), and the Perfusionist Licensure Advisory Committee (Advisory Committee), adopts new §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 and 188.29, concerning Perfusionists. Sections 188.1, 188.3, 188.5, 188.7 - 188.15, 188.17 - 188.23, and 188.29 are adopted without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2288). The rules will not be republished. Sections 188.2, 188.4, 188.6, 188.24, 188.26, and 188.28 are adopted with non-substantive and minor grammatical changes. The rules will be republished.

The adopted rules establish qualifications, procedures, requirements and processes that enable the Board to regulate the practice of perfusion and perform the various functions, including licensing, compliance, and enforcement, as it relates to the practice of perfusion in Texas.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which transferred the Perfusionist licensing program, under Chapter 603 of the Texas Occupations Code, from the Department of State Health Services (DSHS) to the Texas Medical Board (Board). The statutory amendments transferring regulation of Perfusionists from DSHS to the Board took effect on September 1, 2015.

The adopted new rules under 22 TAC Chapter 188 are adopted in accordance with the changes to Chapter 603 of the Texas Occupations Code, as enacted by S.B. 202, and are necessary to enable the Board to regulate the practice of perfusion and perform the various functions, including licensing, compliance, and enforcement relating the practice of perfusion.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §603.152, which provides authority for the Board to adopt rules as necessary to: regulate the practice of perfusion; enforce Chapter 603 of the Texas Occupations Code; and perform its duties under Chapter 603 of the Texas Occupations Code.

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

§188.2. Definitions.

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

(1) Act--The Licensed Perfusionists Act, Title 3, Subtitle K, Texas Occupations Code Annotated Chapter 603.

(2) Active duty--A person who is currently serving as full-time military service member 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.

(3) Address of record--The mailing address of each licensee or applicant as provided to the agency pursuant to the Act.

(4) Advisory committee--The Perfusionist Licensure Advisory Committee, an informal advisory committee to the board whose purpose is to advise the board regarding rules relating to the licensure, enforcement, and discipline of perfusionists.

(5) APA--Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Applicant--A person seeking a perfusionist license from the board.

(7) Armed forces of the United States--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.

(8) Board--The Texas Medical Board.

(9) Delegating physician--A physician licensed by the board who delegates, to a licensed perfusionist, the practice of perfusion.

(10) Health care professional--A licensed perfusionist, provisional licensed perfusionist, or any person licensed, certified, or registered by the state in a health-related profession.

(11) Military service member--A person who is on active duty.

(12) Military spouse--A person who is married to a military service member.

(13) Military veteran--A person who served on active duty and who was discharged or released from active duty.

(14) Perfusion--The function necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory system, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring the parameters of the system under an order and under the supervision of a licensed physician, including:

(A) the use of extracorporeal circulation, cardiopulmonary support techniques, and other therapeutic and diagnostic technologies;

(B) counterpulsation, ventricular assistance, or autotransfusion (including blood conservation techniques), administration of cardioplegia, and isolated limb perfusion;

(C) the use of techniques involving blood management, advanced life support, and other related functions; and

(D) in the performance of the acts described in this subparagraph:

(i) the administration of:

(I) pharmacological and therapeutic agents; or

(II) blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) the performance and use of:

(I) anticoagulation analysis;

(II) physiologic analysis;

(III) blood gas and chemistry analysis;

(IV) hematocrit analysis;

(V) hypothermia;

(VI) hyperthermia;

(VII) hemoconcentration; and

(VIII) hemodilution; and

(iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

(15) Perfusionist--A person licensed as a perfusionist by the board.

(16) Perfusion protocols--Perfusion-related policies and protocols developed or approved by a licensed health facility or a physician through collaboration with administrators, licensed perfusionists, and other health professionals.

(17) Provisional licensed perfusionist--A person provisionally licensed as a perfusionist by the board.

(18) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(19) Supervision--Supervision of a provisionally licensed perfusionist by a licensed perfusionist or a physician who is licensed by the Texas Medical Board and certified by the American Board of Thoracic Surgery or certified in cardiovascular surgery by the American Osteopathic Board of Surgery. Supervision includes overseeing the activities of, and accepting responsibility for, the perfusion services rendered by a provisionally licensed perfusionist.

§188.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a perfusionist;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice perfusion in the state, territory, Canadian province, country, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good professional character;

(8) not have violated any provision of any federal or state statute relating to confidentiality of patient communications or records;

(9) not have been convicted of a felony or a crime involving moral turpitude;

(10) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(11) not have engaged in fraud or deceit in applying for a license;

(12) pass an independently evaluated perfusionist examination approved by the board;

(13) have successfully completed an educational program as set forth in subparagraphs (A) and (B) of this paragraph:

(A) a perfusion education program that is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) at the time of graduation; and

(B) a substantially equivalent program with requirements as stringent as those established by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the board.

(i) Degrees and course work received in international countries shall be acceptable only if the degree or coursework

has educational standards that are as stringent as those established by the AC-PE and approved by CAAHEP or their successors.

(ii) An international training program shall be acceptable only if it has educational standards as stringent as those established by the AC-PE and approved by the CAAHEP or their successors.

(14) submit a complete and legible set of fingerprints, on a form prescribed by the medical board, to the medical board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation, as required by §603.2571 of the Act.

(15) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) Competency Examination. An individual applying for licensure must submit proof of passage of the required perfusion examination administered by the American Board of Cardiovascular Perfusion (ABCP).

(1) If an applicant has already successfully completed the required examination administered by the ABCP, the applicant shall not be required to be reexamined, provided that the applicant furnishes the board with a copy of the test results indicating that the applicant passed the examination and proof that he or she has been certified by the ABCP for some time period within three years immediately preceding date of application.

(2) An applicant who fails the required competency examination administered by the ABCP four times may not reapply as a provisional licensed perfusionist.

(3) The board shall waive the examination requirement for an applicant who, at the time of application:

(A) is licensed or certified by another state that has licensing or certification requirements that the board determines to be substantially equivalent to the requirements of this chapter; or

(B) holds a certificate as a certified clinical perfusionist issued by the ABCP before January 1, 1994, authorizing the holder to practice perfusion in a state that does not license or certify perfusionists.

(c) Jurisprudence Examination. Applicants for licensure must pass a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the perfusionist profession in this state. The jurisprudence examination shall be developed and administered as follows:

(1) Questions for the JP Exam shall be prepared by agency staff with input from the Advisory Committee and board and the agency staff shall make arrangements for a facility by which applicants can take the examination.

(2) Applicants must pass the JP exam with a score of 75 or better within three attempts, unless the board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the Licensure Committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(3) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(4) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(5) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(6) The JP examination must be taken and passed no more than two years prior to the date of the application for licensure.

(d) Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted perfusionist license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas perfusionist license; or

(B) within the five years preceding the application date held a perfusionist license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described by this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this section, shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §188.5 of this chapter (relating to Procedural Rules for Licensure Applicants), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the requirement to produce a copy of a valid and current certificate demonstrating completion of an educational program as described in this section and required in §188.6 of this chapter (relating to Licensure Documentation), may substitute certification from the ABCP if it is made on a valid examination transcript.

(e) Applicants with Military Experience.

(1) The board shall, with respect to an applicant who is a military service member or military veteran as defined in §188.2 of this chapter (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the board.

(2) This section does not apply to an applicant who:

(A) has had a perfusionist license suspended or revoked by another state, territory, Canadian province or country;

(B) holds a perfusionist license issued by another state, territory, Canadian province or country that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

§188.6. Licensure Documentation.

(a) Original documents include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination verification. Each applicant for licensure must have the appropriate testing service that administered the required perfusionist competency examination, described in §188.4 of this chapter (relating to Qualifications for Licensure), submit verification of the applicant's passage of the examination directly to the board or verification of current certification by the ABCP.

(4) Certificate from Educational Program or other State License. All applicants must submit:

(A) a certificate of successful completion of an educational program as described in §188.4 of this chapter, unless the applicant qualifies for the special eligibility provision regarding education under §188.4 of this chapter;

(B) If an applicant is or has been licensed, certified, or registered in another state, territory, or jurisdiction, the applicant must submit information required by the board concerning that license, certificate or registration on official board forms.

(5) Transcripts. Each applicant must have his or her educational program(s) submit a transcript of courses taken and grades obtained to demonstrate compliance with curriculum requirements under §188.4 of this chapter.

(6) Evaluations.

(A) All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §188.4 of this chapter, whichever is the shorter period.

(B) The evaluations must come from at least three supervisors or instructors who are either licensed perfusionists or licensed physicians and have each supervised the applicant's work experience.

(C) An exception to subparagraph (B) of this paragraph may be made for those applicants who provide adequate documentation that they have not been supervised by at least three licensed physicians or licensed perfusionists for the three years preceding the board's receipt of application or since graduation, whichever is the shorter period.

(7) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit, directly to the board, proof that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested, the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance disorder or mental illness. An inpatient facility shall include a hospital, ambulatory surgical center, nursing home, and rehabilitation facility. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that impairs or has impaired the applicant's ability to practice perfusion, shall submit documentation must submit the following:

(A) applicant's statement explaining the circumstances of the inpatient treatment/hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality dis-

order), or a physical illness that impairs or has impaired the applicant's ability to practice perfusion, shall submit documentation to include, but not limited to the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit and, if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for licensure.

(d) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

§188.24. Continuing Education.

(a) Completion of continuing education (CE) requirements by licensee with current certification by the ABCP or its successor agency. Completion of continuing education requirements may be documented by demonstrating current certification by the ABCP annual license renewal.

(b) Completion of CE requirements by licensee without current certification by the ABCP. A licensee without current certification by the ABCP at the time of license renewal must meet the following criteria.

(1) Document a minimum of 30 continuing education credit (CEUs) every 24 months (24 month timeline is in relation to the biennial registration period, not the calendar year). A licensee must report during registration if she or he has completed the required CE. Documentation of CE courses shall be made available to the Board upon request, but should not be mailed with the registration payment. Random audits will be made to assure compliance. A minimum of 15 hours of CEU must be earned in Category I. The activity period covered in the professional activity report is from the date of licensure to the third licensure renewal date and every subsequent third license renewal date.

(2) Document a minimum of 40 clinical perfusion cases in a two-year period by submitting a clinical activity report upon renewal, on the approved form, demonstrating completion of 40 cases each biennial as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(3) One CEU or contact hour activity is defined as 50 minutes spent in an organized, structured or unstructured learning experience. Categories of CEU activities are:

(A) Category I--Perfusion Meetings and Other Perfusion Related Activity--Perfusion meetings are those programs and seminars in which a minimum of 75% of the contact hours consist of perfusion related material. Only those meetings approved by the ABCP will qualify for Category 1 hours. Examples:

(i) International, national regional, and state perfusion meetings.

(ii) Publication of perfusion related book chapter or paper in a professional journal.

(iii) Presentation at an international, national, regional or state perfusion journal.

(B) Category II--Non-Accredited Perfusion Meetings and Other Medical Meetings--This category includes international, national, regional, and state meetings that have not been approved by the ABCP, local perfusion meetings and all other medically related meetings. Examples:

(i) International, National, Regional, and State, perfusion meetings that have not been accredited by the ABCP.

(ii) Local perfusion meetings (do not require ABCP accreditation). Any perfusion meeting NOT EQUALLY ACCESSIBLE to the general CCP community, this includes manufacturer-specific and company-sponsored educational activities.

(iii) International, National, Regional, or Local medically-related meetings.

(C) Category III--Individual Education and Other Self-Study Activities Credit in this category is acquired on an hour for hour basis of the time spent in these non-accredited or non-supervised activities. Examples:

(i) Reading or viewing medical journals, audio-visual, or other educational material.

(ii) Participation in electronic forums.

(iii) Participation in a Journal Club.

(iv) Participation in degree-oriented, professional-related course work.

(v) Presentation of perfusion topic at a non-perfusion meeting.

(4) Documentation of activities. Licensees are responsible for reporting completion of their professional activities. This information must be reported to the board at the time of registration and renewal and documentation must be submitted to the board upon request. Credit will not be granted for activities that are not documented. The suitable documentation is outlined as follows:

(A) Category I--Perfusion meetings--Approved perfusion meetings held before June 30, 1998, may be documented by copies of registration receipts or official meeting name tags. For approved perfusion meetings held after June 30, 1998, an official document from the meeting sponsor documenting attendance and the number of hours received must be provided.

(i) Perfusion Publications must have complete reference of book or article (authors, title, journal and date/volume of journal).

(ii) Perfusion Presentations must have copy of program agenda.

(B) Category II--International, national, regional, and state perfusion meetings not accredited by the ABCP, local perfusion meetings and all other medical meetings--must provide an official document stating CEUs awarded and copy of the meeting program.

(C) Category III--All self-study activities will require an official record of completion or written summary of the activity.

(D) Submission of a clinical activity report upon renewal, on the approved form, demonstrating completion of 40 cases each biennial as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(c) A licensee may request in writing an exemption for the following reasons:

(1) the licensee's catastrophic illness;

(2) the licensee's military service of longer than one year's duration outside the state;

(3) the licensee's residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing education.

(d) Exemptions are subject to the approval of the executive director of the board and must be requested in writing at least 30 days prior to the expiration date of the license.

(e) An exception under subsection (c) of this section may not exceed one year but may be requested annually, subject to the approval of the executive director of the board.

(f) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of continuing education or of specific course subjects.

(g) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(h) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the number of hours of CE as required annually and provided for in this section shall result in the denial of licensure renewal until such time as the licensee obtains and reports the required CE hours.

(i) CE hours that are obtained to comply with the CE requirements for the preceding year as a prerequisite for obtaining licensure renewal, shall first be credited to meet the CE requirements for the previous year. Once the previous year's CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current year.

(j) A false report or statement to the board by a licensee regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §603.401 of the Act. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the perfusionist's license, but such action shall not be less than an administrative penalty of $500.

(k) A perfusionist, who is a military service member, may request an extension of time, not to exceed two years, to complete any CE requirements.

§188.26. Exemption from Registration Fee for Retired Perfusionists Providing Voluntary Charity Care.

(a) A retired perfusionist licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the registration fee.

(b) As used in this section:

(1) "voluntary charity care" means perfusion services provided for no compensation to:

(A) indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a perfusionist must truthfully certify under oath, on a form approved by the board that the following information is correct:

(1) the perfusionist's practice of perfusion does not include the provision of perfusion services for either direct or indirect compensation which has monetary value of any kind;

(2) the perfusionist's practice is limited to voluntary charity care for which the perfusionist receives no direct or indirect compensation of any kind for perfusion services rendered; and

(3) the perfusionist's practice does not include the provision of perfusion services to members of the perfusionist's family.

(d) A perfusionist who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing education as required under the Act and §188.24 of this chapter (relating to Continuing Education), except that the number of credits of CE required shall be equal to two-thirds of the number of continuing education hours required for renewal for a licensed perfusionist.

(e) A retired perfusionist who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the perfusionist engages in the compensated practice of perfusion or the provision of perfusion services to members of the perfusionist's family.

(f) A perfusionist who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act in addition to any civil or criminal actions provided for by state or federal law.

(g) A perfusionist may return to active status by applying to the board, paying an application fee equal to an application fee for a perfusionist license, complying with the requirements for license renewal under the Act, and submitting professional evaluations from each employment held before the license was placed on retired status, demonstrate any formal or informal continuing education obtained during the period of retired status, provide a description of all voluntary charity

care provided during the period of retired status, and complying with subsection (h) of this section.

(h) The request of a perfusionist seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(1) completion of specified continuing education hours approved for Category 1 credits by a CE sponsor approved by the ABCP;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a perfusionist;

(3) remedial education; and/or

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a perfusionist.

(i) The request of a perfusionist seeking a return to active status whose license has been placed on retired status providing voluntary charity care for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to, those options provided in subsection (h) of this section.

(j) In evaluating a request of a perfusionist seeking a return to active status whose license has been placed on retired status providing voluntary charity care, the Licensure Committee or the full board may require a personal appearance by the requesting perfusionist at the offices of the board, and may also require a physical or mental examination by one or more perfusionists or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

§188.28. Exemption from Registration Fee for Retired Perfusionists.

(a) The registration fee shall not apply to retired perfusionists. To become exempt from the registration fee due to retirement:

(1) the perfusionist's current license must not be under an investigation or order with the board or otherwise have a restricted license; and

(2) the perfusionist must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(b) The following restrictions shall apply to perfusionists whose licenses are on official retired status:

(1) the perfusionist must not engage in clinical activities or practice perfusion in any state; and

(2) the perfusionist's license may not be endorsed to any other state.

(c) A perfusionist may return to active status by applying to the board, paying an application fee equal to an application fee for a perfusionist license, complying with the requirements for license renewal under the Act, and submitting professional evaluations from each employment held before the license was placed on retired status, demonstrate any formal or informal continuing education obtained during the period of retired status and complying with subsection (d) of this section.

(d) The request of a perfusionist seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(1) completion of specified continuing education hours approved for Category 1 credits by a CE sponsor approved by the ABCP;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a perfusionist;

(3) remedial education; and/or

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a perfusionist.

(e) The request of a perfusionist seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in subsection (d)(1) - (4) of this section.

(f) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting perfusionist at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure Committee, or other designee(s) determined by majority vote of the board.

(g) A perfusionist applying for retired status under subsections (a) and (b) of this section may be approved for emeritus retired status, a subgroup of "official retired status," provided that the perfusionist has:

(1) never received a remedial plan or been the subject of disciplinary action by the Texas Medical Board;

(2) no criminal history, including pending charges, indictment, conviction and/or deferred adjudication in Texas; and

(3) never held a license, registration or certification that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state, or territory of the United States, a province of Canada, a uniformed service of the United States or other regulatory agency.

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 June 17, 2016.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, with changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2387). The rule will be republished. The change updates a reference in paragraph (1)(L)(ii).

The amendment to §190.8 adds the phrase "post-exposure prophylaxis" to language related to the type of treatment that may be provided by physicians for infectious diseases located under paragraph (1)(L)(iii)(II), so as to improve consistency and mirror other language under paragraph (1)(L)(iii)(I), pertaining to sexually transmitted diseases. The added phrase "post-exposure prophylaxis" (PEP) is intended to further clarify that the purpose of the exception is to potentially prevent infection and the furtherance of an outbreak. The amendments change the definition of a patient's "close contacts" so that the definition better reflects guidance published by the Centers for Disease Control and Prevention and local Texas health authority, so that the specific circumstances of a local communicable disease outbreak and possible drug shortages might be better addressed by physicians. Language under paragraph (1)(L)(iii)(II)(-a-), relating to Chicken Pox, and paragraph (1)(L)(iii)(II)(-f-), stating shingles, is deleted, and replaced with the addition of the term Varicella zoster, for the purpose of reorganizing the list and using scientific names. New language is added to paragraph (1)(L)(iii)(II) and (1)(L)(iii)(II)(-g-) providing language that would allow PEP to be administered by physicians providing public health medical services pursuant to a memorandum of understanding between the Department of State Health Services and the Texas Medical Board, and for any new or emergent communicable diseases not specifically listed under the rule that are determined to be a public health threat by state health authorities, thereby improving the state's ability to provide a quick public health response to communicable diseases affecting the health of Texans. The terms "infectious disease" and "communicable disease" are intended to be interchangeable.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a defined physician-patient relationship.

(i) A defined physician-patient relationship must include, at a minimum:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices, which includes documenting and performing:

(-a-) patient history;
(-b-) mental status examination;
(-c-) physical examination that must be performed by either a face-to-face visit or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions); and
(-d-) appropriate diagnostic and laboratory testing.

(III) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship;

(IV) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(V) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of clause (i)(I) - (IV) of this subparagraph, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Service) and 42 CFR 418.22.

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for:

(I) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(II) a physician to prescribe dangerous drugs and/or vaccines for post-exposure prophylaxis of disease for close contacts of a patient if the physician diagnoses the patient with one or more of the following infectious diseases listed in items (-a-) - (-g-) of this subclause, or is providing public health medical services pursuant to a memorandum of understanding entered into between the board and the Department of State Health Services. For the purpose of this clause, a "close contact" is defined as a member of the patient's household or any person with significant exposure to the patient for whom post-exposure prophylaxis is recommended by the Centers for Disease Control and Prevention, Texas Department of State Health Services, or local health department or authority ("local health authority or department" as defined under Chapter 81 of the Texas Health and Safety Code). The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(-a-) Influenza;

(-b-) Invasive Haemophilus influenzae Type B;

(-c-) Meningococcal disease;

(-d-) Pertussis;

(-e-) Scabies;

(-f-) Varicella zoster; or

(-g-) a communicable disease determined by the Texas Department of State Health Services to:

(-1-) present an immediate threat of a high risk of death or serious long-term disability to a large number of people; and

(-2-) create a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conductions to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act.

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations,

the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the Board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

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 June 17, 2016.

TRD-201603097
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: July 7, 2016
Proposal publication date: April 1, 2016
For further information, please call: (512) 305-7016

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.10

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.10 without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2669). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will increase licensure mobility, clarify exemption under the Psychologists' Licensing Act, and better ensure compliance with the letter and spirit of §501.004 of the Occupations Code. Individuals with doctoral degrees in psychology come to Texas from all over the United States and Canada to complete the clinical training required for licensure and/or board certification by providing psychological services in recognized training institutions and facilities. Many of these individuals plan on ultimately becoming licensed and practicing in states other than Texas. Since the postdoctoral fellowship is essentially a required or expected part of training, in spirit, it falls within the category of "course of study" as listed in Tex. Occ. Code Ann. §501.004(a)(2). Moreover, because these individuals may not be staying in Texas to practice, it may be considered unreasonable to expect them to start the licensure process by applying for the PLP, though such may be of financial benefit to the facility in which they obtain their training. In terms of the "course of study" issue, postdoctoral programs meeting national guidelines include didactics in addition to research and other nonclinical activities.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 13, 2016.

TRD-201602980
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 3, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 305-7706

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.13

The Texas State Board of Examiners of Psychologists adopts an amendment to §469.13, concerning Non-Compliance with Professional Development Requirements, with changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2670). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to resolve a conflict with the requirement set forth in Board rule §461.11(c)(5) that all professional development hours be obtained during the 12-month period preceding a licensee's renewal date.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§469.13. Non-Compliance with Professional Development Requirements.

(a) The license of any licensee who fails to comply with the Board's mandatory professional development requirements pursuant to Board rule §461.11 of this title (relating to Professional Development), is on delinquent status as of the renewal date of the license.

(b) If professional development compliance is not proved within 45 days after the license renewal date, the licensee shall be subject to a complaint for violation of Board rule §461.11(a) of this title applies.

(c) A person may not engage in the practice of psychology with a delinquent license, as stated in Board rule §461.7(c) of this title (relating to License Statuses).

(d) If the license is not activated within one year of expiration and goes void, a new application must be filed to obtain active licensure, and the professional development complaint will be reinstated. The complaint must be resolved before a new license will be issued.

(e) Upon notice of professional development violation, the licensee may:

(1) Submit proof that professional development was obtained within the year preceding the renewal date. Upon receipt and approval, the complaint will be dismissed;

(2) For a first violation, submit proof of late compliance and pay an administrative penalty, which is not considered disciplinary action;

(3) Resign the license in lieu of adjudication by requesting an agreed order of resignation; or

(4) Appear before an informal settlement conference to resolve the matter.

(f) Any payment of an administrative penalty to resolve a complaint is in addition to any applicable renewal fee and late renewal fee assessed by the Licensing Division for late license renewal, pursuant to Board rule §473.4 of this title (relating to Late Fees for Renewals (Not Refundable)).

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 June 13, 2016.

TRD-201602981
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 3, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 305-7706

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER C. MEDICAL FEE GUIDELINES

28 TAC §134.202, §134.302

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts the repeal of 28 TAC §134.202, concerning medical fee guideline, and 28 TAC §134.302, concerning dental fee guideline. The repealed sections are adopted without changes to the proposed text published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2117). No request for a public hearing was submitted to the division and the division did not receive written comments. The adoption of amended 28 TAC §134.204 and new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 is published elsewhere in this issue of the *Texas Register.*

The repeal is necessary because the sections are no longer effective. Identical requirements of 28 TAC §134.202 were adopted in 28 TAC §134.203 and §134.204, which superseded the section for professional services and workers' compensation specific services provided on or after March 1, 2008. Title 28 TAC §134.302 was superseded by 28 TAC §134.303 for dental services on or after June 15, 2005.

The division did not receive any comments on the published proposal for repeal.

The repeal is adopted under Labor Code §402.00111 and §402.061.

Labor Code §402.00111 requires the commissioner of workers' compensation to exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

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 June 17, 2016.

TRD-201603099
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Workers' Compensation Division
Effective date: July 7, 2016
Proposal publication date: March 18, 2016
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28 TAC §§134.204, 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, 134.250

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts non-substantive amendments to 28 Texas Administrative Code (TAC) §134.204 and adopts new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 concerning medical fee guidelines for workers' compensation. The amended and new sections are adopted without changes to the proposed text published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2118). A correction of error notice was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2523) to correct errors in the preamble published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2118). No request for a public hearing was submitted to the division.

New 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 include non-substantive changes to conform to current agency style, correct grammatical errors, and renumber or reletter subsections. The new sections become applicable for workers' compensation specific codes, services and programs provided on or after September 1, 2016 to allow system participants sufficient time to adjust to the reorganization. The adoption of the repeal of §134.202 and §134.302 is published elsewhere in this issue of the *Texas Register.*

In accordance with Government Code §2001.033, the division's reasoned justification for these rules is set out in this order, which includes the preamble. The following paragraphs include a detailed section-by-section description and reasoned justification of amendments to 28 TAC §134.204 and new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250.

The amendments and new sections are necessary to reorganize existing 28 TAC §134.204 by adding its requirements to new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 for workers' compensation specific codes, services, and programs provided on or after September 1, 2016. The division clarifies that the reorganization is non-substantive and does not include new requirements for system participants. The new sections largely mirror existing 28 TAC §134.204 and include non-substantive changes. The reorganization creates a more comprehensive format by separating the billing and reimbursement requirements for multiple services into new sections. The reorganization is necessary to streamline compliance for system participants and streamline future amendments to the guidelines. The reorganization will improve the division's ability to make future amendments to the multiple services without resulting in one complex rule project. The division declines to repeal existing 28 TAC §134.204 at this time. The division clarifies that existing 28 TAC §134.204 will remain applicable for workers' compensation specific codes, services, and programs provided from March 1, 2008 until September 1, 2016.

Amended 28 TAC §134.204. Amended 28 TAC §134.204 addresses the medical fee guideline for workers' compensation specific codes, services, and programs provided from March 1, 2008 until September 1, 2016. Amended 28 TAC §134.204(a)(2) deletes the phrase "on or after" and adds the word "from" and the phrase "until September 1, 2016." These amendments are necessary to prevent the applicability of existing 28 TAC §134.204 from running concurrently with new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250. The new sections replace existing 28 TAC §134.204 for workers' compensation specific codes, services, and programs provided on or after September 1, 2016. The division clarifies that existing 28 TAC §134.204 and the new sections will not be applicable for workers' compensation specific codes, services, and programs at the same time. The delayed applicability date of September 1, 2016 will allow system participants sufficient time to adjust to the reorganization before the new sections become applicable for workers' compensation specific codes, services, and programs.

New 28 TAC §134.209. New 28 TAC §134.209 addresses the applicability for the medical fee guideline for workers' compensation specific codes, services, and programs outlined in new §§134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250. New 28 TAC §134.209 largely mirrors existing 28 TAC §134.204(a), with non-substantive changes. New 28 TAC §134.209 does not include the title "Medical Fee Guideline for Workers' Compensation Specific Services" and instead includes the title "Applicability." The title "Applicability" better reflects the content of the new 28 TAC §134.209. The new section also does not include the phrase "applicability of this rule is as follows:" because the new section title is "Applicability" therefore including the phrase is redundant.

New 28 TAC §134.209(a)(1) - (5) largely mirrors existing 28 TAC §134.204(a)(1)(A) - (E), with non-substantive changes. New 28 TAC §134.209(a) does not include the phrase "This section applies" and instead includes the phrase "Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title apply" to specify the new citation numbers applicable to workers' compensation specific codes, services, and programs.

New 28 TAC §134.209(a) does not include subparagraphs (A) - (E) and instead includes paragraphs (1) - (5). The renumbering is necessary because the phrase "applicability of this rule is as follows:" is excluded.

New 28 TAC §134.209(a)(1) does not include the title of the referenced rule citation in existing 28 TAC §134.204(a)(1)(A) "(relating to Medical Fee Guideline for Professional Service)" to conform to current agency style.

New 28 TAC §134.209(b) largely mirrors existing 28 TAC §134.204(a)(2), with non-substantive changes. New 28 TAC §134.209(b) does not include the phrase "this section applies" and instead includes the phrase "Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title apply" to specify the new citation numbers applicable to workers' compensation specific codes, services, and programs.

New 28 TAC §134.209(b) does not include the date "March 1, 2008" and instead includes the date "September 1, 2016." This is necessary because the new sections will have a delayed applicability date. The delayed applicability date allows time for system participants to adjust to the reorganization and new sections before the new sections become applicable for workers' compensation specific services. The division expects the new sections to become applicable to workers' compensation specific codes, services, and programs provided on or after September 1, 2016.

New 28 TAC §134.209(c) includes a severability clause. The inclusion is necessary to ensure that any invalidity of the rules will not affect parts of the rules given effect without the invalid provision or application.

New 28 TAC §134.209(d) largely mirrors existing 28 TAC §134.204(m), with non-substantive changes. New 28 TAC

§134.209(d) does not include the introductory sentence "the following shall apply to Treating Doctor Examination to Define the Compensable Injury" to conform to current agency style.

New 28 TAC §134.209(d) does not include the phrase "this type of" because the phrase is no longer necessary without the introductory sentence "the following shall apply to Treating Doctor Examination to Define the Compensable Injury."

New 28 TAC §134.209(d) does not include the title of the referenced rule citation in existing 28 TAC §134.204(m) "(relating to Treating Doctor Examination to Define Compensable Injury)" to conform to current agency style.

New 28 TAC §134.209(d) includes the phrase "a treating doctor" and the phrase "to define the compensable injury" because the phrases are necessary to specify the type of examination.

New 28 TAC §134.210. New 28 TAC §134.210 addresses general provisions applicable to the medical fee guideline for workers' compensation specific services.

New 28 TAC §134.210 largely mirrors existing 28 TAC §134.204(a)(5), (b) - (d), and (n), with non-substantive changes. New 28 TAC §134.210 includes the title "Medical Fee Guideline for Workers' Compensation Specific Services" because the title reflects the content of the section.

New 28 TAC §134.210 does not include existing 28 TAC §134.204(a)(3) and (4) because the paragraphs contain rule citations that are no longer effective.

New 28 TAC §134.210(a) largely mirrors existing 28 TAC §134.204(a)(5), with non-substantive changes. New 28 TAC §134.210(a) does not include the phrase "the Texas Department of Insurance, Division of Workers' Compensation (Division)," and instead includes the word "division" to conform to current agency style.

New 28 TAC §134.210(a) does not include the title of the referenced rule citation in existing 28 TAC §134.204(a)(5) "(relating to MDR of Medical Necessity Disputes by Independent Review Organizations)" to conform to current agency style.

New 28 TAC §134.210(b)(1) - (3) largely mirrors existing 28 TAC §134.204(b)(1) - (3), with non-substantive changes. New 28 TAC §134.210(b) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(b)(1) does not include the introductory word "Billing" to conform to current agency style.

New 28 TAC §134.210(b)(1) includes the phrase "Current Procedural Terminology" before the abbreviation "CPT". The non-substantive change is necessary for clarity.

New 28 TAC §134.210(b)(1) does not include the word "codes" because the word is used twice to describe Level I and Level II Healthcare Common Procedure Coding System codes and the second use is repetitive.

New 28 TAC §134.210(b)(1) does not include the abbreviation "HCPs" and instead includes the phrase "health care providers." The non-substantive change is necessary for clarity.

New 28 TAC §134.210(b)(1) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(b)(2) does not include the introductory word "Modifiers" to conform to current agency style.

New 28 TAC §134.210(b)(2) includes the word "insurance" before the word "carriers" to conform to current agency style.

New 28 TAC §134.210(b)(2) does not include subsection "(n)" and instead includes subsection "(e)" because new 28 TAC §134.210(e) contains division-specific modifiers.

New 28 TAC §134.210(b)(3) does not include the introductory phrase "Incentive Payments" to conform to current agency style.

New 28 TAC §134.210(b)(3) does not include the phrase "subsections (d), (e), (g), (i), (j), and (k)" and instead includes the phrase "§§134.220, 134.225, 134.235, 134.240, and 134.250 of this title and subsection (d)" because the new sections reflect the content of existing 28 TAC §134.204(e), (g), (i), (j), and (k).

New 28 TAC §134.210(b)(3) does not include the title of the referenced rule citation in existing 28 TAC §134.204(b)(3) "(relating to Incentive Payments for Workers' Compensation Underserved Areas)" to conform to current agency style.

New 28 TAC §134.210(c) mirrors existing §134.204(c).

New 28 TAC §134.210(d)(1) - (3) largely mirrors existing 28 TAC §134.204(d)(1) - (3), with non-substantive changes. New 28 TAC §134.210(d) does not include the phrase "of the Labor Code" after the citation and instead includes the phrase "Labor Code" before the citation to conform to current agency style.

New 28 TAC §134.210(d)(2) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(d)(3) does not include the title of the referenced rule citation "(relating to Medical Reimbursement)" to conform to current agency style.

New 28 TAC §134.210(e)(1) - (24) largely mirrors existing 28 TAC §134.204(n)(1) - (24), with non-substantive changes. New 28 TAC §134.210(e) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(e), (e)(1), and (18) do not include the abbreviation "HCP" and instead include the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.210(e)(14) and (15) do not include the word "of" in the phrase "of at least" to conform to current agency style.

New 28 TAC §134.210(e)(20) does not include the phrase "maximum medical improvement" and instead includes the abbreviation "MMI." The non-substantive change is necessary for consistency.

New 28 TAC §134.215. New 28 TAC §134.215 addresses the medical fee guideline for home health services. New 28 TAC §134.215 largely mirrors existing 28 TAC §134.204(f), with non-substantive changes. New 28 TAC §134.215 includes the title "Home Health Services" because the title reflects the content of the section.

New 28 TAC §134.215 does not include subsection "(f)" because new 28 TAC §134.215 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.215 does not include unnecessary punctuation because of the change to sentence structure.

New 28 TAC §134.215 includes the phrase "the maximum allowable reimbursement (MAR)" for clarity. New 28 TAC §134.215 does not include the phrase "to determine the MAR" because the MAR provided for home health services is 125% of the Texas

Medicaid fee schedule. New 28 TAC §134.215 also does not include the phrase "the MAR" because the phrase "maximum allowable reimbursement (MAR)" is included and the phrase "the MAR" is repetitive.

New 28 TAC §134.220. New 28 TAC §134.220 addresses the medical fee guideline for case management services. New 28 TAC §134.220 largely mirrors existing 28 TAC §134.204(e), with non-substantive changes. New 28 TAC §134.220 includes the title "Case Management Services" because the title reflects the content of this section.

New 28 TAC §134.220 does not include a subsection "(e)" because new 28 TAC §134.220 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.220 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.220 does not include the word "is" and instead includes the word "are". The non-substantive change is necessary to correct a grammatical error.

New 28 TAC §134.220 does not include the abbreviation "HCP" and instead includes the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.225. New 28 TAC §134.225 addresses the medical fee guideline for functional capacity evaluations. New 28 TAC §134.225 largely mirrors existing 28 TAC §134.204(g), with non-substantive changes. New 28 TAC §134.225 includes the title "Functional Capacity Evaluations" because the title reflects the contents of this section.

New 28 TAC §134.225 does not include a subsection "(g)" because new 28 TAC §134.225 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.225 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.230. New 28 TAC §134.230 addresses the medical fee guideline for return to work rehabilitation programs. New 28 TAC §134.230 largely mirrors existing 28 TAC §134.204(h), with non-substantive changes. New 28 TAC §134.230 includes the title "Return to Work Rehabilitation Programs" because the title reflects the content of this section.

New 28 TAC §134.230 does not include a subsection "(h)" because new 28 TAC §134.230 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.230 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.230 includes the word "insurance" before the word "carrier" to conform to current agency style.

New 28 TAC §134.230(1)(A) includes the phrase "maximum allowable reimbursement (MAR)." The non-substantive change is necessary for clarity.

New 28 TAC §134.230(3)(B) does not include the numeral "8" and instead includes the word "eight" for consistency and to conform to current agency style.

New 28 TAC §134.235. New 28 TAC §134.235 addresses the medical fee guideline for return to work/evaluation of medical care examinations. New 28 TAC §134.235 largely mirrors existing 28 TAC §134.204(k), with non-substantive changes. New 28 TAC §134.235 includes the title "Return to Work/Evaluation of Medical Care Examinations" because the title reflects the content of this section.

New 28 TAC §134.235 does not include a subsection "(k)" because new 28 TAC §134.235 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.235 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.235 includes the phrase "maximum medical improvement/impairment rating (MMI/IR)." The non-substantive change is necessary for clarity.

New 28 TAC §134.235 does not include the phrase "subsection (i) of this section" and instead includes the phrase "§134.240 of this title." The non-substantive change is necessary because new 28 TAC §134.240 reflects the content of existing 28 TAC §134.204(i).

New 28 TAC §134.239. New 28 TAC §134.239 addresses billing for work status reports conducted separately from designated doctor examinations, maximum medical improvement evaluations, or impairment rating examinations. New 28 TAC §134.239 largely mirrors existing 28 TAC §134.204(l), with non-substantive changes. New 28 TAC §134.239 includes the title "Billing for Work Status Reports" because the title reflects the content of this section.

New 28 TAC §134.239 does not include a subsection "(l)" because new 28 TAC §134.239 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.239 does not include the sentence "the following shall apply to work status reports" because the sentence is no longer necessary to separate subsections.

New 28 TAC §134.239 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.239 does not include the phrase "subsections (i) and (j) of this section" and instead includes the phrase "§134.240 and §134.250 of this title" because new 28 TAC §134.240 and §134.250 reflects the content of existing 28 TAC §134.204(i) and (j).

New 28 TAC §134.239 does not include the title of the referenced rule citation in existing 28 TAC §134.204(l) "(relating to Work Status Reports)" to conform to current agency style.

New 28 TAC §134.240. New 28 TAC §134.240 addresses the medical fee guideline for designated doctor examinations. New 28 TAC §134.240 largely mirrors existing 28 TAC 134.204(i), with non-substantive changes. New 28 TAC §134.240 includes the title "Designated Doctor Examinations" because the title reflects the content of this section.

New 28 TAC §134.240 does not include a subsection "(i)" because new 28 TAC §134.240 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.240 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.240(1)(A) - (B) does not include the phrase "subsection (j) of this section" and instead includes the phrase

"§134.250 of this title" because new 28 TAC §134.250 reflects the content of existing 28 TAC §134.204(j).

New 28 TAC §134.240(1)(C) - (F) and (2)(A) - (C) do not include the phrase "subsection (k) of this section" and instead includes the phrase "§134.235 of this title" because new 28 TAC §134.235 reflects the content of existing 28 TAC §134.204(k).

New 28 TAC §134.240(2) does not include the word "subsection" and instead includes the word "section" because new 28 TAC §134.240 is an independent section.

New 28 TAC §134.250. New 28 TAC §134.250 addresses the medical fee guideline for maximum medical improvement evaluations, and impairment rating examinations. New 28 TAC §134.250 largely mirrors existing 28 TAC 134.204(j), with non-substantive changes. New 28 TAC §134.250 includes the title "Maximum Medical Improvement/Impairment Rating Examinations" because the title reflects the content of this section.

New 28 TAC §134.250 does not include a subsection "(j)" because new 28 TAC §134.250 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.250 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.250(1) includes the phrase "maximum allowable reimbursement (MAR)." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(1)(D) does not include unnecessary punctuation to conform to current agency style.

New 28 TAC §134.250(1)(E) does not include the phrase "Act and Division rules in" and instead includes the phrase "Labor Code and" to conform to current agency style.

New 28 TAC §134.250(1)(E) does not include the title of the referenced rule citation in existing 28 TAC §134.204(j)(1)(E) "(relating to Impairment and Supplemental Income Benefits)" to conform to current agency style.

New 28 TAC §134.250(2) does not include the phrase "An HCP" and instead includes the phrase "A health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(2) does not include the phrase "Act and Division rules in" and instead includes the phrase "Labor Code and" to conform to current agency style.

New 28 TAC §134.250(2)(A) - (C) and (3)(B)(i) - (ii) does not include the word "subsection" and instead includes the word "section" because new 28 TAC §134.250 is an independent section.

New 28 TAC §134.250(3)(A)(ii) corrects punctuation to conform to current agency style.

New 28 TAC §134.250(3)(B) and (3)(B)(i) do not include unnecessary punctuation to conform to current agency style.

New 28 TAC §134.250(4)(A) does not include the abbreviation "HCP" and instead includes the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(4)(B) does not include the citation §130.6 because the citation 28 TAC §130.6 is obsolete.

New 28 TAC §134.250(4)(B) does not include the title of the referenced rule citation in existing 28 TAC §134.204(j)(4)(B) "(relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings)" to conform to current agency style.

New 28 TAC §134.250(4)(C)(ii)(I) does not include the numeral "4th" and instead includes the word "fourth" to conform to current agency style.

New 28 TAC §134.250(4)(C)(iv) does not include the title of the referenced rule citation in existing 28 TAC §134.204(j)(4)(C)(iv) "(relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment)" to conform to current agency style.

New 28 TAC §134.250(4)(C)(v) does not include the abbreviation "HCP" and instead includes the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(5) does not include the word "subsection" and instead includes the word "section" because new 28 TAC §134.250 is an independent section.

New 28 TAC §134.250(6) does not include the phrase "Act and Division Rules" and instead includes the phrase "Labor Code and" to conform to current agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: A commenter requests the division consider increasing reimbursements for participating designated doctors as necessary to safekeep the current process. The commenter also requests the division consider a fee of $100.00 for no-show appointments when an injured employee fails to show for a designated doctor exam. The commenter states that there are a lot of hours and sacrifice involved to do a competent and complete job.

Agency Response: The division declines to make the suggested change. The commenter's request is considered substantive and outside the scope of the non-substantive reorganization of 28 TAC §134.204.

Comment: A commenter states that part of 28 TAC §127.10(a)(3) (regarding General Procedures for Designated Doctor Examinations) does not read as intended and requests the division to delete the phrase "within one working day of the examination" and add the phrase "at least one working day prior to the examination."

Agency Response: The division declines to make the suggested change. The commenter's request relates to 28 TAC Chapter 127 and is outside the scope of the non-substantive reorganization of 28 TAC §134.204.

28 TAC §134.204 and 28 TAC §134.210

Comment: A commenter requests a CPT code in the division-specific modifiers section of 28 TAC §134.204(n)(5) and 28 TAC §134.210(e)(5) be changed.

Agency Response: The division appreciates the comment but declines to make the suggested change at this time because the request is considered a substantive change and outside the scope of the non-substantive reorganization 28 TAC §134.204.

28 TAC §134.250

Comment: A commenter questions why a $50.00 reimbursement for incorporating a specialist's report in the final assignment of an impairment rating is allowed only for non-musculoskeletal body areas. The commenter requests that a desig-

nated doctor be reimbursed when incorporating the findings of all types of additional testing into the maximum medical improvement and/or impairment rating report, and requests the division remove "non-musculoskeletal" from the rule.

Agency Response: The division declines to make the suggested change. The commenter's request is considered substantive and outside the scope of the non-substantive reorganization 28 TAC §134.204.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: None

For with changes: None

Against: None

Neither for nor against: Two individuals

The amendments and new sections are adopted under Labor Code §§402.00111, 402.061, 408.021, 408.0252, 413.002, 413.007, 413.011, 413.012, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031, and 413.0511.

Labor Code §402.00111 requires the commissioner of workers' compensation to exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.021 provides that an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code §408.0252 permits the commissioner to identify areas of this state in which access to health care providers is less available and may adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas. Labor Code §413.002 requires the division to monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner relating to health care, including medical policies and fee guidelines. Labor Code §413.007 requires the division to maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used in adopting and administering the medical policies and fee guidelines. Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems and the fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. Labor Code §413.012 requires the division to review and revise the medical policies and fee guidelines at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted. Labor Code §413.013 requires the commissioner to establish programs related to health care treatments and services for dispute resolution monitoring and review to ensure compliance with medical policies or guidelines. Labor Code §413.014 requires the commissioner to specify which health care treatments and services require preauthorization or concurrent review by insurance carriers. Labor Code §413.015 requires the commissioner to review and audit insurance carriers payments of charges for medical services to ensure compliance of medical policies and fee guidelines adopted by the commissioner. Labor Code §413.016 requires the division to order a refund of charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines and investigate the potential violation. Labor Code §413.017 provides for a presumption of reasonableness for medical services consistent with the medical policies and fee guidelines. Labor Code §413.019 provides for payment of interest on delayed payments, refunds, or overpayments. Labor Code §413.031 provides for medical dispute resolution for a medical service provided. Labor Code §413.0511 requires the medical advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by Labor Code §413.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603100
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Workers' Compensation Division
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Proposal publication date: March 18, 2016
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "Board") adopts without changes amendments to 31 Texas Administrative Code ("TAC") §§371.1, 371.2, 371.10 - 371.18, 371.20 - 371.24, 371.30 - 371.35, 371.40 - 371.42, 371.60 - 371.62, 371.70 - 371.74, 371.80 - 371.82, and 371.85 - 371.88, relating to the TWDB's administration of the Drinking Water State Revolving Fund ("DWSRF"). TWDB adopts new §§371.3, 371.4, 371.36, and 371.43 - 371.52 without changes. Repeals of existing §§371.3, 371.4, and 371.43 - 371.51 are simultaneously adopted elsewhere in this issue of the *Texas Register.* These changes were proposed in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2397).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENTS AND NEW RULES.

The TWDB adopts revisions to numerous provisions in 31 TAC Chapter 371. Various revisions are adopted to provide greater clarity in this chapter of TWDB rules or to update rule provisions pursuant to TWDB practice. The specific provisions being revised and the reasons for the revisions are discussed in more detail below.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS AND NEW RULES.

Subchapter A. General Program Requirements.

Section 371.1. Definitions.

The definition of "Acquisition" is added to discuss eligible project costs and to describe a phase of the project.

The definition of "Applicant" is revised for clarity to focus on the repayment of the debt rather than ownership of the project.

The definition of "Application" is revised to expand the focus from solely 'forms' to 'forms and other information' that is submitted to the Board.

The definition of "Authorized representative" is revised to provide greater clarity.

The definition of "Bypass" is revised to incorporate the specific reasoning for passing over a higher ranked project in favor of lower ranked project.

The definition of "Commitment" is revised for clarity to refer directly to the Board resolution that constitutes the commitment rather than to the applicant's fulfillment of the conditions.

The definition of "Commitment term" is deleted because it is no longer needed with the added definition of "Expiration date," which provides more clarity.

The definition of "Construction" is deleted because it is no longer necessary.

The definition of "Construction phase" is added to provide greater clarity.

The definition of "Corporation" is deleted because it is not necessary.

The definition of "Design" is revised for clarity.

The definition of "Disadvantaged community" is revised to incorporate unemployment rates and population trends into the affordability criteria that currently consider only the income level.

The definition of "Disaster" is revised to add extreme heat.

The definition of "Eligible applicant" is revised to include a privately-owned community water system, which is currently eligible, as one of the eligible entities listed in the rule.

The definition of "Environmental affirmation" is deleted because it is no longer needed.

The definition of "Expiration date" is added to provide greater clarity regarding the Board's offer of financial assistance and is used to clarify the timeframe allowed for the applicant to submit a request to extend the Board's commitment.

The definition of "Financial assistance" is revised to provide greater clarity.

The definition of "Invited Projects List" is retitled "Initial Invited Projects List" to be consistent with the terminology used in the Board's Intended Use Plan.

The definition of "Lending rate" is revised for greater clarity to distinguish between financial assistance, which must be repaid and accrues interest, and principal forgiveness, which is not repaid and does not accrue interest.

The definition of "Nonprofit noncommunity (NPNC water system)" is revised to focus on the operation of the system rather than ownership by a non-profit organization.

The definition of "Person" is revised to align more closely to the definition in Chapter 15, Subchapter J, of the Texas Water Code.

The definition of "Planning" is added to reference a particular phase or aspect of the project.

The definition of "Population" is revised to specify that the data used must be the latest data available from the U.S. Census Bureau, such as the American Community Survey data released annually, rather than the decennial census.

The definition of "Principal forgiveness" is added to specify the type of additional subsidization that is being offered for the program.

The definition of "Project" is revised to provide greater clarity.

The definition of "Project information form" is retitled as "Project Information Form (PIF)" and is revised to clarify that the information submitted must conform to the agency's requirements.

The definition of "Project Priority List" is revised for clarity to reference the specific list found in the Intended Use Plan that contains the projects eligible for funding ranked according to their rating criteria score.

The definition of "Ready to proceed" is revised for clarification purposes.

The definition of "Subsidy" is revised to reference only a reduction in the interest rate from the market interest rate rather than principal forgiveness.

The definition of "Utility Commission" is added to delineate between the Public Utility Commission of Texas and the Texas Commission on Environmental Quality because of new powers and duties of the Public Utility Commission.

Other non-substantive, grammatical changes are made for clarification and grammatical purposes. Subsections are renumbered to reflect added and removed definitions.

Section 371.2. Projects and Activities Eligible for Assistance.

Section 371.2 is revised to include a list of all eligible project categories, eligible project-related costs, and ineligible projects in accordance with the Federal Safe Drinking Water Act ("FSDWA") (42 U.S.C. §§300f *et seq.).* While all projects and activities eligible under federal law are listed, the specific projects and activities eligible for assistance under the Texas DWSRF program for a particular funding year will be established annually in the DWSRF's Intended Use Plan. This will allow greater flexibility to adjust the program based on needs and capacity.

Section 371.3. Other Authorized Activities: Source Water Protection and Technical Assistance.

New §371.3 is added. Language from previously numbered §371.3 and §371.4 is added and revised to align the language more closely to the federal regulations. The reference to limitations on the use of funds for these purposes includes the percentages specified in the federal regulations.

Section 371.4. Federal Requirements.

A new §371.4 is added to discuss the federal requirements currently applicable to DWSRF projects. The applicability of the American Iron and Steel requirement currently established an-

nually through the federal appropriations for the program will be specified in the Intended Use Plan.

Subchapter B. Financial Assistance.

Section 371.10. Type of Financial Assistance.

Section 371.10 is revised to state that the executive administrator shall determine the type of financial assistance in accordance with the types of financial assistance authorized by the Act.

Section 371.11. Financing of Planning, Acquisition, and Design Phases.

Section 371.11 is revised to reflect a change in terminology regarding the phases of projects. It is revised to state that applicants may request financial assistance for planning, acquisition, and design without a determination that the project is ready to proceed. It also deletes the reference to applicants who have completed the planning, acquisition, and design for a proposed project within three years of the closing date for financial assistance receiving priority for construction phase funding of the project in the next available IUP if the project is ready to proceed. This priority is retained elsewhere in §371.21(d). The title is revised from "Planning, Acquisition, and Design Funding" to "Financing of Planning, Acquisition, and Design Phases."

Section 371.12. Construction Phase Funding.

Section 371.12 is revised to reflect a change in terminology regarding the phases of projects. The title is revised from "Construction Funding" to "Construction Phase Funding."

Section 371.13. Pre-Design Funding Option.

Section 371.13 is revised to reflect a change in terminology regarding the phases of projects.

Section 371.14. Lending Rates.

Section 371.14 is revised to make private and taxable entities eligible for the interest rate reduction. As part of the revision to clarify eligibility for the reduction, TWDB is revising the method of establishing the fixed rate scale and determining the amount of adjustment from the market interest rate. TWDB is not altering the interest rate reduction a borrower would have received under the current program practices. For consistency, the point in time for determining the total fixed lending rate reduction will be set at 30 days from the proposed date the application will be presented to the Board for approval. Other wording changes were made to provide greater clarity. In addition, references to the maximum reduction level have been removed to allow greater flexibility in establishing a significant interest rate reduction consistent with projections of the long-term financial health of the DWSRF. The interest rate reduction will instead be established annually in DWSRF's Intended Use Plan.

Section 371.15. Fees for Financial Assistance.

Section 371.15 is revised to allow greater flexibility to make annual adjustment to the DWSRF program based on needs and projected financial conditions. To accomplish this, the amount of any administrative loan origination fee, up to the maximum specified amount, will be established in the DWSRF's Intended Use Plan. The title is revised from "Fees of Financial Assistance" to "Fees for Financial Assistance."

Section 371.16. Term of Financial Assistance.

Section 371.16 is revised to incorporate a reference to the Federal Safe Drinking Water Act with respect to the expected design life of extended term financing offered to a disadvantaged community and extended financing through the purchase of debt obligations of a municipality.

Section 371.17. Principal Forgiveness.

Section 371.17 is revised to substitute "principal forgiveness" for "subsidies" in the title and text. As explained under Definitions, principal forgiveness is a type of additional subsidization offered in the program. The term "subsidy" now refers only to a reduction in the interest rate from the market interest rate rather than principal forgiveness.

Subchapter C. Intended Use Plan.

Section 371.20. Submission of Project Information Forms.

Section 371.20 is revised to clarify the requirements for submission of project information forms. It specifically references submission of Project Information Forms to be included on an amended Project Priority List within the Intended Use Plan. It also establishes that the required information that must be in a Project Information Form will be specified in Board guidance. It clarifies that a registered engineer must properly affix the engineer's seal, signature, and date of execution to the project information form if the amount requested from the program is equal to or greater than $100,000.

Section 371.21. Rating Process.

Section 371.21 is revised to incorporate a consideration of effective management in the rating factors for the program. A new subsection (f) is added to discuss the selection process for urgent need financial assistance, including the ability to bypass higher rated projects to provide funding to urgent need projects.

371.22. Public Notice.

Section 371.22 is revised to better reflect TWDB processes whereby the executive administrator, not the Board members, hold public hearings. The rule will state that the executive administrator may make amendments to the Project Priority List after a 14-day public comment period without any public hearing.

Section 371.23. Criteria and Methods for Distribution of Funds.

Section 371.23 is revised to reflect a change in terminology and to provide greater clarity. It revises "Subsidy" or "subsidies" to "principal forgiveness" and "Invited Projects List" to "Project Priority List" to be consistent with other sections as well as the terminology in the Intended Use Plan. The reference to small communities is clarified to mean small water systems.

Section 371.24. Changes to Project.

Section 371.24 is revised to adjust permitted changes in a proposed project listed in the Intended Use Plan without requiring a re-ranking of the project. First, the applicant for a proposed project may change provided the project itself does not change. Second, the fundable amount of a proposed project may not increase by more than 10% of the amount listed in the approved IUP. The rule is revised to allow the executive administrator to waive the 10% limit to not only incorporate additional elements to the project, but also increased project costs. Further, the section is revised to specify that any principal forgiveness awarded may not exceed the amount in the original Intended Use Plan.

Subchapter D. Application for Assistance.

Section 371.30. Pre-Application Conferences.

Section 371.30 is revised to allow individuals to participate in the conference without being in attendance.

Section 371.31. Timeliness of Application and Required Application Information.

Section 371.31 is revised to base the due date for curing a deficiency on the date of the notice to the applicant rather than the date the applicant receives the notice. This will allow enhanced tracking for program administration. This section specifies that the application must include a copy of any actual or proposed contracts covering revenues for the project for a duration specified by the agency. To allow additional flexibility to the agency, the rule will permit an alternative method of establishing a reliable accounting of the financial records of the applicant if approved by the executive administrator. The rule will clarify the listing within the application of all the funds used for the project. This section is revised to require private applicants to submit an affidavit stating that the decision to apply for financial assistance was done so in accordance with the Applicant's bylaws or charter, instead of submitting an affidavit stating the Applicant sent written, 72-hour notice to all customers, to allow Applicants to follow their established notice requirements. The provisions regarding required documentation from private applicants are revised to also cover sole proprietorships. Other non-substantive and grammatical changes were made for clarification purposes.

Section 371.32. Review of Applications for Financial Assistance.

Section 371.32(c) is deleted because it is no longer necessary. New §371.32(c) is added to establish commitment timeframes for projects that qualify and have been designated to receive principal forgiveness. Due to the high demand and limited availability of subsidized funding, it is imperative that applicants offered principal forgiveness proceed in a timely manner.

Section 371.33. Refinancing.

Section 371.33 is revised to require the project to meet programmatic requirements.

Section 371.34. Required Water Conservation Plan and Water Loss Audit.

Section 371.34 is revised to incorporate new statutory requirements. According to §16.0121(g), Water Code, a retail public utility providing potable water that receives financial assistance from the TWDB is required to use a portion of that financial assistance, or any additional financial assistance provided by TWDB, to mitigate the utility's system water loss if, based on a water audit filed by the utility, the water loss meets or exceeds the threshold established by TWDB rule. In accordance with §16.0121(g), Water Code, as amended by H.B. 949, 84th Legislative Session, §371.34 is revised to allow the TWDB, at the request of the retail public utility, to waive this requirement. TWDB rules regarding this waiver are located in 31 TAC §358.6.

Section 371.35. Board Approval of Funding.

Section 371.35 is revised to remove the commitment expiration timeframes from the rules and establish the expiration timeframes through the annual Intended Use Plan applicable to the project in order to provide greater flexibility in administering the program. Section 371.35 will allow multiple extensions instead of one extension and the language is revised to better instruct applicants on the procedure for requesting an extension.

Section 371.36. Multi-year Commitments.

New section 371.36 is added to implement multi-year commitments to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project. In order to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project, the TWDB may offer multi-year commitments. Multi-year commitments should assist entities that need to fund large projects over a period of time. Further, to assist in providing for long-term financial planning, the minimum interest rate reduction for the multi-year commitments will be established and locked for the five year period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

Subchapter E. Environmental Reviews and Determinations.

Subchapter E is revised to provide greater clarity on the environmental review process through a reorganization of this subchapter. Repeals of existing §§371.43 - 371.51 are simultaneously adopted elsewhere in this issue of the *Texas Register.*

Section 371.40. Definitions.

The definition of "Affected community" is revised to clarify its meaning in the context of its use within the subchapter.

The definitions of "Categorical Exclusion," "Environmental Assessment," "Environmental Impact Statement," "Environmental Information Document," "Finding of No Significant Impact," "Record of Decision," and "Statement of Finding" are added to provide greater clarity on what is included in these various documents, which party prepares the documents, and their use.

The definitions of "Federal Environmental Cross-cutters" and "Human environment" are added to clarify terminology utilized within the subchapter.

The definition of "Mitigation" is revised to better reflect the federal definition by adding fuller explanations of the avoidance, minimization, and rectification aspects of mitigation. Therefore, because it is no longer necessary to retain separate definitions of "Avoidance" and "Minimization," they have been deleted.

The definition of "Emergency Relief Project" is revised to include natural disasters as an emergency condition or incident.

Section 371.41. Environmental Review Process.

Section 371.41 is revised to delete references to avoidance and minimization, which are both included in the definition of mitigation. In addition, disbursement of funds information was removed as this information is already provided in §371.72, relating to Disbursement of Funds. Section 371.41 is further revised to add more details on the timing and preparation of different environmental documents in order to provide greater clarity. Certain terminology is revised in order to avoid confusion between state and federal environmental documents. Other non-substantive and grammatical changes are made for clarification purposes.

Section 371.42. Board's Environmental Finding: Categorical Exclusions.

The title of §371.42 is revised from "Types of Environmental Determinations: Categorical Exclusion" to "Board's Environmental Finding: Categorical Exclusion" in order to provide greater clarity on which party is responsible for evaluating eligibility and issuing the Categorical Exclusion. It is further revised to clarify when a project can be categorically excluded from a full environmental review. Subsection (f) is deleted in order to move this information

to new §371.43 in order to further separate and clarify Applicant versus TWDB responsibilities.

Section 371.43. Applicant Requirements: Categorical Exclusions.

New §371.43 is added in order to delineate between the Applicant's and the TWDB's responsibilities regarding a Categorical Exclusion. New §371.43 contains the Applicant's responsibilities. This change was made to provide greater clarity.

Section 371.44. Board's Environmental Finding: Finding of No Significant Impact.

New §371.44 is added to reorganize and revise previous provisions on the Finding of No Significant Impact in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §371.43 is added here and is revised to remove the statement that an environmental assessment is required for proposed projects involving new construction. This is because some minor new construction elements are eligible for a CE, which does not require an environmental assessment. The previous language is further revised to reflect the fact that an environmental assessment is not required if the action is categorically excluded or if the executive administrator has decided that an environmental impact statement is required. It is revised to require that all contracts, plans, specifications, or other applicable documents used during the design and construction of the project include reference to or descriptions of the mitigation measures. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Other minor revisions were made to provide greater clarity.

Section 371.45. Applicant Requirements: Environmental Information Document.

New §371.45 is added to reorganize and revise previous provisions on the Environmental Information Document in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §371.44 is added here and revised to provide greater clarity. An Applicant must prepare an Environmental Information Document for projects that have potential environmental impacts and the significance of those impacts is unknown. New §371.45 provides greater clarity on when an Environmental Information Document is needed, which party prepares the document, and what the document must include.

Section 371.46. Environmental Impact Statements.

New §371.46 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.47 is added here and non-substantive changes to that language are made for clarity purposes.

Section 371.47. Decision to Prepare an Environmental Impact Statement: Notice of Intent.

New §371.47 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.45 is added here and non-substantive changes to that language are made for clarity purposes.

Section 371.48. Board's Environmental Finding: Record of Decision.

New §371.48 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.46 is added here and non-substantive changes to that language are made for clarity purposes. That language is revised to delete references to avoidance and minimization because both are included in the definition of mitigation. The language is further revised to clarify that the TWDB may provide written notification regarding the outcome of the mitigation measures rather than issue a statement of findings.

Section 371.49. Applicant Requirements: Environmental Impact Statement.

New §371.49 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.48 is added here and non-substantive changes to that language are made for clarity purposes.

Section 371.50. Proposed Project Alterations.

New §371.50 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.49 is added here and revised to state that the executive administrator's review of proposed project alterations may result in a notation to the file when the alterations are minor. It is further revised for clarity to explain the process of confirming that project alterations are within the scope of the original environmental finding.

Section 371.51. Use of Previously Prepared Environmental Findings.

New §371.51 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.50 is added here and revised to allow the executive administrator to adopt previous environmental findings issued by other agencies, not just federal agencies, provided that the finding is compliant with NEPA. It is also revised to clarify that only mitigation measures from the previous findings that are applicable to the proposed project components will be applied as conditions of the financial assistance. It is revised to state that the executive administrator may provide written notification of the outcome of the mitigation measure proposed in an environmental finding to interested agencies and public groups. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Certain wording from previous language is revised in order to provide greater clarity.

Section 371.52. Emergency Relief Project Procedures.

New §371.52 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.51 is added here and non-substantive changes to that language are made for clarity purposes. Certain references to the Board are removed to provide greater flexibility in the emergency relief project procedures.

Subchapter F. Engineering Review and Approval.

Section 371.60. Engineering Feasibility Report.

Section 371.60 is revised to require the engineering feasibility report to show how the project will remedy the drinking water issues and problems instead of simply that they will remedy the problems and issues. Other non-substantive changes are made for clarity purposes.

Section 371.61. Contract Documents: Review and Approval.

Section 371.61 is revised to provide greater clarity on what the term "contract documents" include for the purposes of this section and to reference the TWDB's authority to audit project files.

Section 371.62. Advertising and Awarding Construction Contracts.

Section 371.62 is revised to extend the required notification period for pre-construction conferences from five to ten days to ensure TWDB staff will be able to attend if desired.

Subchapter G. Loan Closings and Availability of Funds.

Section 371.70. Financial Assistance Secured by Bonds or Other Authorized Securities.

Section 371.70 is revised to require the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board to include a statement that all payments, including the origination fee, are made to the Board via wire transfer at no cost to the Board. Further, §371.70(a)(5) is revised to still require assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding, but to delete the requirement that this assurance last until all financial obligations to the state have been discharged. Subsection (d) is added to provide greater clarity on which documents are required and which are not in the case of 100 percent principal forgiveness. Other non-substantive and grammatical changes are made for clarification purposes.

Section 371.71. Financial Assistance Secured by Promissory Notes and Deeds of Trust.

Section 371.71 is revised to clarify that a deed of trust, security agreement, and title insurance policy is not required in the situation of 100 percent principal forgiveness. It is also revised to change "Commission" to "Utility Commission" because of new powers and duties of the Public Utility Commission.

Section 371.72. Disbursement of Funds.

Section 371.72 is revised to eliminate the environmental affirmation by the Board but still require the environmental review to be completed before release of funds for design.

Section 371.73. Remaining Unused Funds.

Section 371.73 is revised to use "unused funds" instead of "surplus funds" for consistency.

Section 371.74. Surcharge.

Section 371.74 is revised to remove "as those terms are defined" because those terms are not defined. It is also revised to reflect new powers and duties of the Public Utility Commission.

Subchapter H. Construction and Post-Construction Requirements.

Section 371.80. Inspection During Construction.

Section 371.80 is revised to eliminate the reference to "sound engineering principles" for consistency with §17.185 of the Texas Water Code. Further, on-site observations were added to the scope of inspections as part of TWDB's actions to confirm ongoing compliance with all applicable requirements. Other minor revisions were made to provide greater clarity.

Section 371.81. Alterations During Construction.

Section 371.81 is revised to include the requirement in §17.186 of the Texas Water Code that the Texas Commission on Environmental Quality must give its approval before any substantial or material changes are made in any previously approved plans for facilities required to have commission approval of plans and specifications.

Section 371.85. Final Accounting.

Section 371.85 is revised to specify that remaining surplus funds may be used as specified in any applicable bond ordinance for certain purposes.

Section 371.87. Release of Retainage.

Section 371.87 is revised to clarify that the TWDB must issue a Certificate of Approval prior to approving the full release of retainage on a contract.

Non-substantive or grammatical changes are made to the following sections for clarification and grammatical purposes: §§371.18, 371.82, 371.86, and 371.88.

REGULATORY IMPACT ANALYSIS

The Board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide greater clarity regarding the DWSRF and to follow federal and state requirements for that fund.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Safe Drinking Water Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather it is also adopted under authority of Texas Water Code §15.605. Therefore, these adopted rules do not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The Board evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to make clarifying changes that align with state statutes and federal requirements related to the DWSRF. The adopted rules would substantially advance this stated purpose by clarifying rules related to the DWSRF, incorporating applicable language from state and federal laws and rules, and reflecting the current state and federal requirements for the DWSRF.

The Board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because

this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The Board is the agency that administers the DWSRF for the State of Texas.

Nevertheless, the Board further evaluated these adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking requires compliance with state and federal laws and rules regarding the DWSRF. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

No comments were received.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §§371.1 - 371.4

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2016.

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Les Trobman
General Counsel
Texas Water Development Board
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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§371.10 - 371.18

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §§371.20 - 371.24

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§371.30 - 371.36

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§371.40 - 371.52

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§371.60 - 371.62

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.74

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

31 TAC §§371.80 - 371.82, 371.85 - 371.88

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "Board") adopts the repeal of 31 Texas Administrative Code (TAC) §§371.3, 371.4, and 371.43 - 371.51 as proposed in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2428).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal of provisions of 31 TAC Chapter 371 in order to reorganize certain information to provide greater clarity and to streamline TWDB processes for implementation of the Drinking Water State Revolving Fund (DWSRF). The specific provisions being repealed and the reasons for the repeals are discussed in more detail below.

SECTION BY SECTION DISCUSSION OF ADOPTED REPEALS.

Section 371.3 and §371.4 are repealed in order to combine relevant language and delete language that is no longer necessary. These changes are made to provide greater clarity and to ensure consistency with state and federal DWSRF requirements.

Sections 371.43 - 371.51 are repealed in order to provide greater clarity regarding the environmental requirements for the DWSRF. These changes will provide greater clarity on which

documents are prepared by the Applicant, which documents are prepared by the TWDB, and which documents are prepared by a third party. These changes will also provide greater clarity on the timing of required environmental documentation. The repeal of these sections is adopted in order to reorganize and renumber this subchapter for greater clarity.

REGULATORY IMPACT ANALYSIS

The Board reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the repeals are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to provide greater clarity regarding the DWSRF and ensure consistency with state and federal requirements for that fund.

Even if the adopted repeals were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to these repeals because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This repeal rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Safe Drinking Water Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather it is also adopted under authority of Texas Water Code §15.605. Therefore, these adopted repeals do not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The Board evaluated these adopted repeals and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these repeals is to more closely align the TWDB's rules related to the DWSRF to state statutes and federal requirements and to provide greater clarity. The adopted repeals would substantially advance this stated purpose by reflecting the current state and federal requirements for the DWSRF.

The Board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The Board is the agency that administers the DWSRF for the State of Texas.

Nevertheless, the Board further evaluated these adopted repeals and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because these repeals do not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these repeals require compliance with state and federal laws and rules regarding the DWSRF. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the adopted repeals do not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

No comments were received.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §371.3, §371.4

STATUTORY AUTHORITY.

This repeal is adopted under the authority of Texas Water Code §15.605.

The adopted repeal affects Chapter 15 of the Texas Water 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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Les Trobman
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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§371.43 - 371.51

STATUTORY AUTHORITY.

This repeal is adopted under the authority of Texas Water Code §15.605.

The adopted repeal affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "Board") adopts without changes amendments to 31 Texas Administrative Code (TAC) §§375.1, 375.2, 375.10 - 375.19, 375.30 - 375.34, 375.40 - 375.44, 375.60 - 375.62, 375.81 - 375.83, 375.90, 375.91, 375.101 - 375.104, 375.106 - 375.109, 375.201, 375.203, and 375.206 relating to the TWDB's administration of the Clean Water State Revolving Fund (CWSRF). TWDB adopts new §§375.3, 375.45, 375.63 - 375.71, and 375.92 - 375.94 without changes. Repeals of existing §§375.50 - 375.56, 375.63 - 375.70, 375.92, and 375.93 are simultaneously adopted elsewhere in this issue of the *Texas Register.* These changes were proposed in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2430).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENTS AND NEW RULES.

Pursuant to the Water Resources Reform and Development Act of 2014 (WRRDA), the TWDB adopts revisions to numerous provisions in 31 TAC Chapter 375. Various revisions are adopted to implement changes to the federal requirements for the CWSRF. Various other revisions are adopted to provide greater clarity in this chapter of TWDB rules or to update rule provisions pursuant to TWDB practice. The specific provisions being revised and the reasons for the revisions are discussed in more detail below.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS AND NEW RULES.

Subchapter A. General Program Requirements.

Section 375.1. Definitions.

The definition of "Acquisition" is added to discuss eligible project costs and federal requirements regarding acquisition of land. It is also used to describe a phase of the project.

The definition of "Applicant" is revised for clarity to focus on the repayment of the debt rather than ownership of the project.

The definition of "Application" is revised to expand the focus from solely forms to forms and other information that is submitted to the TWDB.

The definition of "Authorized representative" is revised to provide greater clarity.

The definition of "Bypass" is revised to incorporate the specific reasoning for passing over a higher ranked project in favor of a lower ranked project.

The definition of "Commitment" is revised for clarity to refer directly to the Board resolution that constitutes the commitment rather than to the applicant's fulfillment of the conditions.

The definition of "Commitment term" is deleted because it is no longer needed with the added definition of "Expiration date," which provides more clarity.

The definition of "Construction" is revised to match the definition found in 33 U.S.C. §1292(1).

The definition of "Construction phase" is added to provide greater clarity.

The definition of "Cost and Effectiveness Analysis" is added to implement provisions of WRRDA. The term "analysis" includes both the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity and the final selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation.

The definition of "Design" is revised for clarity.

The definition of "Disadvantaged Community" is revised to incorporate the affordability criteria required in WRRDA.

The definition of "Disaster" is revised to add extreme heat.

The definition of "Eligible Applicant" is revised to implement provisions of WRRDA, explicitly mention eligibility of a special purpose district that finances on behalf of its members' waste disposal projects, and provide greater clarity.

The definition of "Environmental affirmation" is deleted because it is no longer needed.

The definition of "Expiration date" is added to provide greater clarity regarding the TWDB's offer of financial assistance and is used to clarify the timeframe allowed for the applicant to submit a request to extend the Board's commitment.

The definition of "Financial assistance" is revised to provide greater clarity.

The definition of "Fiscal Sustainability Plan" is added to implement provisions of WRRDA.

The definition of "Invited Projects List" is retitled "Initial Invited Projects List" to be consistent with the terminology used in the TWDB's Intended Use Plan.

The definition of "Lending rate" is revised for greater clarity to distinguish between financial assistance, which must be repaid and accrues interest, and principal forgiveness, which is not repaid and does not accrue interest.

The definition of "Municipality" is revised to better reflect the definition in federal law.

The definition of "Non-equivalency project" is revised to provide clarity through a reference to equivalency projects.

The definition of "Planning" is added to implement provisions of WRRDA.

The definition of "Political subdivision" is revised to conform to the Texas Water Code.

The definition of "Population" is revised to specify that the data used must be the latest data available from the U.S. Census Bureau, such as the American Community Survey data released annually, rather than the decennial census.

The definition of "Principal forgiveness" is added to specify the type of additional subsidization that is being offered for the program.

The definition of "Project" is revised to reference the language in the Federal Water Pollution Control Act and provide greater clarity.

The definition of "Project information form" is retitled as "Project Information Form (PIF)" and is revised to clarify that the information submitted must conform to the agency's requirements.

The definition of "Project Priority List" is revised for clarity to reference the specific list found in the Intended Use Plan that contains the projects eligible for funding ranked according to their rating criteria score.

The definition of "Ready to proceed" is revised for clarification purposes.

The definition of "Small and Medium-sized Publicly Owned Treatment Works" is added to implement provisions of WRRDA.

The definition of "Subsidy" is revised to reference only a reduction in the interest rate from the market interest rate rather than principal forgiveness.

The definition of "Treatment works" is added to implement provisions of WRRDA.

The definition of "Utility Commission" is added to delineate between the Public Utility Commission of Texas and the Texas Commission on Environmental Quality because of new powers and duties of the Public Utility Commission.

Other non-substantive, grammatical changes are made for clarification and grammatical purposes. Paragraphs are renumbered to reflect added and removed definitions.

Section 375.2. Projects and Activities Eligible for Assistance.

Section 375.2 is revised to add new projects and activities that are eligible under the Federal Water Pollution Control Act in accordance with WRRDA. While all projects and activities eligible under federal law are listed, the specific projects and activities eligible for assistance under the Texas CWSRF program for a particular funding year will be established annually in the CWSRF's Intended Use Plan. This will allow greater flexibility to adjust the CWSRF program based on needs and capacity.

Section 375.3. Federal Requirements.

Section 375.3 is added to list the new federal requirements for the CWSRF instituted or made permanent through WRRDA. Also, TWDB is proposing to include EPA's new policy on providing "signage" options to enhance public awareness for equivalency projects.

Subchapter B. Financial Assistance.

Section 375.10. Types of Financial Assistance.

Section 375.10 is revised to state that the executive administrator shall determine the type of financial assistance in accordance with the types of financial assistance authorized by the Federal Water Pollution Control Act ("the Act").

Section 375.11. Refinancing.

Section 375.11 is revised to require the project to meet programmatic requirements.

Section 375.12. Financing of Planning, Acquisition, and Design Phase.

Section 375.12 is revised to reflect a change in terminology regarding the phases of projects. It is revised to state that applicants may request financial assistance for planning, acquisition, and design without a readiness to proceed determination. It also deletes the reference to applicants who have completed the planning, acquisition, and design for a proposed project within three years of the closing date for financial assistance receiving priority for construction phase funding of the project in the next available IUP if the project is ready to proceed. This priority is retained elsewhere in §375.31(c).

Section 375.13. Construction Phase Funding and Section 375.14. Pre-Design Funding Option.

Section 375.13 and §375.14 are revised to reflect a change in terminology regarding the phases of projects.

Section 375.15. Lending Rates.

Section 375.15 is revised to make private and taxable entities eligible for the interest rate reduction. As part of the revision on eligibility for the reduction, TWDB is consolidating and revising the method of establishing the fixed rate scale and determining the amount of adjustment from the market interest rate for both the equivalency and non-equivalency borrowers. TWDB is not altering the interest rate reduction a borrower would have received under the current program practices. For consistency, the point in time for determining the total fixed lending rate reduction is set at 30 days from the date the application will be presented to the Board for approval. Other wording changes were made to provide greater clarity. In addition, references to the maximum reduction level have been removed to allow greater flexibility in establishing a significant interest rate reduction consistent with projections of the long-term financial health of the CWSRF. The interest rate reduction will instead be established annually in CWSRF's Intended Use Plan.

Section 375.16. Fees for Financial Assistance.

Section 375.16 is revised to allow greater flexibility to make annual adjustment to the CWSRF program based on needs and projected financial conditions. To accomplish this, the amount of any administrative loan origination fee, up to the maximum specified amount, will be established in the CWSRF's Intended Use Plan. The title is revised from "Fees of Financial Assistance" to "Fees for Financial Assistance." Other non-substantive changes are made.

Section 375.17. Term of Financial Assistance.

Section 375.17 is revised to be consistent with the requirement of WRRDA. The TWDB is revising the requirement that the term offered may not exceed the "expected design" life of an eligible project to the "projected useful" life.

Section 375.18. Principal Forgiveness.

Section 375.18 is revised based on new requirements established through WRRDA.

Subchapter C. Intended Use Plan.

Section 375.30. Submission of Project Information Forms.

Section 375.30 is revised to clarify the requirements for submission of project information forms. It specifically references submission of Project Information Forms to be included on an amended Project Priority List within the Intended Use Plan. It also establishes that the required information that must be in a Project Information Form will be specified in TWDB guidance. It clarifies that a registered engineer must properly affix the engineer's seal, signature, and date of execution to the project information form if the amount requested from the program is equal to or greater than $100,000.

Section 375.31. Rating Process.

Section 375.31 is revised to amend the rating criteria to incorporate additional projects and activities that are eligible based on WRRDA. In addition, consistent with the overall goals of the Federal Water Pollution Control Act, TWDB is considering enforcement action, innovative or alternative technology or approaches, and effective management as rating criteria. It is further revised for greater clarity.

Section 375.32. Public Notice.

Section 375.32 is revised to better reflect TWDB processes whereby the executive administrator, not the Board members, hold public hearings. The rule states that the executive administrator may make amendments to the Project Priority List after a 14-day public comment period without any public hearing.

Section 375.33. Criteria and Methods for Distribution of Funds.

Section 375.33 is revised to reflect a change in terminology and to provide greater clarity. It revises "subsidies" to "principal forgiveness" and "Invited Projects List" to "Project Priority List" to be consistent with other sections as well as the terminology in the Intended Use Plan. Other non-substantive changes are made.

Section 375.34. Changes to Project.

Section 375.34 is revised to adjust permitted changes in a proposed project listed in the Intended Use Plan without requiring a re-ranking of the project. First, the applicant for a proposed project may change provided the project itself does not change. Second, the fundable amount of a proposed project may not increase by more than 10% of the amount listed in the approved IUP. The rule is revised to allow the executive administrator to waive the 10% limit to not only incorporate additional elements to the project, but also increased project costs. Further, the section is revised to specify that any principal forgiveness awarded may not exceed the amount in the original Intended Use Plan. Other non-substantive changes are made.

Subchapter D. Application for Assistance.

Section 375.40. Pre-Application Conferences.

Section 375.40 is revised to allow individuals to participate in the conference without being in attendance.

Section 375.41. Timeliness of Application and Required Application Information.

Section 375.41 is revised to base the due date for curing a deficiency on the date of the notice to the applicant rather than the date the applicant receives the notice. This will allow enhanced tracking for program administration. This section specifies that the application must include a copy of any actual or proposed contracts covering revenues for the project for a duration specified by the agency. To allow additional flexibility to the agency, the rule will permit an alternative method of establishing a reliable accounting of the financial records of the applicant if approved by the executive administrator. The rule will clarify the listing within the application of all the funds used for the project. It is revised to include the Public Utilities Commission in the list of agencies in relation to the Applicant's affidavit. This section is revised to list the application requirements for eligible private applicants.

Section 375.42. Review of Applications.

Section 375.42(c) is deleted because it is no longer necessary. New §375.42(c) is added to establish commitment timeframes for projects that qualify and have been designated to receive principal forgiveness. Due to the high demand and limited availability of subsidized funding, it is imperative that applicants offered principal forgiveness proceed in a timely manner.

Section 375.43. Required Water Conservation Plan and Water Loss Audit.

Section 375.43 is revised to incorporate new statutory requirements. According to §16.0121(g), Water Code, a retail public utility providing potable water that receives financial assistance from the TWDB is required to use a portion of that financial assistance, or any additional financial assistance provided by TWDB, to mitigate the utility's system water loss if, based on a water audit filed by the utility, the water loss meets or exceeds the threshold established by TWDB rule. In accordance with §16.0121(g), Water Code, as amended by H.B. 949, 84th Legislative Session, §375.43 is revised to allow the TWDB, at the request of the retail public utility, to waive this requirement. TWDB rules regarding this waiver are located in 31 TAC §358.6. In accordance with §16.0121(h), Water Code, the TWDB shall adopt rules regarding the use of financial assistance from the TWDB as required by §16.0121(g) to mitigate system water loss. Section 375.43 is revised to incorporate the statutory requirements of §16.0121, Water Code, and to specify that use of financial assistance must be in accordance with the Act and the applicable Intended Use Plan.

Section 375.44. Board Approval of Funding.

Section 375.44 is revised to remove the commitment expiration timeframes from the rules and establish the expiration timeframes through the annual Intended Use Plan applicable to the project in order to provide greater flexibility in administering the program. Section 375.44 will allow multiple extensions instead of one extension and the language is revised to better instruct applicants on the procedure for requesting an extension.

Section 375.45. Multi-year Commitments.

Section 375.45 is added to implement multi-year commitments to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project. In order to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project, the TWDB may offer multi-year commitments. Multi-year commitments should assist entities that need to fund large projects over a period of time. Further, to assist in providing for long-term financial planning, the minimum interest rate reduction for the multi-year commitments will be established and locked for the five-year period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

Subchapter E. Environmental Reviews and Determinations.

Section 375.60. Definitions.

The definition of "Affected community" is revised to clarify its meaning in the context of its use within the subchapter.

The definitions of "Categorical Exclusion," "Environmental Assessment," "Environmental Impact Statement," "Environmental Information Document," "Finding of No Significant Impact," "Record of Decision," and "Statement of Finding" are added to provide greater clarity on what is included in these various documents, which party prepares the documents, and their use.

The definitions of "Federal Environmental Cross-cutters" and "Human environment" are added to clarify terminology utilized within the subchapter.

The definition of "Mitigation" is revised to better reflect the federal definition by adding fuller explanations of the avoidance, minimization, and rectification aspects of mitigation. Therefore, because it is no longer necessary to retain separate definitions of "Avoidance" and "Minimization," they have been deleted.

Section 375.61. Environmental Review Process.

Section 375.61 is revised to add subsection (e) to establish a key difference in the environmental review process between equivalency and non-equivalency projects. For equivalency projects, TWDB will inform EPA when consultation or coordination by EPA with other federal agencies is necessary to resolve issues regarding compliance with applicable federal authorities. Section 375.61 is revised to delete references to avoidance and minimization, which are both included in the definition of mitigation. In addition, disbursement of funds information was removed as this information is already provided in §375.93, relating to Disbursement of Funds. Section 375.61 is further revised to add more details on the timing and preparation of different environmental documents in order to provide greater clarity. Certain terminology is revised in order to avoid confusion between state and federal environmental documents. Other non-substantive and grammatical changes are made for clarification purposes.

Section 375.62. Board's Environmental Finding: Categorical Exclusions.

The title of §375.62 is revised from "Types of Environmental Determinations: Categorical Exclusion" to "Board's Environmental Finding: Categorical Exclusion" in order to provide greater clarity on which party is responsible for evaluating eligibility and issuing the Categorical Exclusion. It is further revised to clarify when a project can be categorically excluded from a full environmental review. Subsection (f) is deleted in order to move this information to new §375.63 in order to further separate and clarify Applicant versus TWDB responsibilities.

Section 375.63. Applicant Requirements: Categorical Exclusions.

New §375.63 is added in order to delineate between the Applicant's and the TWDB's responsibilities regarding a Categorical Exclusion. New §375.63 contains the Applicant's responsibilities. This change was made to provide greater clarity.

Section 375.64. Board's Environmental Finding: Findings of No Significant Impact.

New §375.64 is added to reorganize and revise previous provisions on the Finding of No Significant Impact in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §375.63 is added here and is revised to remove the statement that an environmental assessment is required for proposed projects involving new construction. This is because some minor new construction elements are eligible for a CE, which does not require an environmental assessment. The previous language is further revised to reflect the fact that an environmental assessment is not required if the action is categorically excluded or if the executive administrator has decided that an environmental impact statement is required. It is revised to require that all contracts, plans, specifications, or other applicable documents used during the design and construction of the project include reference to or descriptions of the mitigation measures. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Other minor revisions were made to provide greater clarity.

Section 375.65. Applicant Requirements: Environmental Information Document.

New §375.65 is added to reorganize and revise previous provisions on the Environmental Information Document in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §375.64 is added here and revised to provide greater clarity. An Applicant must prepare an Environmental Information Document for projects that have potential environmental impacts and the significance of those impacts is unknown. New §375.65 provides greater clarity on when an Environmental Information Document is needed, which party prepares the document, and what the document must include.

Section 375.66. Environmental Impact Statements.

New §375.66 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.67 is added here and non-substantive changes to that language are made for clarity purposes.

Section 375.67. Decision to Prepare an Environmental Impact Statement: Notice of Intent.

New §375.67 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.65 is added here and non-substantive changes to that language are made for clarity purposes.

Section 375.68. Board's Environmental Finding: Record of Decision.

New §375.68 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.66 is added here and non-substantive changes to that language are made for clarity purposes. That language is revised to delete references to avoidance and minimization because both are included in the definition of mitigation. The language is further revised to clarify that the TWDB may provide written notification regarding the outcome of the mitigation measures rather than issue a statement of findings.

Section 375.69. Applicant Requirements: Environmental Impact Statement.

New §375.69 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.68 is added here and non-substantive changes to that language are made for clarity purposes.

Section 375.70. Proposed Project Alterations.

New §375.70 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.69 is added here and revised to state that the executive administrator's review of proposed project alterations may result in a notation to the file when the alterations are minor. It is further revised for clarity to explain the process of confirming that project alterations are within the scope of the original environmental finding.

Section 375.71. Use of Previously Prepared Environmental Findings.

New §375.71 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.70 is added here and revised to allow the executive administrator to adopt previous environmental findings issued by other agencies, not just federal agencies, provided that the finding is compliant with NEPA. It is also revised to clarify that only mitigation measures from the previous findings that are applicable to the proposed

project components will be applied as conditions of the financial assistance. It is revised to state that the executive administrator may provide written notification of the outcome of the mitigation measure proposed in an environmental finding to interested agencies and public groups. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Certain wording from previous language is revised in order to provide greater clarity.

Subchapter F. Engineering Review and Approval.

Section 375.81. Engineering Feasibility Report.

Section 375.81 is revised to require the engineering feasibility report to show how the project will remedy the drinking water issues and problems instead of simply that they will remedy the problems and issues. Other non-substantive changes are made for clarity purposes.

Section 375.82. Contract Documents: Review and Approval.

Section 375.82 is revised to provide greater clarity on what the term "contract documents" include for the purposes of this section and to reference the TWDB's authority to audit project files.

Section 375.83. Advertising and Awarding Construction Contracts.

Section 375.83 is revised to extend the required notification period for pre-construction conferences from five to ten days to ensure TWDB staff will be able to attend if desired.

Subchapter G. Loan Closing and Availability of Funds.

Section 375.90. Applicability.

Section 375.90 is revised to correct a past drafting error that failed to specify that this subchapter applies to both equivalency and non-equivalency projects.

Section 375.91. Financial Assistance Secured by Bonds or Other Authorized Securities.

Section 375.91 is revised to require the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board to include a statement that all payments, including the origination fee, are made to the Board via wire transfer at no cost to the Board. Further, §375.91(a)(5) is revised to still require assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding, but to delete the requirement that this assurance last until all financial obligations to the state have been discharged. Other non-substantive and grammatical changes are made for clarification purposes.

Section 375.92. Financial Assistance Secured by Promissory Notes and Deeds of Trust.

Section 375.92 is added to establish closing requirements for water supply corporations, eligible private Applicants, and other Applicants that are not authorized to issue bonds or other securities.

Section 375.93. Disbursement of Funds.

Section 375.93 is added and the language of former §375.92 is revised to amend subsection (b), describing the current method of releasing funds to the recipient's construction account for principal forgiveness. These revisions are made to provide greater clarity. It is also revised to eliminate the environmental affirmation by the Board but still require the environmental review to be completed before release of funds for design.

Section 375.94. Remaining Unused Funds.

Section 375.94 is added and the language of former §375.93 is revised to use the term "unused funds" instead of "surplus funds" for consistency purposes.

Subchapter H. Construction and Post Construction Requirements.

Section 375.101. Inspection During Construction.

Section 375.101 is revised to eliminate the reference to "sound engineering principles" for consistency with §17.185 of the Texas Water Code. Further, on-site observations were added to the scope of inspections as part of TWDB's actions to confirm ongoing compliance with all applicable requirements. Other minor revisions were made to provide greater clarity.

Section 375.102. Alterations During Construction.

Section 375.102 is revised to include the requirement in §17.186 of the Texas Water Code that the Texas Commission on Environmental Quality must give its approval before any substantial or material changes are made in any previously approved plans for wastewater treatment plants or other facilities.

Section 375.106. Final Accounting.

Section 375.106 is revised to specify that remaining surplus funds may be used as specified in any applicable bond ordinance for certain purposes.

Section 375.108. Release of Retainage.

Section 375.108 is revised to clarify that the TWDB must issue a Certificate of Approval prior to approving the full release of retainage on a contract. Other non-substantive changes are made.

Non-substantive or grammatical changes are made to the following sections for clarification and grammatical purposes: §§375.19, 375.103, 375.104, 375.107, 375.109, 375.201, 375.203, and 375.206.

REGULATORY IMPACT ANALYSIS

The Board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide greater clarity regarding the CWSRF and to implement changes to federal requirements for that fund.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency

instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Water Pollution Control Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather it is also adopted under authority of Texas Water Code §15.605. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The Board evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to more closely align the TWDB's rules related to the CWSRF to state statutes and federal requirements. The adopted rulemaking would substantially advance this stated purpose by clarifying rules related to the CWSRF, incorporating applicable language from state and federal laws and rules, and reflecting the current state and federal requirements for the CWSRF.

The Board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The Board is the agency that administers the CWSRF for the State of Texas.

Nevertheless, the Board further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking requires compliance with state and federal laws and rules regarding the CWSRF. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

No comments were received.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §§375.1 - 375.3

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2016.

TRD-201603010
Les Trobman
General Counsel
Texas Water Development Board
Effective date: July 4, 2016
Proposal publication date: April 1, 2016
For further information, please call: (512) 463-7686

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§375.10 - 375.19

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §§375.30 - 375.34

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§375.40 - 375.45

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§375.60 - 375.71

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§375.81 - 375.83

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§375.90 - 375.94

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

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SUBCHAPTER H. CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS

31 TAC §§375.101 - 375.104, 375.106 - 375.109

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. NONPOINT SOURCE POLLUTION LINKED DEPOSITS PROGRAM

31 TAC §§375.201, 375.203, 375.206

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §15.605.

The adopted rulemaking affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "Board") adopts the repeal of 31 Texas Administrative Code (TAC) §§375.50 - 375.56 in Subchapter E, Division 1; §§375.63 - 375.70 in Subchapter E, Division 2; and §375.92 and §375.93, as proposed in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2461).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal of various sections of 31 TAC Chapter 375 in order to implement new federal requirements imposed by the Water Resources Reform and Development Act of 2014 (WRRDA), to provide greater clarity, and to streamline TWDB processes for implementation of the Clean Water State Revolving Fund (CWSRF). The TWDB adopts the repeal of provisions that are no longer needed and the repeal of other provisions in order to relocate them in other locations of 31 TAC Chapter 375 for clarification purposes. The specific provisions being repealed and the reasons for the repeals are discussed in more detail below.

SECTION BY SECTION DISCUSSION OF ADOPTED REPEALS.

Subchapter E, Environmental Reviews and Determinations, Division 1, State Projects.

Division 1 (State Projects) of Subchapter E (Environmental Reviews and Determinations), which includes §§375.50 - 375.56, is repealed. In accordance with WRRDA, National Environmental Policy Act (NEPA)-like environmental reviews are now required for all CWSRF assistance for the construction of treatment works, not just the equivalency projects. Therefore, TWDB is proposing to delete Division 1 of Subchapter E covering environmental reviews and determinations for state projects that was previously applied to the non-equivalency projects. The "Division 2 Federal Projects" title is therefore no longer necessary for the remaining provisions of the subchapter.

Subchapter E, Environmental Reviews and Determinations, Division 2, Federal Projects.

Sections 375.63 - 375.70 are repealed in order to provide greater clarity regarding the environmental requirements for the CWSRF. These changes will provide greater clarity on which documents are prepared by the Applicant, which documents are prepared by the TWDB, and which documents are prepared by a third party. These changes will also provide greater clarity on the timing of required environmental documentation. The repeal of these sections is adopted in order to reorganize and renumber this subchapter for greater clarity.

Section 375.92. Disbursement of Funds and Section 375.93. Remaining Unused Funds

Section 375.92 and §375.93 are repealed in order to relocate them within 31 TAC Chapter 375 for greater clarity.

REGULATORY IMPACT ANALYSIS

The Board reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the repeals are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this repeals is to provide greater clarity regarding the CWSRF and to implement changes to federal requirements for that fund.

Even if the adopted repeals were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to these repeals because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This repeal rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Water Pollution Control Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather it is also adopted under authority of Texas Water Code §15.605. Therefore, these adopted repeals do not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The Board evaluated these adopted repeals and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these repeals is to more closely align the TWDB's rules related to the CWSRF

to state statutes and federal requirements. The adopted repeals would substantially advance this stated purpose by reflecting the current state and federal requirements for the CWSRF.

The Board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The Board is the agency that administers the CWSRF for the State of Texas.

Nevertheless, the Board further evaluated these adopted repeals and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because these repeals do not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these repeals require compliance with state and federal laws and rules regarding the CWSRF. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the adopted repeals do not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

No comments were received.

SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS
DIVISION 1. STATE PROJECTS

31 TAC §§375.50 - 375.56

STATUTORY AUTHORITY.

This repeal is adopted under the authority of Texas Water Code §15.605.

The adopted repeal affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2016.

TRD-201603007
Les Trobman
General Counsel
Texas Water Development Board
Effective date: July 4, 2016
Proposal publication date: April 1, 2016
For further information, please call: (512) 463-7686

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DIVISION 2. FEDERAL PROJECTS

31 TAC §§375.63 - 375.70

STATUTORY AUTHORITY.

This repeal is adopted under the authority of Texas Water Code §15.605.

The adopted repeal affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2016.

TRD-201603008
Les Trobman
General Counsel
Texas Water Development Board
Effective date: July 4, 2016
Proposal publication date: April 1, 2016
For further information, please call: (512) 463-7686

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §375.92, §375.93

STATUTORY AUTHORITY.

This repeal is adopted under the authority of Texas Water Code §15.605.

The adopted repeal affects Chapter 15 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2016.

TRD-201603009
Les Trobman
General Counsel
Texas Water Development Board
Effective date: July 4, 2016
Proposal publication date: April 1, 2016
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)
SUBCHAPTER B. PAYMENT PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §5.12

The Comptroller of Public Accounts adopts an amendment to §5.12, regarding processing payments through electronic funds transfers, without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3243).

The amendment to subsection (g)(1) updates the email address to which any questions, comments, or complaints may be sent concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and concerning §5.12.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §403.016, which requires the comptroller to adopt rules regarding an electronic funds transfer system.

This amendment implements Government Code, §403.016.

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 June 16, 2016.

TRD-201603066
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: July 6, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 2. CAPITOL ACCESS PASS

37 TAC §§2.1, 2.2, 2.7, 2.8, 2.13

The Texas Department of Public Safety (the department) adopts amendments to §§2.1, 2.2, 2.7, 2.8, and 2.13, concerning Capitol Access Pass. These sections are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3246) and will not be republished.

These amendments are necessary in part to implement House Bill 910, enacted by the 84th Texas Legislature, to reflect changes in the name of the license to carry a handgun. In addition, the expiration date on the Capitol Access Pass is to be extended to provide a five-year period of validity.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §411.0625, which requires the department adopt rules necessary to administer the program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603075
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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CHAPTER 10. IGNITION INTERLOCK DEVICE

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§10.1 - 10.4

The Texas Department of Public Safety (the department) adopts new §§10.1 - 10.4, concerning General Provisions. These sections are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3247) and will not be republished.

These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. New Subchapter A of Chapter 10 is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of these new sections.

The new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603076
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER B. VENDOR AUTHORIZATION

37 TAC §§10.11 - 10.16

The Texas Department of Public Safety (the department) adopts new §§10.11 - 10.16, concerning Vendor Authorization. These sections are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3248) and will not be republished.

These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. New Subchapter B of Chapter 10 is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of these new sections.

The new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603078
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER C. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES - SPECIAL CONDITIONS FOR VENDOR AUTHORIZATIONS

37 TAC §§10.21 - 10.24

The Texas Department of Public Safety (the department) adopts new §§10.21 - 10.24, concerning Military Service members, Veterans, and Spouses- Special Conditions For Vendor Authorizations. These sections are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3250) and will not be republished.

New Subchapter C of Chapter 10 is intended to implement the requirements of Occupations Code, Chapter 55, as amended by Senate Bill 1307, enacted by the 84th Texas Legislature. The bill requires the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses.

No comments were received regarding the adoption of these new sections.

The new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Occupations Code, §55.02 which authorizes a state agency that issues a license to adopt rules to exempt an individual who holds a license issued by the agency from an increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

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 June 17, 2016.

TRD-201603079
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER D. IGNITION INTERLOCK DEVICE APPROVAL

37 TAC §10.31, §10.32

The Texas Department of Public Safety (the department) adopts new §10.31 and §10.32, concerning Ignition Interlock Device Approval. These sections are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3251) and will not be republished.

These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. New Subchapter D of Chapter 10 is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of these new sections.

The new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603080
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.172

The Texas Department of Public Safety (the department) adopts amendments to §15.172, concerning Issuance by Counties. This section is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3252) and will not be republished.

These amendments are necessary to remove the pilot program designation and statutory reference to Texas Transportation Code, §521.008, as a result of legislation passed by the 84th Texas Legislature.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.009, which authorizes the department to enter into agreements with certain counties for issuance of duplicate and renewal driver licenses, election identification certificates, and personal identification certificates.

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 June 17, 2016.

TRD-201603081
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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CHAPTER 18. DRIVER EDUCATION
SUBCHAPTER A. ISSUANCE AND EXAMINATION REQUIREMENTS FOR LEARNER AND PROVISIONAL LICENSES

37 TAC §18.4

The Texas Department of Public Safety (the department) adopts amendments to §18.4, concerning Examinations Administered by a Driver Education School or Parent Taught Driver Education Course Provider. This section is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3264) and will not be republished.

These amendments are necessary to remove information related to driver education program administration transferred to the Texas Department of Licensing and Regulation (TDLR) by the 84th Texas Legislature.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §1001.052 which authorizes the Texas Commission of Licensing and Regulation to adopt comprehensive rules governing driving safety courses and §§1001.201 - 1001.214.

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 June 17, 2016.

TRD-201603082
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS
SUBCHAPTER B. TEXAS IGNITION INTERLOCK DEVICE REGULATIONS

37 TAC §§19.21 - 19.29

The Texas Department of Public Safety (the department) adopts the repeal of §§19.21 - 19.29, concerning Texas Ignition Interlock Device Regulations. This repeal is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3265) and will not be republished.

The repeal of this subchapter is filed simultaneously with proposed new Chapter 10, concerning Ignition Interlock Device. The proposed new chapter is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2016.

TRD-201603083
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 7, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Title 4, Part 3

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist files this notice of its intent to review the Commercial Feed Rules (Chapter 61), Pet Food Rules (Chapter 63), and Commercial Fertilizer Rules (Chapter 65) in accordance with Texas Government Code, §2001.039.

Each rule will be reviewed to determine whether it is obsolete, whether the rules reflect current legal and policy considerations, and whether the rules reflect current procedures of the Office.

Comments on the review may be submitted by mail to Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389; or by e-mail at tjh@otsc.tamu.edu. The commission must receive comments postmarked no later than 30 days from the date this notice is published in the *Texas Register.*

TRD-201603148

Dr. Timothy Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Filed: June 21, 2016

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 239, Student Services Certificates, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 239 are organized under the following subchapters: Subchapter A, School Counselor Certificate; Subchapter B, School Librarian Certificate; Subchapter C, Educational Diagnostician Certificate; Subchapter D, Reading Specialist Certificate; and Subchapter E, Master Teacher Certificate. The SBEC proposed the review of 19 TAC Chapter 239 in the May 6, 2016 issue of the *Texas Register* (41 TexReg 3317).

Relating to the review of 19 TAC Chapter 239 the SBEC finds that the reasons for the adoption of Subchapters A-E continue to exist and readopts the rules. The SBEC received comments related to the review of Chapter 239. Following is a summary of the public comments received and the corresponding responses.

Comment: The executive director of the Texas Counseling Association (TCA) commented that since the last review of 19 TAC Chapter 239, Subchapter A, the scope of services that certified school counselors deliver to students, schools, and communities has increased. The commenter also stated that school counselor certification programs must deliver a level of rigor that truly prepares their graduates to arrive on a campus equipped to deliver effective comprehensive and developmental school counseling programs. The commenter provided six recommendations on behalf of TCA that would reflect best practices and ensure consistent and high professional standards across Texas. TCA suggested amendments to §239.1, General Provisions; §239.10, Preparation Program Requirements; §239.15, Standards Required for the School Counselor Certificate; §239.20, Requirements for the Issuance of the Standard School Counselor Certificate; §239.25, Requirements to Renew the Standard School Counselor Certificate; and §239.30, Transition and Implementation Dates.

Board Response: The SBEC recognizes the important role of the school counselor and adopted the review of 19 TAC Chapter 239. The Texas Education Agency (TEA) staff will review TCA's recommendations as part of the stakeholder activities that will occur at a later time to develop proposed rule changes for review by the SBEC.

Comment: A policy specialist and a summer law clerk with Disability Rights Texas commented that the reasons for adopting 19 TAC Chapter 239, Subchapter C, continue to exist. The commenters also noted that Texas students with disabilities would benefit if the SBEC were to readopt the standards required for the educational diagnostician with certain amendments recommended by Disability Rights Texas.

Board Response: The SBEC recognizes the important role of the educational diagnostician and adopted the review of 19 TAC Chapter 239. The TEA staff will review the recommendations of Disability Rights Texas as part of the stakeholder activities that will occur at a later time to develop proposed rule changes for review by the SBEC.

Comment: Fourteen school counselors, a professor of counseling with the University of Houston Clear Lake, an assistant professor with Lamar University, and six individuals shared support of TCA's recommendations to require a master's degree in counseling; include at least one hour of face-to-face weekly sessions provided by an experienced certified school counselor; add competencies in addressing crisis management, trauma and disasters, wellness and self-care, and technology; clarify continuing education requirements by setting a standard of 20 hours, including 4 hours in ethics over 24 months for all certified school counselors; and place limits on the amount of coursework and supervision that can be completed online.

Board Response: The SBEC acknowledges the commenters' support of TCA's recommendations and adopted the review of 19 TAC Chapter 239. The TEA staff will review TCA's recommendations as part of the stakeholder activities that will occur at a later time to develop proposed rule changes for review by the SBEC.

Comment: An assistant professor for counseling and special populations with Lamar University confirmed after reviewing 19 TAC Chapter 239 that the rules are sufficient as written and no changes are needed at this time.

Board Response: The SBEC appreciates this feedback and adopted the review of 19 TAC Chapter 239. TEA staff anticipates convening stakeholder meetings in the future to develop proposed rule changes for review by the SBEC.

Comment: A counselor in Houston Independent School District supports three of TCA's overall recommendations for changes to rules for school counselors, but does not believe a master's degree in counseling should be required for the certificate. The commenter also does not believe there are enough certified school counselors to support one hour of face-to-face weekly sessions.

Board Response: The SBEC appreciates this feedback and adopted the review of 19 TAC Chapter 239. TEA staff anticipates convening stakeholder meetings in the future to develop proposed rule changes for review by the SBEC.

This concludes the review of 19 TAC Chapter 239.

TRD-201603117
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: June 20, 2016

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Texas Medical Board

Title 22, Part 9

The Texas Medical Board (Board) adopts the review of Chapter 161, General Provisions, §§161.1 - 161.13, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2507).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 161, General Provisions.

TRD-201603055
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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The Texas Medical Board (Board) adopts the review of Chapter 164, Physician Advertising, §§164.1 - 164.6, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2507).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 164, Physician Advertising.

TRD-201603056
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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The Texas Medical Board (Board) adopts the review of Chapter 168, Criminal History Evaluation Letters, §168.1 and §168.2, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2779).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 168, Criminal History Evaluation Letters.

TRD-201603057
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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The Texas Medical Board (Board) adopts the review of Chapter 176, Health Care Liability Lawsuits and Settlements, §§176.1 - 176.9, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2507).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 176, Health Care Liability Lawsuits and Settlements.

TRD-201603058
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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The Texas Medical Board (Board) adopts the review of Chapter 181, Contact Lens Prescriptions, §§181.1 - 181.7, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2507).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 181, Contact Lens Prescriptions.

TRD-201603059

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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The Texas Medical Board (Board) adopts the review of Chapter 191, District Review Committees, §§191.1 - 191.5, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2507).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 191, District Review Committees.

TRD-201603060
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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The Texas Medical Board (Board) adopts the review of Chapter 196, Voluntary Relinquishment or Surrender of a Medical License, §§196.1, 196.2, 196.4 and 196.5, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2507).

The Board has determined that the reasons for adopting the sections continue to exist.

No comments were received regarding the rule review.

This concludes the review of Chapter 196, Voluntary Relinquishment or Surrender of a Medical License.

TRD-201603061
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: June 15, 2016

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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

Biofuel Infrastructure Partnership Request for Application

Statement of Purpose and Authority

Pursuant to Texas Agriculture Code, §12.002, the Texas Department of Agriculture (TDA) hereby requests applications for the Biofuel Infrastructure Partnership (BIP), which is designed to increase consumption of biofuel in the form of ethanol. The BIP is authorized under Sections 5(b) and 5(e) of the Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714c(b) and 714c(e)).

Eligibility

Texas is seeking additional fueling station partners to expand the infrastructure for renewable fuels derived from agricultural products produced in the United States. Each grant will fund a portion of the costs related to the installation of fuel pumps and related infrastructure dedicated to the distribution of higher ethanol blends, for example "E15" and "E85," at vehicle fueling locations, including, but not limited to, local fueling stations, convenience stores (CS), hypermarket fueling stations (HFS), or fleet facilities in Texas.

Funding Parameters

Applications must be complete and have all required documentation to be considered. Applications missing documentation or otherwise deemed incomplete will not be considered for funding until sufficient information has been received by TDA within a timeframe set forth by the agency.

Federal funds made available under BIP may only be used for infrastructure to support higher ethanol blend utilization, including:

Blender pumps that can dispense a range of ethanol blends including E85 (new pumps or retrofit of existing pumps), capped at 50 percent federal share per pump;

Dedicated E15 or E85 pumps (new pumps or retrofit of existing pumps), capped at 50 percent federal share per pump; and

New storage tanks and related equipment associated with new facilities or additional capacity (replacement is not included), capped at 25 percent federal share per tank.

Application Requirements

Applications must be submitted on the form provided by TDA. The application is available on TDA's website at *www.TexasAgriculture.gov,* under the "Grants & Services" tab, BIP program web page, or available upon request from TDA by calling (512) 463-6616.

Deadline for Submission of Responses

Applications must be submitted electronically via email to *Grants@TexasAgriculture.gov.*

Applicants must submit one complete, signed application. The application packet must be **received by TDA before close of business (5:00 p.m. CT) on Wednesday, July 6, 2016.**

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6616, or by email at *Grants@TexasAgriculture.gov.*

TRD-201603164
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: June 22, 2016

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Brazos Valley Council of Governments

Notice of Request for Proposal On-line Accredited High School Program for Brazos Valley Workforce Development Area: Brazos, Burleson, Grimes, Leon, Madison, Robertson and Washington Counties

On June 17, 2016 the Workforce Solutions Brazos Valley Board is releasing a request for proposal for an on-line accredited high school program. A comprehensive, integrated, full-featured program using web-based architecture available to WIOA participants at alternative programs/schools, for student home use, and by Board personnel and contractors to allow students to complete high school curricula and obtain a high school diploma. The program should allow WIOA participants to obtain a high school diploma through alternative programs outside the standard secondary school. The program should provide original and credit recovery for participants. The program will provide each student with a laptop computer and "wifi" hotspot to access programming. The program will provide security for laptops and the ability to track on-line access. The program will provide access by contractor case managers to allow tracking of participant achievements and levels of performance during the course of a participant's program participation.

Proposals are due to Workforce Solutions Brazos Valley Board on July 19, 2016 by 4:00 p.m. A proposers' conference call will be held on June 23, 2016 at 10:00 a.m. to discuss the RFP and to answer questions about the procurement. The RFP may be accessed at the Board's web page at www.bvjobs.org/. The contact person for this procurement is Richard Rogers, Board Procurement Consultant, (512) 963-4895, richard@sw-texas.net.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819

TRD-201603068
Patricia Buck
Program Manager
Brazos Valley Council of Governments
Filed: June 16, 2016

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Notice of Request for Quotes Adult Education Classes for Madisonville, Texas

On June 17, 2016 the Brazos Valley Council of Governments and Workforce Solutions Brazos Valley Board is releasing a request for quotes for Adult Education classes to be held in the city of Madisonville Texas in Madison County. Adult Education classes may include GED, English as a Second Language, El Civics and will be expected to meet Federal, State and local rules, regulations and performance.

Proposals are due to Brazos Valley Council of Governments/Workforce Solutions Brazos Valley Board on July 13, 2016 by 12:00 p.m. A proposers' conference call will be held on June 23, 2016 at 2:00 p.m. to discuss the RFQ and to answer questions about the procurement. The RFQ may be accessed at the Board's web page at www.bvjobs.org/. The contact person for this procurement is Richard Rogers, Board Procurement Consultant, (512) 963-4895, richard@swtexas.net.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819

TRD-201603067
Patricia Buck
Program Manager
Brazos Valley Council of Governments
Filed: June 16, 2016

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2016

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced to 1/4 percent and an additional 1/4 percent as permitted under Chapter 505 of the Texas Local Government Code Type B Corporations (4B) will become effective July 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Penitas (Hidalgo Co)	2108190	.020000	.082500

TRD-201603062
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: June 16, 2016

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Notice of Contract Amendment

The Texas Comptroller of Public Accounts ("Comptroller") entered into an amendment with the following contractor to its respective Professional Services Agreement for Independent Examining Services ("Contract") resulting from Comptroller's Request for Qualifications 207L ("RFQ 207L"). The Contract was awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 207L was published in the April 11, 2014, issue of *Texas Register* (39 TexReg. 2975). Notice of Award was published in the August 22, 2014, issue of *Texas Register* (39 TexReg 6737).

The Amendment to the respective Contract has been entered into with the following person or firm:

State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053, is extended by Amendment No. 2.

The term of the Contract, as amended, is September 1, 2014 through August 31, 2016. The Amendment, the subject of this notice, extends the term of the Contract through August 31, 2017, with no option to renew.

The total amount of the Contract is based on the size of contract tax examination package awarded by the Comptroller's Project Manager during the term of the Contract.

TRD-201603160
Laurie Velasco
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 22, 2016

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Notice of Contract Amendments

The Texas Comptroller of Public Accounts ("Comptroller") entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services ("Contracts") resulting from Comptroller's Request for Qualifications 212m ("RFQ 212m"). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of issuance of RFQ 212m was published in the April 10, 2015, issue of *Texas Register* (40 TexReg 2104). Notice of Award was published in the September 4, 2015, issue of *Texas Register* (40 TexReg 5938).

The Amendments to the respective Contracts have been entered into with the following persons or firms:

Cynthia Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021, is extended by Amendment No. 1.

Sam W. Armstrong, P.C., 27403 Manor Falls Lane, Fulshear, Texas 77441, is extended by Amendment No. 1.

Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003, is extended by Amendment No. 1.

Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083, is extended by Amendment No. 1.

Lee A. Hopes & Associates, Inc., 10415 Antelope Alley, Missouri City, Texas 77459, is extended by Amendment No. 1.

Delores A. Nornberg, 7518 Briecesco Drive, Corpus Christi, Texas 78414, is extended by Amendment No. 1.

Texas Tax Consulting Group, L.C., 3216 Reid Drive, Suite E, Corpus Christi, Texas 78404, is extended by Amendment No. 1.

The original term of the Contracts is September 1, 2015 through August 31, 2016. The Amendments, the subject of this notice, extend the term of the Contracts through August 31, 2017, with one (1) additional one (1) year option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201603161
Laurie Velasco
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 22, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/27/16 - 07/03/16 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 06/27/16 - 07/03/16 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/16 - 07/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/16 - 07/31/16 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201603127
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 21, 2016

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Deep East Texas Council of Governments

Solicitation for Professional Accounting Services

The Deep East Texas Council of Governments (DETCOG) announces the issuance of a Request for Proposals (RFP) #0617.0788. DETCOG seeks a qualified Certified Public Accounting firm to perform consulting services for our Housing Choice Voucher Program as outlined in the Scope of Service. DETCOG operates 1941 Section 8 Voucher units. Questions regarding this RFP should be submitted to the following email address: cboykin@detcog.org.

The deadline for proposals is Tuesday, July 12, 2016 at 4:00 p.m. CST. DETCOG reserves the right to accept or reject any or all proposals submitted. DETCOG is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits DETCOG to pay for any costs incurred prior to the award of a contract.

Parties interested in submitting a proposal may obtain information by contacting CaTina Boykin at (409) 381-5251 or "cboykin@detcog.org". A copy of the RFP may be downloaded from the "www.DETCOG.org" website.

TRD-201603108
Rusty Phillips
Assistant Executive Director
Deep East Texas Council of Governments
Filed: June 17, 2016

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State Board for Educator Certification

Notice of State Board for Educator Certification Disciplinary Policy Guidelines

Filing Date. June 22, 2016

The State Board for Educator Certification (SBEC) took action at its December 11, 2015 meeting to adopt the following Disciplinary Policy Guidelines in order to articulate and provide notice of its guiding policy considerations in educator discipline matters.

SBEC Disciplinary Policy Guidelines

As provided in 19 TAC §249.5, the primary purposes the SBEC seeks to achieve in educator disciplinary matters are to: (1) protect the safety and welfare of Texas schoolchildren and school personnel; (2) ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and (3) fairly and efficiently resolve educator disciplinary proceedings.

The SBEC's focus on the safety and welfare of students is also reflected in the SBEC Mission Statement, Core Principles, and Goals that were adopted on February 6, 2009.

Without diminishing in any way the SBEC 19 TAC Chapter 249 procedural and substantive rights of educators to contest allegations of educator misconduct, it is the policy of the SBEC to fully investigate such allegations and, if those allegations are found to have merit, to ensure that any sanction that is imposed furthers these purposes.

A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. Therefore, the conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator discipline proceedings.

General Principles:

1. Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.

2. SBEC disciplinary sanctions are based on educator conduct that is proved by a preponderance of the evidence, without regard to whether there has been a criminal conviction, deferred adjudication or other type of community supervision, an indictment, or even an arrest. Under the Educators' Code of Ethics, an educator may be sanctioned for conduct underlying a criminal conviction even if the crime is not subject to sanction under the Texas Occupations Code, Chapter 53. An educator may also be sanctioned for conduct underlying a criminal conviction even if the conduct is not specifically listed in 19 TAC §249.16, as long as the conduct renders the educator unworthy to instruct.

3. Because the SBEC recognizes that an educator's good moral character, as defined in 19 TAC §249.3, constitutes the essence of the role model that the educator represents to students both inside and outside the classroom, criminal law, 19 TAC Chapter 247, the Educator's Code of Ethics, and 19 TAC Chapter 249, providing for educator disciplinary proceedings, are merely a minimum base line standard for educator conduct. Active community supervision, as well as conduct that indicates dishonesty, untruthfulness, habitual impairment through drugs or alcohol, abuse or neglect of students and minors, including the educator's own children, or reckless endangerment of the safety of others, may demonstrate that the person lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator.

4. "Unworthy to instruct or to supervise the youth of this state," which serves as a basis for sanctions under 19 TAC §249.15(b)(2), is a broad concept that is not limited to the specific criminal convictions that are described in Texas Education Code (TEC) §21.058 and §21.060. The SBEC 19 TAC §249.3(45) definition of "the determination that a person is unfit to hold a certificate under the TEC, Chapter 21, Subchapter B, or to be allowed on a school campus under the auspices of an educator preparation program" predates the adoption of TEC §21.058 and §21.060, and is based upon the TEC, Chapter 21, Subchapter B, grant of authority to the SBEC to "regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators." As a Texas Court of Civil Appeals ruled in the seminal case of *Marrs v. Matthews,* 270 S.W. 586 (1925), "unworthy to instruct" "means the lack of 'worth'; the absence of those moral and mental qualities which are required to enable one to render the service essential to the accomplishment of the object which the law has in view." Therefore, the moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction.

5. Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Therefore, educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. The SBEC considers any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, to be conduct that may result in permanent revocation of an educator's certificate.

6. The SBEC recognizes and considers evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate, but must also consider the nature and seriousness of prior conduct, the potential danger the conduct poses to the health and welfare of students, the effect of the prior conduct upon any victims of the conduct, whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct, and the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students. Where appropriate, Agreed Orders will include a requirement for rehabilitation, counseling, or training programs.

Further Information. For more information, contact the SBEC c/o TEA Division of Educator Leadership and Quality by mail at 1701 North Congress Avenue, Room 5-100, Austin, Texas 78701; by telephone at (512) 936-8213; by fax at (512) 463-7795; or by email at SBECPublicComment@tea.texas.gov.

TRD-201603165

Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: June 22, 2016

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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 August 2, 2016. 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 August 2, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Arturo Lomeli Briseno dba A B Ranch; DOCKET NUMBER: 2016-0310-AGR-E; IDENTIFIER: RN102450723; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §321.31(a), and Texas Pollutant Discharge Elimination System Permit Number WQ0004850000, Parts VI A. and VII A.8(f)(2), by failing to prevent the unauthorized discharge of wastewater from a CAFO into or adjacent to any water in the state; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 580-D West Lingleville Road, Stephenville, Texas 76401, (254) 965-9200.

(2) COMPANY: Atmos Energy Corporation; DOCKET NUMBER: 2016-0279-AIR-E; IDENTIFIER: RN100542505; LOCATION: Athens, Henderson County; TYPE OF FACILITY: natural gas compression and storage plant; RULES VIOLATED: 30 TAC §122.143(4), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2458, Special Terms and Conditions Number 7, by failing to maintain daily fuel usage below the permitted limit; PENALTY: $17,550; Supplemental Environmental Project offset amount of $7,020; ENFORCEMENT COORDINATOR: Carol Mc-

Grath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: BIG STAR RV PARK, LLC; DOCKET NUMBER: 2016-0315-PWS-E; IDENTIFIER: RN107923195; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(4) COMPANY: Cabot Norit Americas, Incorporated; DOCKET NUMBER: 2016-0309-AIR-E; IDENTIFIER: RN102609724; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: an activated carbon manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), Federal Operating Permit (FOP) Number O3335, Special Terms and Conditions (STC) Number 2.F., and Texas Health and Safety Code (THSC), §382.085(b), by failing to report on final records all individually listed compounds or mixtures of air contaminants for reportable emissions events; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O3335, STC Number 2.F., and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 212534 within 24 hours after discovery of the emissions event; 30 TAC §116.115(c) and §122.143(4), FOP Number O3335, STC Number 8, New Source Review (NSR) Permit Number 56552, Special Conditions (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), FOP Number O3335, STC Number 8, NSR Permit Numbers 78421 and PSDTX1183, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $65,208; Supplemental Environmental Project offset amount of $32,604; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: CASTLE WATER, INCORPORATED; DOCKET NUMBER: 2016-0071-PWS-E; IDENTIFIER: RN101283679; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(P) and TCEQ Agreed Order Docket Number 2013-1956-PWS-E, Ordering Provision Number 2.c., by failing to provide an all-weather access road to well sites; 30 TAC §290.45(b)(1)(D)(i), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2013-1956-PWS-E, Ordering Provision Number 2.e., by failing to provide a minimum well capacity of at least 0.44 gallons per minute per connection, as required by the alternative capacity requirement approved by the executive director on October 2, 2001; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual public health service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91840002 for Fiscal Years 2014 and 2015; PENALTY: $485; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: CBS Foods, LLC dba Center Food Mart; DOCKET NUMBER: 2016-0615-PST-E; IDENTIFIER: RN101767598; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline and diesel; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $4,312; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: City of Earth; DOCKET NUMBER: 2015-1102-MWD-E; IDENTIFIER: RN101916187; LOCATION: Earth, Lamb County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0010162001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TCEQ Permit Number WQ0010162001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of untreated wastewater from the collection system into or adjacent to water in the state; 30 TAC §305.125(1) and §319.11(d) and TCEQ Permit Number WQ0010162001, Monitoring and Reporting Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at facility start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0010162001, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010162001, Special Provisions Number 15, by failing to submit the results of the annual soil sample analysis during September of each year; PENALTY: $25,803; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(8) COMPANY: City of Los Fresnos; DOCKET NUMBER: 2016-0230-MWD-E; IDENTIFIER: RN102184207; LOCATION: Los Fresnos, Cameron County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010590002, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Delta County Municipal Utility District; DOCKET NUMBER: 2015-0916-MWD-E; IDENTIFIER: RN101608990; LOCATION: Pecan Gap, Delta County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010744001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010744001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §§305.125(1) and (11)(A), 319.1, 319.4, and 319.5(b), and TPDES Permit Number WQ0010744001, Monitoring Requirements Numbers 1 and 3(a), by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: $55,100; Supplemental Environmental Project offset amount of $55,100; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2016-0328-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing; 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 8125, PSDTX1280, and N144, Special Conditions Number 1, and Federal Operating Permit Number O1426, Special Terms and Conditions Number 32, by

failing to comply with the maximum allowable emissions rate for Methanol Reformer Furnace, EPN EHTF7001; PENALTY: $105,000; Supplemental Environmental Project offset amount of $42,000; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: ERA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1742-PWS-E; IDENTIFIER: RN101438992; LOCATION: Era, Cooke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of a distribution total coliform-positive sample result on a routine sample for the month of August 2015; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of each quarter for the second quarter of 2015; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2013 and 2014; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2013 - December 31, 2013, monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR to the ED for the first and third quarters of 2014; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 10278 for calendar year 2014; PENALTY: $571; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Hwy 300 LLC; DOCKET NUMBER: 2016-0403-MWD-E; IDENTIFIER: RN103065041; LOCATION: Longview, Gregg County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0014395001 Operational Requirements Number 1 and Special Provisions Number 3, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §21.4 and TWC, §5.702, by failing to pay all annual Consolidated Water Quality fees and associated late fees for TCEQ Financial Administration Account Number 23005554 for Fiscal Years 2010 - 2016; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: INDUSTRIAL ASPHALT, LLC; DOCKET NUMBER: 2014-1655-EAQ-E; IDENTIFIER: RN103140695; LOCATION: Buda, Hays County; TYPE OF FACILITY: quarry; RULES VIOLATED: 30 TAC §213.4(j)(3) and Water Pollution Abatement Plan (WPAP) Number 11-10110302 Standard Condition Number 6, by failing to obtain approval of a modification to an approved WPAP prior to initiating construction of the modification; and 30 TAC §213.4(k) and WPAP Number 11-10110302 Standard Condition Number 2, by failing to maintain the best management practices; PENALTY: $23,175; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(14) COMPANY: Ingram Readymix Number 9, L.L.C. and Ingram Readymix, Incorporated; DOCKET NUMBER: 2015-0212-WQ-E; IDENTIFIER: RN102571247; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §122.28(b)(2), 30 TAC §205.7, and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXG111156, Part III Section B(4)(c) and Part IV Number 1, by failing to maintain a rain gauge on-site and monitor the rain gauge a minimum of once per week; 40 CFR §122.28(b)(2) and §136.3, 30 TAC §205.7 and §319.11(b), and TPDES GP Number TXG111156, Part IV Numbers 1 and 7(c), by failing to ensure that the methods of sample analysis meet the requirements of 40 CFR Part 136 or are analyzed in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater; 40 CFR §122.28(b)(2), 30 TAC §205.7, and TPDES GP Number TXG111156, Part III Section B(1), (2), and (3) and Part IV Number 1, by failing to monitor effluent from Outfall Number 002 at the frequency specified in the permit; TWC, §26.121(a)(1), 40 CFR §122.28(b)(2), 30 TAC §205.7, and TPDES GP Number TXG111156, Part III Section B(5)(b)(iii)(A)(1) and Part IV Numbers 1 and 3, by failing to prevent or minimize the discharge of industrial waste into or adjacent to any water in the state; TWC, §26.121(a)(1), 40 CFR §122.28(b)(2), and 30 TAC §205.7, and TPDES GP Number TXG111156, Part IV Numbers 1 and 3, by failing to prevent the discharge of industrial waste into or adjacent to any water in the state; PENALTY: $11,714; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: James T. Scott; DOCKET NUMBER: 2016-0906-WOC-E; IDENTIFIER: RN105733927; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license for PWS program; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(16) COMPANY: Lucid Energy Westex, LLC; DOCKET NUMBER: 2016-0173-AIR-E; IDENTIFIER: RN106588601; LOCATION: Sterling, Sterling County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§122.143(4), 122.146(1) and (2), and 122.165(a)(8) and (b), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3686/Oil and Gas General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(1) and (2), by failing to submit a complete and accurate annual compliance certification within 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(B), THSC, §382.085(b), and FOP Number O3686/Oil and Gas GOP Number 514, Site-wide Requirements (b)(1) and (2), by failing to submit a deviation report for at least each six-month period after permit issuance; 30 TAC §§106.8(c)(4), 106.512(2)(C)(i), and 122.143(4), THSC, §382.085(b), and FOP Number O3686/Oil and Gas GOP Number 514, Site-wide Requirements (b)(9)(D)(xliii), by failing to maintain the records of the manufacturer's specific recommendation for the oxygen sensor replacement and maintenance for the Mustang Caterpillar Engines and make them available for review; and 30 TAC §116.615(2), THSC, §382.085(b), and FOP Number O3686/Oil and Gas GOP Number 514, Site-wide Requirements (b)(9)(E)(ii), by failing to accurately represent Engines C2 and C3 in Standard Permit Registration Number 107819; PENALTY: $18,000; Supplemental Environmental Project offset amount of $7,200; ENFORCEMENT COORDINATOR: Rajesh

Acharya, (512) 239-0577; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(17) COMPANY: MANJARI INCORPORATED dba O M Mart; DOCKET NUMBER: 2016-0385-PST-E; IDENTIFIER: RN101900397; LOCATION: Springtown, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline and diesel fuel; 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; and 30 TAC §115.225 and 40 Code of Federal Regulations §63.11120(a) and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $5,048; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Marathon Pipe Line LLC; DOCKET NUMBER: 2016-0473-AIR-E; IDENTIFIER: RN105087670; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: pipeline transportation of natural gas and refined petroleum products; RULE VIOLATED: Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: MARINA QUEST, INCORPORATED dba Texoma Marina and Resort; DOCKET NUMBER: 2015-1826-PWS-E; IDENTIFIER: RN102071990; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of May 2015 - August 2015 and failing to issue public notification and submit a copy of the notification to the executive director (ED) regarding the failure to collect routine coliform samples for the months of May 2015 and June 2015; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A) and (f), by failing to collect five routine distribution coliform samples during the month following a total coliform-positive sample result for the month of April 2015, and failing to issue public notification and submit a copy of notification to the ED regarding the failure to collect five routine distribution coliform samples during the month following a total coliform-positive sample result for the month of April 2015; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected for the month of March 2015, and failing to conduct increased coliform monitoring for the month of September 2014, and failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of August 2014; PENALTY: $1,986; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Marisol Management LLC dba Marisols Convenience Store; DOCKET NUMBER: 2016-0305-PST-E; IDENTIFIER: RN104891338; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, Class B, Class C for the facility; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with an underground storage tank (UST) system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight and free of debris; and 30 TAC §334.50(b)(1)(A), (2) and (A)(i)(III), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, failing to provide release detection for the pressurized piping associated with the UST system, failing to test the line leak detectors at least once per year for performance and operational reliability, 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% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: $7,734; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(21) COMPANY: MARTY MECHANICAL, INCORPORATED dba One Stop 46; DOCKET NUMBER: 2016-0141-PST-E; IDENTIFIER: RN102257227; LOCATION: Rockwall, Rockwall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.51(b) and TWC, §26.3475(c)(2), by failing to equip the UST system with spill and overfill prevention equipment; 30 TAC §334.6(a)(2), by failing to provide notification of major construction activities for a UST system; 30 TAC §334.78(c), by failing to submit a site assessment report within 45 days after a confirmed release of a regulated substance from a UST system; 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground and/or totally or partially submerged metal components of a UST system; and 30 TAC §26.121(a)(1), by failing to not allow the unauthorized discharge of gasoline into or adjacent to waters in the state; PENALTY: $58,690; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Mazen, LLC dba Truck N Travel; DOCKET NUMBER: 2016-0303-PST-E; IDENTIFIER: RN101559672; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §115.225 and 40 Code of Federal Regulations §63.11120(a), by failing to conduct the annual testing of the Stage I equipment; 30 TAC §115.222(3) and Texas Health and Safety Code, §382.085(b), by failing to comply with control requirements for emission limitation anywhere in the liquid transfer or vapor balance system; and 30 TAC §334.45(c)(3)(A), by failing

to ensure that the emergency shutoff valves are securely anchored at the base of the dispensers; PENALTY: $26,622; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Minerva Garcia dba Abdiels Tire Shop; DOCKET NUMBER: 2016-0579-MSW-E; IDENTIFIER: RN108045733; LOCATION: Austin, Travis County; TYPE OF FACILITY: tire shop; RULE VIOLATED: 30 TAC §328.63(c), by failing to obtain a registration to process scrap tires; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(24) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2016-0428-PWS-E; IDENTIFIER: RN101450286; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: New Braunfels Utilities; DOCKET NUMBER: 2016-0429-MWD-E; IDENTIFIER: RN102078011; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010232001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $27,000; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: NEW DELTA BUSINESS LLC dba Delta Food Mart 2; DOCKET NUMBER: 2016-0262-PST-E; IDENTIFIER: RN101887891; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i), by failing to inspect all sumps, manways, over spill containers, or catchment basins associated with an underground storage tank (UST) system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight and free of debris and liquid and remove any liquid or debris found in them during that inspection within 96 hours of discovery; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST; PENALTY: $3,108; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: OVERSTREET DAIRY LLC; DOCKET NUMBER: 2016-0276-AGR-E; IDENTIFIER: RN105126551; LOCATION: Chillicothe, Hardeman County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §305.125(1) and §321.44(a) and Texas Pollution Discharge Elimination System (TPDES) General Permit (GP) Number TXG921386, Part IV, Recordkeeping, Reporting, and Notification Requirements, B. Reporting and Notifications Number 5, by failing to notify the appropriate regional office orally within 24 hours of becoming aware of a discharge and in writing within 14 working days of the discharge to the Enforcement Division; 30 TAC §321.39(b) and (6), and §305.125(1) and (5) and TPDES GP Number TXG921386, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements Numbers 6.e, 10.a, and 10.c., by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(1) and §321.46(a)(7)(A) and TPDES GP Number TXG921386, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements Number 2.a, by failing to indicate all required items on the site map; and 30 TAC §305.125(1) and §321.46(c)(5) and TPDES GP Number TXG921386, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements Number 15.b, by failing to have a licensed Texas Professional Engineer review the existing engineering documentation, complete a site evaluation of the structural controls, and review existing liner documentation every five years; PENALTY: $4,150; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(28) COMPANY: Plainview BioEnergy, LLC; DOCKET NUMBER: 2016-0339-IWD-E; IDENTIFIER: RN101983278; LOCATION: Plainview, Hale County; TYPE OF FACILITY: ethanol production plant; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollution Discharge Elimination System (TPDES) Permit Number WQ0004935000, Monitoring and Reporting Requirements Number 5, by failing to ensure that all automatic flow measuring or recording devices are calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually; and 30 TAC §305.125(1) and §319.11(a), and TPDES Permit Number WQ0004935000, Monitoring and Reporting Requirements Numbers 2.a and 3.a, by failing to properly collect effluent samples; PENALTY: $5,083; Supplemental Environmental Project offset amount of $2,033; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(29) COMPANY: Prime Materials, LLC; DOCKET NUMBER: 2016-0458-MLM-E; IDENTIFIER: RN106908379; LOCATION: Tilden, McMullen County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §106.149(3) and Texas Health and Safety Code, §382.085(b), by failing to ensure water sprays are installed on the plant at all screens and transfer points and used as necessary to achieve maximum control of dust emissions; 30 TAC §281.25(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollution Discharge Elimination System General Permit Number TXR050000; and 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $13,125; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(30) COMPANY: Texmark Chemicals, Incorporated; DOCKET NUMBER: 2015-1684-AIR-E; IDENTIFIER: RN100238740; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1363, Special Terms and Conditions (STC) Number 1.A, by failing to record at least 98% of the flare daily visible emissions observations; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 Code of Federal Regulations (CFR) §60.18(c)(2), FOP Number O1363, STC Numbers 1.A and 13, and New Source Review (NSR) Permit Number 21472, Special Conditions (SC) Number 14.B, by failing to operate the flare with a flame present at all times; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1363, STC Numbers 1.A and 13, and NSR Permit Number 21472, SC Number 23.F, by failing to conduct quarterly leak detection and repair monitoring; 30 TAC §§101.20(1),

115.352(4), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 CFR §60.482-6(a)(1), FOP Number O1363, STC Numbers 1.A and 13, and NSR Permit Number 21472, SC Number 23.E, by failing to maintain a cap, plug, or blind flange on all open-ended lines; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1363, STC Numbers 1.A and 13, and NSR Permit Number 21472, SC Number 14.D, by failing to conduct annual calibrations for the flare flow monitor and calorimeter; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1363, STC Numbers 1.A and 13, and NSR Permit Number 21472, SC Number 8, by failing to conduct semi-annual natural gas fuel analysis; 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O1363, General Terms and Conditions, by failing to report all instances of deviations; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1363, STC Number 13, and NSR Permit Number 21472, SC Number 14.D, by failing to maintain continuous records of the vent stream flow and British thermal units content to the flare; and 30 TAC §§101.20(1), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 CFR §60.112b(a)(1)(i), FOP Number O1363, STC Numbers 1.A and 13, and NSR Permit Number 21472, SC Number 25.B, by failing to refill or de-gas tanks within 24 hours of landing internal floating roofs; PENALTY: $53,394; Supplemental Environmental Project offset amount of $20,158; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: United Skates Incorporated dba Adventures USA; DOCKET NUMBER: 2016-0026-PWS-E; IDENTIFIER: RN101196434; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the months of September and December of 2012, June, October, November and December of 2014, and June of 2015; and 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect a routine distribution water sample for coliform analysis for the month of September 2015; PENALTY: $660; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

TRD-201603121
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2016

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Enforcement Orders

An agreed order was adopted regarding Jesus Espinoza dba Champion Stone Quarry, Docket No. 2014-1016-MLM-E on June 22, 2016 assessing $55,000 in administrative penalties with $11,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Servando Rivera, Docket No. 2015-0150-MLM-E on June 22, 2016 assessing $34,071 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Legacy Metals LLC, Docket No. 2015-0298-IHW-E on June 22, 2016 assessing $7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding James L. Oxford, Trustee of Country Villa Trust dba Country Villa Mobile Home Park, Docket No. 2015-0666-PWS-E on June 22, 2016 assessing $794 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW NGC, INC., Docket No. 2015-0783-WQ-E on June 22, 2016 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was adopted regarding Devine Convenience LLC dba Super Mart, Docket No. 2015-0803-PST-E on June 22, 2016 assessing $8,750 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 adopted regarding Nelson Gardens Energy, LLC, Docket No. 2015-0869-AIR-E on June 22, 2016 assessing $13,938 in administrative penalties with $2,787 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hub City Convenience Stores, Inc. dba Chisum 35, Docket No. 2015-0904-PST-E on June 22, 2016 assessing $10,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Paul Mauricio Sr., Docket No. 2015-0921-PST-E on June 22, 2016 assessing $7,650 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Margarito Mendez, Docket No. 2015-1161-MSW-E on June 22, 2016 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Owens Corning Insulating Systems, LLC, Docket No. 2015-1207-AIR-E on June 22, 2016 assessing $37,121 in administrative penalties with $7,424 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wolf Hollow I Power, LLC, Docket No. 2015-1292-AIR-E on June 22, 2016 assessing $96,600 in administrative penalties with $19,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Craig's Dirt Service, L.L.C., Docket No. 2015-1342-WQ-E on June 22, 2016 assessing $26,517 in administrative penalties with $5,303 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding D & D INTERNATIONAL, INC. dba Handi Stop 72, Docket No. 2015-1374-PST-E on June 22, 2016 assessing $23,585 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Marathon Oil EF LLC, Docket No. 2015-1378-AIR-E on June 22, 2016 assessing $9,150 in administrative penalties with $1,830 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Randall & Spencer, LLC dba 2 Cousins Gas & Grocery, Docket No. 2015-1383-PWS-E on June 22, 2016 assessing $550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Barge & Boat, Inc., Docket No. 2015-1410-AIR-E on June 22, 2016 assessing $10,650 in administrative penalties with $2,130 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Air Liquide Large Industries U.S. LP, Docket No. 2015-1459-AIR-E on June 22, 2016 assessing $107,100 in administrative penalties with $21,420 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Eddie Douglas, Docket No. 2015-1551-PWS-E on June 22, 2016 assessing $2,202 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Midstream Services LLC, Docket No. 2015-1559-AIR-E on June 22, 2016 assessing $14,298 in administrative penalties with $2,859 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Midstream Services LLC, Docket No. 2015-1568-AIR-E on June 22, 2016 assessing $8,990 in administrative penalties with $1,798 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Odessa, Docket No. 2015-1598-MWD-E on June 22, 2016 assessing $22,112 in administrative penalties with $4,422 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Orange County Water Control and Improvement District No. 1, Docket No. 2015-1621-PWS-E on June 22, 2016 assessing $1,380 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Chemical LP, Docket No. 2015-1636-AIR-E on June 22, 2016 assessing $50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Adrian, Docket No. 2015-1647-PWS-E on June 22, 2016 assessing $697 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHIN-ETSU SILICONES OF AMERICA, INC., Docket No. 2015-1726-PWS-E on June 22, 2016 assessing $243 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512)

239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Presidio, Docket No. 2015-0141-MWD-E on June 21, 2016 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Junction, Docket No. 2015-0421-MWD-E on June 21, 2016 assessing $6,413 in administrative penalties with $1,282 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WINNIE WELDING WORKS & CONSTRUCTION, INC., Docket No. 2015-1426-WQ-E on June 21, 2016 assessing $5,813 in administrative penalties with $1,162 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Royse City, Docket No. 2015-1463-PWS-E on June 21, 2016 assessing $300 in administrative penalties with $60 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Huntsville, Docket No. 2015-1482-MWD-E on June 21, 2016 assessing $5,812 in administrative penalties with $1,162 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Duval County Conservation and Reclamation District, Docket No. 2015-1573-MWD-E on June 21, 2016 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JACKSON WATER SUPPLY CORPORATION, Docket No. 2015-1592-PWS-E on June 21, 2016 assessing $612 in administrative penalties with $122 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CSFM INC dba Chestnut Star Food Mart, Docket No. 2015-1697-PST-E on June 21, 2016 assessing $3,505 in administrative penalties with $701 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mart, Docket No. 2015-1709-PWS-E on June 21, 2016 assessing $2,322 in administrative penalties with $464 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United Copper Industries, Inc., Docket No. 2015-1757-AIR-E on June 21, 2016 assessing $3,413 in administrative penalties with $682 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Katy, Docket No. 2015-1786-WQ-E on June 21, 2016 assessing $813 in administrative penalties with $162 deferred.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Canutillo Independent School District, Docket No. 2015-1808-MWD-E on June 21, 2016 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding La Joya Independent School District, Docket No. 2015-1848-MWD-E on June 21, 2016 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Lampasas, Docket No. 2016-0008-PWS-E on June 21, 2016 assessing $370 in administrative penalties with $74 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MAXEY ENERGY COMPANY dba Max E Mart 13, Docket No. 2016-0029-PST-E on June 21, 2016 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edgewood, Docket No. 2016-0043-PWS-E on June 21, 2016 assessing $639 in administrative penalties with $127 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding One Stop Restoration LLC dba Iron Horse Ranch Yorktown Lodge, Docket No. 2016-0060-PWS-E on June 21, 2016 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SBBQ Operations, LLC, Docket No. 2016-0097-WQ-E on June 21, 2016 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CONTINENTAL HOMES OF TEXAS, L.P., Docket No. 2016-0112-WQ-E on June 21, 2016 assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mauser USA, LLC, Docket No. 2016-0169-AIR-E on June 21, 2016 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Development, Inc., Docket No. 2016-0175-PWS-E on June 21, 2016 assessing $150 in administrative penalties with $30 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enbridge G & P (East Texas) L.P., Docket No. 2016-0194-AIR-E on June 21, 2016 assessing $5,800 in administrative penalties with $1,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Whitewright, Docket No. 2016-0195-MWD-E on June 21, 2016 assessing $2,925 in administrative penalties with $585 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Childress, Docket No. 2016-0220-MWD-E on June 21, 2016 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of Woodsboro, Docket No. 2016-0231-MWD-E on June 21, 2016 assessing $4,875 in administrative penalties with $975 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HOLLY SPRINGS WATER SUPPLY CORPORATION, Docket No. 2016-0233-PWS-E on June 21, 2016 assessing $200 in administrative penalties with $40 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Beaumont, Docket No. 2016-0246-PST-E on June 21, 2016 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Patrick Mireles, Arnold Mireles, and Total Commitment Construction Co., LLC, Docket No. 2016-0365-MSW-E on June 21, 2016 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Bland, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Megatel Homes, Inc., Docket No. 2016-0450-WQ-E on June 21, 2016 assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201603163
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Notice of a Proposed Renewal with Amendment of a General Permit Authorizing the Discharge of Pesticides

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) is proposing to renew and amend Texas Pollutant Discharge Elimination System General Permit TXG870000. This general permit authorizes the application of pesticides into or over, including near, waters of the United States for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes the application of pesticides into or over, including near, waters of the United States (U.S.) for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests. No significant degradation of water quality is expected and existing uses will be maintained and protected. The executive director proposes to require certain dischargers to submit a Notice of Intent to obtain authorization to discharge.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Advisory Committee regulations and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ website at *http://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, Texas 78711-3087 or electronically at *www.tceq.texas.gov/about/comments.html* within 30 days from the date this notice is published.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissions' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our website at: *http://www.tceq.texas.gov.*

Further information may also be obtained by calling Laurie Fleet of the TCEQ Water Quality Division at (512) 239-5445.

Si desea información en español, puede llamar 1-800-687-4040.

TRD-201603077
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 17, 2016

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 2, 2016.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 2, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: 4150 East Highway 290 Partners, LLC dba Austin Paintball; DOCKET NUMBER: 2012-1834-MLM-E; TCEQ ID NUMBER: RN106477052; LOCATION: 4150 East Highway 290, Dripping Springs, Hays County; TYPE OF FACILITY: recreation facility used for paintball competition; RULES VIOLATED: 40 CFR §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with construction activities; and 30 TAC §213.23(a)(1), by failing to obtain authorization prior to beginning regulated activities over the Edward Aquifer Contributing Zone; PENALTY: $5,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Austin 512, LLC; DOCKET NUMBER: 2015-0891-MWD-E; TCEQ ID NUMBER: RN103124202; LOCATION: 1105

Westwood Lane, Giddings, Lee County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), by discharging sewage, municipal waste, recreational waste, agricultural waste, and/or industrial waste into or adjacent to any water in the state without authorization; PENALTY: $7,386; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: BLS RE1, LLC; DOCKET NUMBER: 2015-1007-PWS-E; TCEQ ID NUMBER: RN105736722; LOCATION: 1921 Alta Vista Drive, Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f), by failing to collect routine distribution water samples for coliform analysis, issue public notification, and submit a copy of the notification to the executive director regarding the failure to collect routine coliform samples; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of the quarter; PENALTY: $2,247; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(4) COMPANY: City of Carl's Corner; DOCKET NUMBER: 2015-1283-PWS-E; TCEQ ID NUMBER: RN101391852; LOCATION: 2100 Linda Road East, Carl's Corner, Hill County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c), 30 TAC §290.45(b)(1)(B)(i), and TCEQ AO Docket Number 2009-1496-PWS-E, Ordering Provision Number 2.g., by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.43(d)(7), by failing to maintain the pressure tank and all associated appurtenances thoroughly tight against leakage; 30 TAC §290.41(c)(3)(L), by failing to provide a well blow-off line that terminates in a downward direction and at a point which will not be submerged by flood waters; and 30 TAC §290.42(e)(3)(D), by failing to provide disinfection facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; PENALTY: $16,345; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: ESPINOZA STONE, INC.; DOCKET NUMBER: 2015-0997-WQ-E; TCEQ ID NUMBER: RN106352875 and RN108638545; LOCATION: County Road 207, approximately 0.5 miles southwest of the intersection of county roads 205 and 207, Shackelford County (Site Number 1); 470 East County Road 427, Goldthwaite, Mills County (Site Number 2); TYPE OF FACILITY: aggregate production operations (APOs); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued on Site Number 1, and 30 TAC §342.25(b), by failing to register Site Number 2 as an APO not later than 10 business days before the beginning date of regulated activities; PENALTY: $10,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674 (Site Number 1) and Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335 (Site Number 2).

(6) COMPANY: Jet Center of Dallas, LLC; DOCKET NUMBER: 2014-1866-PST-E; TCEQ ID NUMBER: RN103017257; LOCATION: 5661 Apollo Drive, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system with two USTs at an aircraft refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(I), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $10,901; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Prakesh Patel d/b/a Git It Kwik; DOCKET NUMBER: 2015-0552-PST-E; TCEQ ID NUMBER: RN102392776; LOCATION: 9801 Wesley Street, Greenville, Hunt County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $22,500; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: ROY STATION COMPANY; DOCKET NUMBER: 2015-0359-PST-E; TCEQ ID NUMBER: RN101489730; LOCATION: 1801 West 2nd Street, Taylor, Williamson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the USTs; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $10,254; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201603123
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2016

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the execu-

tive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 2, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 2, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: David Gray; DOCKET NUMBER: 2015-1735-LII-E; TCEQ ID NUMBER: RN108740960; LOCATION: 6725 Lucas Lane, North Richland Hills, Tarrant County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003 and 30 TAC §30.5(b), by advertising or representing to the public that he can perform services for which a license is required without holding a current license, or without employing an individual who holds a current license; PENALTY: $262; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Sergio Ayala, Jr.; DOCKET NUMBER: 2015-1475-LII-E; TCEQ ID NUMBER: RN108306408; LOCATION: 3616 Esper Drive, El Paso, El Paso County; TYPE OF FACILITY: landscape business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigation license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; PENALTY: $955; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201603124
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2016

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Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy

SOAH Docket No. 582-16-4677

TCEQ Docket No. 2015-1311-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 3, 2016 concerning assessing administrative penalties against and requiring certain actions of Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy, for violations in Collin County, Texas, of: Tex. Water Code §§26.3467(a) and 26.3475(c)(1) and (c)(2), and 30 Tex. Admin. Code §§334.7(d)(3); 334.8(c)(4)(C), (c)(5)(A), and (c)(5)(A)(i); 334.50(b)(1)(A); 334.51(a)(6); 334.54(e)(2); 334.72; and 334.602(a).

The hearing will allow Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512)239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512)239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When

contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 21, 2016

TRD-201603166
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of M Siddiqi & Son's Inc. d/b/a/ B Z Shop 2

SOAH Docket No. 582-16-4663

TCEQ Docket No. 2015-1066-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 25, 2016 concerning assessing administrative penalties against and requiring certain actions of M SIDDIQI & SON'S INC. d/b/a B Z Shop 2, for violations in Dallas County, Texas, of: Tex. Water Code §26.3475(a) and (c)(1), 30 Tex. Admin. Code §334.50(b)(1)(a) and (b)(2), and TCEQ Agreed Order Docket No. 2012-0852-PST-E, Ordering Provision No. 2.a.

The hearing will allow M SIDDIQI & SON'S INC. d/b/a B Z Shop 2, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford M SIDDIQI & SON'S INC. d/b/a B Z Shop 2, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of M SIDDIQI & SON'S INC. d/b/a B Z Shop 2 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. M SIDDIQI & SON'S INC. d/b/a B Z Shop 2, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting J. Amber Ahmed, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 21, 2016

TRD-201603167
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Maria E. Rosas

SOAH Docket No. 582-16-4556

TCEQ Docket No. 2015-1836-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 14, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 2, 2016 concerning assessing administrative penalties against and requiring certain actions of Maria E. Rosas, for violations in Hudspeth County, Texas, of: 30 Tex. Admin. Code §330.15(c) and Agreed Order Docket No. 2013-0583-MSW-E, Ordering Provision No. 2.b.

The hearing will allow Maria E. Rosas, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Maria E. Rosas, the Executive Director of the Commission, and the Commis-

sion's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Maria E. Rosas to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Maria E. Rosas, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code ch. 361, and 30 Tex. Admin. Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 15, 2016

TRD-201603168
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Rathana Sarey Khey d/b/a Blue Diamond Convenience Store

SOAH Docket No. 582-16-4662

TCEQ Docket No. 2015-1487-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 15, 2016 concerning assessing administrative penalties against and requiring certain actions of Rathana Sarey Khey d/b/a Blue Diamond Convenience Store, for violations in Harrison County, Texas, of: Tex. Water Code §26.3467(a), 30 Tex. Admin. Code §§37.815 (a) and (b), 30 Tex. Admin. Code §§334.8(c)(4)(A)(vii), (c)(5)(A)(i), (c)(5)(B)(ii), and 334.602(a).

The hearing will allow Rathana Sarey Khey d/b/a Blue Diamond Convenience Store, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Rathana Sarey Khey d/b/a Blue Diamond Convenience Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Rathana Sarey Khey d/b/a Blue Diamond Convenience Store to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Rathana Sarey Khey d/b/a Blue Diamond Convenience Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 37, 70, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Adam Taylor, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 21, 2016

TRD-201603169

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Notice of Water Rights Application

Notice issued June 15, 2016

APPLICATION NO. 14-1841A; Tanner & Carol Mahan and Tyler & Paige Wright, P.O. Box 888, Menard, Texas 76859, and P.O. Box 845, Menard, Texas 76859, Applicants, seek to amend their portion of Certificate of Adjudication No. 14-1841 to authorize an existing dam and reservoir on the San Saba River, Colorado River Basin in Menard County and impound therein not to exceed 6.625 acre-feet of water for recreation purposes and to use their two acre-foot portion of water to compensate for evaporative losses. The application and partial fees were received on December 12, 2012. Additional information and fees were received on January 26, January 31, and June 20, 2013. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 13, 2013. The Executive Director has completed the technical review of the application and prepared a draft amendment. The amendment, if granted, would include a special condition requiring the Owners to pass inflows. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "(I/we) request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ) Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on June 21, 2016.

TRD-201603156
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on June 14, 2016, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Chapman, Inc.; SOAH Docket No. 582-16-1301; TCEQ Docket No. 2015-0727-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Chapman, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201603157
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2016

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Kristi Melton at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2016

Bob W. Leonard, 101 Summit Ave., Ste. 300, Fort Worth, Texas 76102

David Medina, The Medina Law Firm PLLC, 5300 Memorial Dr., Ste. 890, Houston, Texas 77007

J.M. Alvarez, 501 N. Britton Ave., Rio Grande City, Texas 78582

Borris Lee Miles, 5302 Almeda Rd., Houston, Texas 77004

Mauricio Rondon, 4003 Feagan St., #5, Houston, Texas 77007

Anette J. Carlisle, P.O. Box 2733, Amarillo, Texas 79105

Ronald Reynolds, 6140 Hwy. 6 South, Ste. 233, Missouri City, Texas 77459

Mary M. Markantonis, 12335 Kingsride, #336, Houston, Texas 77024

Ricky W. Smith, P.O. Box 9297, Huntsville, Texas 77340

Peter M. Kelly, 1005 Heights Blvd., Houston, Texas 77008

John T. Floyd, III, 2927 Dixon Ct., Pearland, Texas 77584

Emmett Gary Merwin, 5009 Sugarberry Dr., McKinney, Texas 75071

Matthew Murphy, P.O. Box 301044, Houston, Texas 77230-0144

Daniel A. Biggs, 7979 Westheimer St., Apt. 101, Houston, Texas 77063

Nathan Webb, 5817 1/2 Victor St., Dallas, Texas 75214

Deadline: 30th Day Before Election Report due February 1, 2016

Marco A. Sevilla, 4345 FM 851 S., Alto, Texas 75925

Elaine H. Palmer, P.O. Box 131392, Houston, Texas 77219

Robert Cody Garrett, 914 Koerner Lane, Austin, Texas 78721

David Wylie, P.O. Box 170321, Arlington, Texas 76003

Andrew J. Condie, P.O. Box 894, Cuero, Texas 77954

Andrew T. McKernon, P.O. Box 11614, Fort Worth, Texas 76110

Marilynn S. Mayse, 4306 York St., Dallas, Texas 75210

Tex Christopher, 5711 Sugar Hill, #112, Houston, Texas 77056

Deadline: 8th Day Before Election Report due February 22, 2016

Mitchell Ray Bosworth, 5411 Sycamore Creek, Kingwood, Texas 77345

TRD-201603087
Natalia Ashley
Executive Director
Texas Ethics Commission
Filed: June 17, 2016

♦ ♦ ♦

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Lobby Activities Report due December 10, 2015

Wil Galloway, 408 W. 11th St., Austin, Texas 78701

Adam Goldman, 919 Congress Ave., Ste. 425, Austin, Texas 78701

Ricardo Lopez-Guerra, P.O. Box 1765, Austin, Texas 78767

Roberto Maldonado, 924 McCullough Ave., San Antonio, Texas 78215

James W. Mathis, 1122 Colorado, Ste. 208, Austin, Texas 78701

Dinah Welsh, 3400 Enfield Rd., Austin, Texas 78703

Deadline: Lobby Activities Report due January 11, 2016

Ben Campbell, 1749 Timber Ridge Cr., Corinth, Texas 76210

Johnna Carlson, Texas Children's Hospital, 2450 Holcombe Blvd., Houston, Texas 77021

Hank Clements, 5907 Hillcrest Ave., Dallas, Texas 75205

Wil Galloway, 408 W. 11th St., Austin, Texas 78701

Scott E. Gilmore, 1301 Nueces St., Ste. 200, Austin, Texas 78701

Anthony Haley, 1212 Guadalupe, Ste. 1003, Austin, Texas 78701

Tony Hernandez, 408 W. 11th St., Fifth Fl., Austin, Texas 78701

S. Jay Maguire, 6616 Tasajillo Trl., Austin, Texas 78739-1482

Dinah Welsh, 3400 Enfield Rd., Austin, Texas 78703

Deadline: Personal Financial Statement due February 12, 2016

Connor P. Flanagan, 1221 W. Oak St. #2428, Denton, Texas 76201

Barbara Hawkins, 215 N. Center St., Apt. 1702, San Antonio, Texas 78202

Darren J. Mieskoski, 10120 Palmbrook Dr., Austin, Texas 78717

TRD-201603114
Natalia Ashley
Executive Director
Texas Ethics Commission
Filed: June 20, 2016

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-7-20571

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-7-20571. TFC seeks a five (5) or ten (10) year lease of approximately 5,637 square feet of office space in San Antonio, Texas.

The deadline for questions is July 12, 2016 and the deadline for proposals is July 21, 2016 at 3:00 p.m. The award date is August 17, 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=125258.*

TRD-201603085
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 17, 2016

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Request for Proposals #303-7-20572

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) announces the issuance of Request for Proposals (RFP) #303-7-20572. TFC seeks a five (5) or ten (10) year lease of approximately 25,536 square feet of usable space that consists of 3,676 square feet of office space and 21,860 square feet of conditioned warehouse space in Grand Prairie or Arlington, Texas.

The deadline for questions is July 12, 2016 and the deadline for proposals is July 26, 2016 at 3:00 p.m. The award date is August 17, 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=125296.*

TRD-201603115

Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 20, 2016

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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 May 31, 2016, through June 3, 2016. 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, June 24, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, July 25, 2016.

FEDERAL AGENCY ACTIVITY:

Applicant: National Marine Fisheries Service (NMFS)

Location: Gulf of Mexico

Project Description: To promulgate a new rule to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico. This Proposed Rule would adjust the red grouper allowable harvest in the Gulf of Mexico. The commercial annual catch limit (ACL) and annual catch target (ACT) would be adjusted from 6.03 million pounds gutted weight (mp gw) and 5.72 mp gw, to 8.19 mp gw, and 7.78 mp gw, respectively. The recreational ACL and ACT would be adjusted from 1.9 mp gw and 1.73 mp gw, to 2.58 mp gw, and 2.37 mp gw, respectively. NMFS stated that the project will be consistent to the maximum extent practicable with the enforceable policies of the Texas Coastal Management Program.

CMP Project No: 16-1343-F2

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. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873 or via e-mail at *federal.consistency@glo.texas.gov.* Comments should be sent to Mr. Solis at the above address or by e-mail.

TRD-201603153
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: June 21, 2016

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Texas Health and Human Services Commission

Public Notice - Waiver Amendment to the Medically Dependent Children Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Medically Dependent Children Program (MDCP) waiver, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2017. The proposed effective date for the amendment is August 31, 2016, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

Increase waiver year (WY) 4 and WY 5 point-in-time (PIT) and Factor C numbers to better align with actual enrollment counts. This will increase the number of individuals that can be enrolled in the waiver at any point-in-time and the maximum number of unduplicated individuals that can be served during the waiver year based on legislative appropriations.

MDCP provides home and community-based services to persons under age 21 who are medically fragile and meet the requirements for nursing facility care. Services include respite, adaptive aids, minor home modifications, employment assistance, supported employment, financial management services, transition assistance services and flexible family support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home or a foster care home which can meet their complex medical needs.

An individual may obtain free copies of the proposed waiver amendment, including MDCP settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this amendment or the MDCP settings transition plan, interested parties may contact Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jacqueline Pernell, Policy Development Support, Waiver Coordinator

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Program Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the DADS local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DADS website at:

http://www.dads.state.tx.us/providers/MDCP/

The HHSC website will have a link to the complete waiver amendment at:

http://www.hhsc.state.tx.us/medicaid/hcbs/

TRD-201603146

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2016

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of June, 2016, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25, Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC, §289.205(b)(15); Health and Safety Code, §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	Seton Family of Hospitals	L00268	Austin	146	06/08/16
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	90	06/09/16
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L00740	Austin	130	06/06/16
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L00740	Austin	131	06/14/16
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids South Austin Medical Center	L03273	Austin	103	06/14/16
Austin	Austin Heart P.L.L.C.	L04623	Austin	86	06/13/16
Austin	ARA St. Davids Imaging L.P.	L05862	Austin	65	06/08/16
Burleson	Heartplace P.A.	L05883	Burleson	22	06/09/16
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	15	06/14/16
Clifton	Goodall Witcher Hospital Authority dba Goodall Witcher Hospital	L06574	Clifton	03	06/08/16
College Station	Texas A&M University	L00448	College Station	145	06/15/16
College Station	College Station Hospital L.P. dba College Station Medical Center	L02559	College Station	67	06/08/16
Corpus Christi	Triad Isotopes Inc. dba Triad Isotopes-Corpus Christi	L05368	Corpus Christi	21	06/14/16
Corpus Christi	Pegasus Inspections & Consulting L.L.C.	L06733	Corpus Christi	03	06/09/16
Dallas	Baylor University Medical Center	L01290	Dallas	136	06/07/16
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	204	06/07/16
Dallas	Petnet Solutions Inc.	L05193	Dallas	46	06/13/16
Dallas	Cardinal Health	L05610	Dallas	36	06/06/16
Dallas	Cardinal Health	L05610	Dallas	37	06/15/16

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	32	06/06/16
Dallas	Truradiation Partners North Dallas L.L.C. dba Northpoint Cancer Center	L06645	Dallas	05	06/01/16
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	72	06/09/16
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	73	06/13/16
El Paso	El Paso Healthcare System Ltd. dba Las Palmas Medical Center	L02715	El Paso	92	06/13/16
Fort Worth	Texas Christian University	L01096	Fort Worth	47	06/15/16
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	150	06/09/16
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	212	06/06/16
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	164	06/13/16
Houston	Weatherford US L.P.	L02756	Houston	29	06/10/16
Houston	South Texas Nuclear Pharmacy	L05304	Houston	14	06/14/16
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	117	06/01/16
Houston	Cardinal Health	L05536	Houston	54	06/15/16
Houston	Oncology Consultants P.A.	L06339	Houston	09	06/15/16
Houston	Texas Gulf Coast Veterinary Specialists P.L.L.C.	L06437	Houston	02	06/01/16
Irving	Las Colinas Oncology MSO L.P. dba Las Colinas Cancer Center	L06078	Irving	12	06/15/16
La Porte	Braskem America Inc.	L06292	La Porte	08	06/08/16
Lake Jackson	Brazosport Cardiology dba Pearland Heart Institute	L05359	Lake Jackson	10	06/06/16
Lubbock	University Medical Center	L04719	Lubbock	147	06/14/16
Marble Falls	Scott & White Hospital – Marble Falls dba Baylor Scott & White Medical Center – Marble Falls	L06722	Marble Falls	03	06/15/16
McKinney	Columbia Medical Center of McKinney Subsidiary L.P. dba Medical Center of McKinney	L02415	McKinney	47	06/06/16
Nacogdoches	Shared Medical Services Inc.	L06142	Nacogdoches	14	06/08/16
Plano	Columbia Medical Ctr of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	108	06/08/16
Plano	Health Texas Provider Network dba The Heart Group	L06501	Plano	11	06/14/16
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	08	06/14/16
Point Comfort	Alcoa World Alumina L.L.C.	L05186	Point Comfort	16	06/14/16
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	237	06/13/16
San Antonio	VHS San Antonio Imaging Partners L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	93	06/13/16
San Antonio	Alamo Cement Company	L04951	San Antonio	12	06/09/16
San Antonio	BTDI JV L.L.P.	L06768	San Antonio	01	06/06/16
Stephenville	Texas Health Harris Methodist Hospital Stephenville	L03097	Stephenville	35	06/15/16
Sugar Land	Fort Bend Heart Center Ltd., L.L.P.	L05678	Sugar Land	12	06/07/16
Temple	Scott &White Memorial Hospital dba Scott & White Medical Center – Temple	L00331	Temple	104	06/01/16
Throughout TX	Seton Family of Hospitals	L00268	Austin	145	06/06/16
Throughout TX	Nondestructive & Visual Inspection L.L.C.	L06162	Carthage	18	06/15/16
Throughout TX	Techcorr USA Management L.L.C.	L05972	Flint	120	06/10/16

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	Baker Hughes Oilfield Operations Inc. dba Baker Atlas	L00446	Houston	185	06/08/16
Throughout TX	Irisndt Inc.	L06435	Houston	14	06/07/16
Throughout TX	NDT Pro Services L.L.C.	L06772	Houston	02	06/03/16
Throughout TX	Endeavor Energy Resources L.P. dba Jones Wireline Services	L05085	Midland	10	06/07/16
Throughout TX	Endeavor Energy Resources L.P. dba Jones Wireline Services	L05085	Midland	11	06/10/16
Throughout TX	Team Industrial Services Inc.	L00087	Pasadena	237	06/08/16
Throughout TX	P. L. P. S. Inc.	L04955	Pearland	09	06/14/16
Throughout TX	Ace NDT	L06595	Perryton	12	06/02/16
Throughout TX	The Woodlands	L06303	The Woodlands	07	06/14/16
Tyler	Nutech Inc.	L04274	Tyler	80	06/14/16
Tyler	Cardiac Imaging Inc.	L06565	Tyler	10	06/06/16
Waco	Hillcrest Baptist Medical Center dba Baylor Scott & White Med. Ctr Hillcrest	L00845	Waco	105	06/13/16
Waco	Providence Health Services of Waco	L01638	Waco	67	06/01/16
Waco	Texas Oncology P.A. Cancer Care and Research Center	L05940	Waco	10	06/07/16
Waco	Texas Oncology P.A.	L05940	Waco	11	06/14/16

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Midland	T Bob Amthor Holdings L.L.C.	L05964	Midland	03	06/14/16
Orange	Lanxess Corporation	L00976	Orange	60	06/07/16
Southlake	Forest Park Medical Ctr. at Southlake L.L.C. dba FPMC Southlake	L06600	Southlake	02	06/06/16

TRD-201603159
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 22, 2016

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Texas Department of Housing and Community Affairs

"Revised 2016-1 Multifamily Direct Loan" Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2015 Grant Year HOME allocation, and loan repayments from the Tax Credit Assistance Program ("TCAP Repayment funds" or "TCAP RF"). The Department may amend this NOFA or the Department may release a new NOFA upon receiving its 2016 HOME allocation from HUD or additional TCAP loan repayments. These funds have been programmed for multifamily activities including acquisition and/or refinance of affordable housing involving new construction or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") previously announced the availability of up to $23,109,096 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. Of that amount, at least $4,000,000 has been set aside for applications layered with Non-competitive (4%) Housing Tax Credits proposing new construction; at least $3,236,344 is available for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this NOFA; up to $3,000,000 will be available for applications proposing Supportive Housing in accordance with 10 TAC §10.3(a) of the 2016 Uniform Multifamily Rules or applications that commit to setting aside units for extremely low income households as required in the NOFA; the remaining funds will be available for applications that do not meet the requirements above.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified as earning 80 percent or less of the applicable Area Median Family Income.

Applications have been and will continue to be accepted on a first-come, first-served basis until 5 p.m. Austin local time on August 31, 2016. Funds are currently available on a statewide basis.

III. Application Deadline and Availability.

Applications may be accepted until 5 p.m. Austin Local Time on August 31, 2016. The "Revised 2016-1 Multifamily Direct

Loan" NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted. The Application Log, which indicates the amount currently available under each set-aside, is also posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/home/index.htm

Questions regarding the 2016-1 Multifamily Direct Loan NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-201603098
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 17, 2016

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Texas Department of Insurance

Company Licensing

Application for admission to the state of Texas by SAFEPOINT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Temple Terrace, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201603158
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: June 22, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1757 "$7 Million Payout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1757 is "$7 MILLION PAYOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1757 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1757.

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, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, MONEY BAG SYMBOL, $25 BURST SYMBOL, 2X SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $25.00, $40.00, $100, $500 and $5,000.

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. 1757 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
MONEY BAG SYMBOL	WIN
$25 BURST SYMBOL	WIN$25
2X SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$40.00	FRTY$
$100	ONHN$
$500	FVHN
$5,000	FVTH

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, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $40.00, $100 or $500.

H. High-Tier Prize - A prize of $5,000.

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 (1757), 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: 1757-0000001-001.

K. Pack - A Pack of the "$7 MILLION PAYOUT" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on

the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$7 MILLION PAYOUT" Scratch Ticket Game No. 1757.

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 "$7 MILLION PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 12 (twelve) 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 "Money Bag" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "$25 BURST" Play Symbol, the player wins $25 instantly. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) 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 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) 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. A Ticket can win up to five (5) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbols and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "MONEY BAG" (WIN), "$25 BURST" (WIN$25) and "2X" (DBL) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "$25 BURST" (WIN$25) Play Symbol will appear as dictated by the prize structure.

I. The "2X" (DBL) Play Symbol will appear as dictated by the prize structure.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 10 and $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "$7 MILLION PAYOUT" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $25.00, $40.00, $100 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, $40.00, $100 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 "$7 MILLION PAYOUT" Scratch Ticket Game prize of $5,000, 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 "$7 MILLION PAYOUT" 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 "$7 MILLION PAYOUT" 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 "$7 MILLION PAYOUT" 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 Ticket Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 1757. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1757 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,440,000	8.33
$2	880,000	13.64
$5	160,000	75.00
$10	80,000	150.00
$20	40,000	300.00
$25	20,000	600.00
$40	17,500	685.71
$100	3,000	4,000.00
$500	150	80,000.00
$5,000	5	2,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.54. 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. 1757 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. 1757, 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-201603134
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 21, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1776 "Cowboys"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1776 is "COWBOYS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1776 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1776.

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, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, FOOTBALL SYMBOL, TD SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1776 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
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
FOOTBALL SYMBOL	WIN
TD SYMBOL	WINALL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1776), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1776-0000001-001.

K. Pack - A Pack of "COWBOYS" Scratch Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning 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 - A Texas Lottery "COWBOYS" Scratch Ticket Game No. 1776 Ticket.

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 "COWBOYS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose

45 (forty-five) Play Symbols. If a player matches any of the 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 "FOOTBALL" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "TD" Play Symbol, the player WINS ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 45 (forty-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 45 (forty-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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-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 Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $100,000, $5,000 and $1,000 will each appear at least once, except on Tickets winning eleven (11) times or more.

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. The "TD" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "TD" (WINALL) Play Symbol will instantly win all twenty (20) prizes and will win only as per the prize structure.

K. The "TD" (WINALL) Play Symbol will never appear more than once on a Ticket.

L. The "TD" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "TD" (WINALL) Play Symbol, no YOUR NUMBERS Play Symbols will match any of the WINNING NUMBERS Play Symbols.

N. The "FOOTBALL" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "FOOTBALL" (WIN) Play Symbol will instantly win the prize amount directly below the "FOOTBALL" (WIN) Play Symbol on a Ticket.

P. The "FOOTBALL" (WIN) Play Symbol will never appear more than once on a Ticket.

Q. The "FOOTBALL" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

R. The "TD" (WINALL) Play Symbol and the "FOOTBALL" (WIN) Play Symbol will never appear on the same Ticket.

S. On Tickets winning with the "FOOTBALL" (WIN) Play Symbol, no YOUR NUMBERS Play Symbols will match any of the WINNING NUMBERS Play Symbols.

T. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20, 50 and $50).

U. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

V. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 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 "COWBOYS" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COWBOYS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "COWBOYS" 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 "COWBOYS" 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "COWBOYS" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 9,720,000 Scratch Tickets in Scratch Ticket Game No. 1776. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1776 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	820,800	11.84
$10	1,144,800	8.49
$20	388,800	25.00
$50	64,800	150.00
$100	14,445	672.90
$1,000	452	21,504.42
$5,000	54	180,000.00
$100,000	10	972,000.00

*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 3.99. 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. 1776 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. 1776, 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-201603150
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 21, 2016

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Scratch Ticket Game Number 1777 "Houston Texans"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1777 is "HOUSTON TEXANS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1777 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1777.

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, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, FOOTBALL SYMBOL, GOALPOST SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1777- 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
FOOTBALL SYMBOL	WIN
GOALPOST SYMBOL	WINX5
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1777), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 75 within each Pack. The format will be: 1777-0000001-001.

K. Pack - A Pack of "HOUSTON TEXANS" Scratch Game Tickets contains 75 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOUSTON TEXANS" Scratch Ticket Game No. 1777.

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 "HOUSTON TEXANS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-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 "FOOTBALL" Play Symbol, the player wins the prize for that Play Symbol instantly. If a player reveals a "GOALPOST" Play Symbol, the player wins 5 TIMES the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 45 (forty-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 45 (forty-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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-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 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 in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and $5).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. No matching WINNING NUMBERS Play Symbols on a Ticket.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. A Ticket may have up to five (5) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

H. The "FOOTBALL" (WIN) Play Symbol will never appear more than once on a winning Ticket.

I. The "GOALPOST" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON TEXANS" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100 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, $100 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 "HOUSTON TEXANS" Scratch Ticket Game prize of $5,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOUSTON TEXANS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "HOUSTON TEXANS" 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 "HOUSTON TEXANS" 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 Ticket Prizes. There will be approximately 5,520,000 Scratch Tickets in Scratch Ticket Game No. 1777. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1777 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	625,600	8.82
$10	496,800	11.11
$20	147,200	37.50
$25	50,600	109.09
$50	46,874	117.76
$100	15,180	363.64
$500	1,380	4,000.00
$5,000	15	368,000.00
$100,000	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.99. 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. 1777 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. 1777, 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-201603151
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 21, 2016

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North Central Texas Council of Governments

Call for Projects

The North Central Texas Council of Governments (NCTCOG), under the Environmental Protection Agency's Clean Diesel Funding Assistance Program, is offering $600,000 in grant funding for replacement or repower of existing diesel-powered ground support equipment (GSE) operating airports in the Dallas-Fort Worth (DFW) ten-county ozone nonattainment region. Eligible projects may receive federal funds for up to 25 percent of total project cost for repower and up to 40 percent of project cost for replacement. Priority may be given to projects that repower or replace existing GSE with an all-electric equivalent. Selected partners will be responsible for: following all applicable federal procurement guidelines; meeting cost-share requirements; and granting appropriate security interest to NCTCOG for all grant funded vehicles and/or equipment. NCTCOG may consider applications received in response to this solicitation for future funding opportunities or programs. More information and application materials for this Call for Projects can be obtained online at www.nctcog.org/aqfunding.

Application materials must be received no later than 5:00 p.m., CDT, on Friday, August 26, 2016, to Rachel Linnewiel, Air Quality Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011.

NCTCOG encourages participation by minority business enterprises and women's business enterprises, and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201603084
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 17, 2016

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on June 16, 2016, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Kent County, Texas.

Docket Style and Number: Application of Cap Rock Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change in Kent County. Docket Number 46068.

The Application: The minor boundary amendment is being filed to realign the boundary between the Verbena exchange of Cap Rock Telephone Cooperative, Inc. and the Snyder exchange of ATT Communications, Inc. The amendment will transfer a portion of ATT's serving area in the Snyder exchange to Cap Rock's Verbena exchange.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 8, 2016, 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 46068.

TRD-201603152
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2016

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Notice of Application for Approval of Merger

Notice is given to the public of an application by AEP Texas Central Company, AEP Texas North Company and AEP Utilities, Inc., filed with the Public Utility Commission of Texas (commission) on June 15, 2016, pursuant to Public Utility Regulatory Act §14.101, and §39.915 and 16 Texas Administrative Code §25.74(a) (TAC).

Docket Style and Number: Application of AEP Texas Central Company, AEP Texas North Company and AEP Utilities, Inc. for Approval of Merger, Docket No. 46050

The Application: AEP Texas Central Company (TCC), AEP Texas North Company (TNC) and AEP Utilities, Inc. (collectively, Applicants) filed an application with commission for regulatory approval to merge TCC and TNC into their parent company, currently named AEP Utilities, Inc., which will change its name to AEP Texas, Inc. Applicants request Commission approval of the merger before the scheduled closing date of December 31, 2016.

Persons who wish to intervene in or comment upon this application should notify the commission. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene is July 15, 2016. All correspondence should refer to Docket Number 46050.

TRD-201603103
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 2016

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 17, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Brushy Creek Municipal Utility District and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Williamson County, Docket Number 46077.

The Application: Brushy Creek and Aqua Texas filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Williamson County. Specifically, Aqua Texas seeks approval to purchase the water assets of Brushy Creek, CCN No. 11773, and retain the seller's current water certificated service areas.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46077.

TRD-201603162
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2016

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Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend water and sewer certificates of convenience and necessity in Montgomery County.

Docket Style and Number: Application of Quadvest, L.P. to Amend its Certificates of Convenience and Necessity in Montgomery County, Docket Number 46067.

The Application: On June 16, 2016, Quadvest, L.P. filed an application to amend water certificate of convenience and necessity (CCN) No. 11612 and sewer CCN No. 20952, adding approximately 202 acres of service area and zero current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46067.

TRD-201603172
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on June 20, 2016, a petition to amend a certificate of convenience and necessity (CCN) by expedited release in Montgomery County.

Docket Style and Number: Petition of Monterrey Oaks, LTD to Amend the City of Splendora's Certificate of Convenience and Necessity in Montgomery County by Expedited Release, Docket Number 46078.

The Application: Monterrey Oaks, LTD filed an application for expedited release of approximately 102.291 acres from the City of Splendora's water CCN No. 11727 in Montgomery County pursuant to Tex. Water Code §13.254(a-5) and 16 Tex. Admin. Code §24.113(r).

Persons wishing to comment on the action sought should contact the Commission no later than July 21, 2016, 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 46078.

TRD-201603171
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2016

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 20, 2016 for recovery of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and 16 TAC §26.406.

Docket Style and Number: Application of Big Bend Telephone Company to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and 16 TAC §26.406. Docket Number 46082.

The Application: Big Bend Telephone Company seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Big Bend. The petition requests that the Commission allow recovery of funds from the TUSF up to the amount of $859,203 for 2015 to replace FUSF revenue reductions.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46082.

TRD-201603154
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2016

♦ ♦ ♦

Public Notice of Workshop and Request for Comments

Staff of the Public Utility Commission of Texas will conduct a workshop on Project No. 45625, *Rulemaking Relating to the Use of Hand-Held Devices for Retail Electric Customer Enrollment,* on Monday, August 8, 2016, at 9:30 a.m. The workshop will be conducted in

the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Ave., Austin, Texas. Prior to the workshop, commission staff will make a copy of the meeting agenda available by Wednesday, July 27, 2016 in Central Records under Project No. 45625.

In preparation for the workshop, commission staff requests comments from interested parties on the strawman proposals filed by staff and/or party coalition in Project No. 45625 by Monday, June 27, 2016. Parties are invited to submit written comments on the two strawman proposals by filing sixteen copies of such comments with the commission's Central Records no later than 3:00 p.m. on Friday, July 22, 2016. Parties are invited to file reply comments by filing sixteen copies of such responses no later than 3:00 p.m. on Tuesday, August 2, 2016. All comments and reply comments should reference Project No. 45625 and should be limited to 20 pages.

Questions concerning the workshop or this notice should be referred to Cliff Crouch, Competitive Markets, at (512) 936-7296 or at *cliff.crouch@puc.texas.gov.* Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201603101
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 2016

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201603155
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 22, 2016

♦ ♦ ♦

Workforce Solutions for the Heart of Texas

Request for Proposal for Data Analysis Services

Workforce Solutions for the Heart of Texas Child Care Services (WS HOT CCS) is the contracted entity for the CCS program funded by the Workforce Solutions for Heart of Texas, Texas Workforce Commission and Department of Labor. WS HOT CCS is soliciting proposals for a qualified professional to provide Child Care Services data analysis reports as needed. Selection of contractor will be based on Request for Proposal (RFP) Evaluation Criteria.

The RFP contains all the proposal submission requirements and may be obtained by contacting Teresa Watson at (254) 296-5372 or e-mailing: *Teresa.Watson@hotworkforce.com.* The RFP can be downloaded from the WS HOT CCS website: **http://www.eoacwaco.org** beginning June 13, 2016. Respondents may submit questions about the procurement to Ms. Watson from June 13 - 15, 2016.

Proposals are due no later than 3:00 p.m. (CST) June 21, 2016.

Workforce Solutions Heart of Texas Child Care Services

1416 S. New Road

Waco, Texas 76711

(254) 296-5372

The Workforce Solutions Heart of Texas Child Care Services is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1-800-735-2989 / 1-800-735-2988 (voice).

TRD-201603044
Teresa Watson
CCS Director
Workforce Solutions for the Heart of Texas
Filed: June 15, 2016

♦ ♦ ♦

January - December 2017 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices*.** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue Number	Issue Date	Deadline for Rules by 12 Noon	Deadline for other Documents by 12 Noon
1	January 6, 2017	*Thursday, December 22, 2016*	*Thursday, December 22, 2016*
2	January 13, 2017	Monday, January 2, 2017	Wednesday, January 4, 2017
3	January 20, 2017	Monday, January 9, 2017	Wednesday, January 11, 2017
4	January 27, 2017	*Friday, January 13, 2017*	Wednesday, January 18, 2017
5	February 3, 2017	Monday, January 23, 2017	Wednesday, January 25, 2017
6	February 10, 2017	Monday, January 30, 2017	Wednesday, February 1, 2017
7	February 17, 2017	Monday, February 6, 2017	Wednesday, February 8, 2017
8	February 24, 2017	Monday, February 13, 2017	Wednesday, February 15, 2017
9	March 3, 2017	*Friday, February 17, 2017*	Wednesday, February 22, 2017
10	March 10, 2017	Monday, February 27, 2017	Wednesday, March 1, 2017
11	March 17, 2017	Monday, March 6, 2017	Wednesday, March 8, 2017
12	March 24, 2017	Monday, March 13, 2017	Wednesday, March 15, 2017
13	March 31, 2017	Monday, March 20, 2017	Wednesday, March 22, 2017
14	April 7, 2017	Monday, March 27, 2017	Wednesday, March 29, 2017
15	April 14, 2017	Monday, April 3, 2017	Wednesday, April 5, 2017
16	April 21, 2017	Monday, April 10, 2017	Wednesday, April 12, 2017
17	April 28, 2017	Monday, April 17, 2017	Wednesday, April 19, 2017
18	May 5, 2017	Monday, April 24, 2017	Wednesday, April 26, 2017
19	May 12, 2017	Monday, May 1, 2017	Wednesday, May 3, 2017
20	May 19, 2017	Monday, May 8, 2017	Wednesday, May 10, 2017
21	May 26, 2017	Monday, May 15, 2017	Wednesday, May 17, 2017
22	June 2, 2017	Monday, May 22, 2017	Wednesday, May 24, 2017
23	June 9, 2017	*Friday, May 26, 2017*	Wednesday, May 31, 2017
24	June 16, 2017	Monday, June 5, 2017	Wednesday, June 7, 2017
25	June 23, 2017	Monday, June 12, 2017	Wednesday, June 14, 2017
26	June 30, 2017	Monday, June 19, 2017	Wednesday, June 21, 2017
27	July 7, 2017	Monday, June 26, 2017	Wednesday, June 28, 2017
28	July 14, 2017	Monday, July 3, 2017	Wednesday, July 5, 2017
29	July 21, 2017	Monday, July 10, 2017	Wednesday, July 12, 2017
30	July 28, 2017	Monday, July 17, 2017	Wednesday, July 19, 2017

31	August 4, 2017	Monday, July 24, 2017	Wednesday, July 26, 2017
32	August 11, 2017	Monday, July 31, 2017	Wednesday, August 2, 2017
33	August 18, 2017	Monday, August 7, 2017	Wednesday, August 9, 2017
34	August 25, 2017	Monday, August 14, 2017	Wednesday, August 16, 2017
35	September 1, 2017	Monday, August 21, 2017	Wednesday, August 23, 2017
36	September 8, 2017	Monday, August 28, 2017	Wednesday, August 30, 2017
37	September 15, 2017	*Friday, September 1, 2017*	Wednesday, September 6, 2017
38	September 22, 2017	Monday, September 11, 2017	Wednesday, September 13, 2017
39	September 29, 2017	Monday, September 18, 2017	Wednesday, September 20, 2017
40	October 6, 2017	Monday, September 25, 2017	Wednesday, September 27, 2017
41	October 13, 2017	Monday, October 2, 2017	Wednesday, October 4, 2017
42	October 20, 2017	Monday, October 9, 2017	Wednesday, October 11, 2017
43	October 27, 2017	Monday, October 16, 2017	Wednesday, October 18, 2017
44	November 3, 2017	Monday, October 23, 2017	Wednesday, October 25, 2017
45	November 10, 2017	Monday, October 30, 2017	Wednesday, November 1, 2017
46	November 17, 2017	Monday, November 6, 2017	Wednesday, November 8, 2017
47	November 24, 2017	Monday, November 13, 2017	Wednesday, November 15, 2017
48	December 1, 2017	*Friday, November 17, 2017*	*Friday, November 17, 2017*
49	December 8, 2017	Monday, November 27, 2017	Wednesday, November 29, 2017
50	December 15, 2017	Monday, December 4, 2017	Wednesday, December 6, 2017
51	December 22, 2017	Monday, December 11, 2017	Wednesday, December 13, 2017
52	December 29, 2017	Monday, December 18, 2017	Wednesday, December 20, 2017

How to Use the Texas Register

Information Available: The 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.

Review of Agency Rules - notices of state agency rules review.

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.

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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