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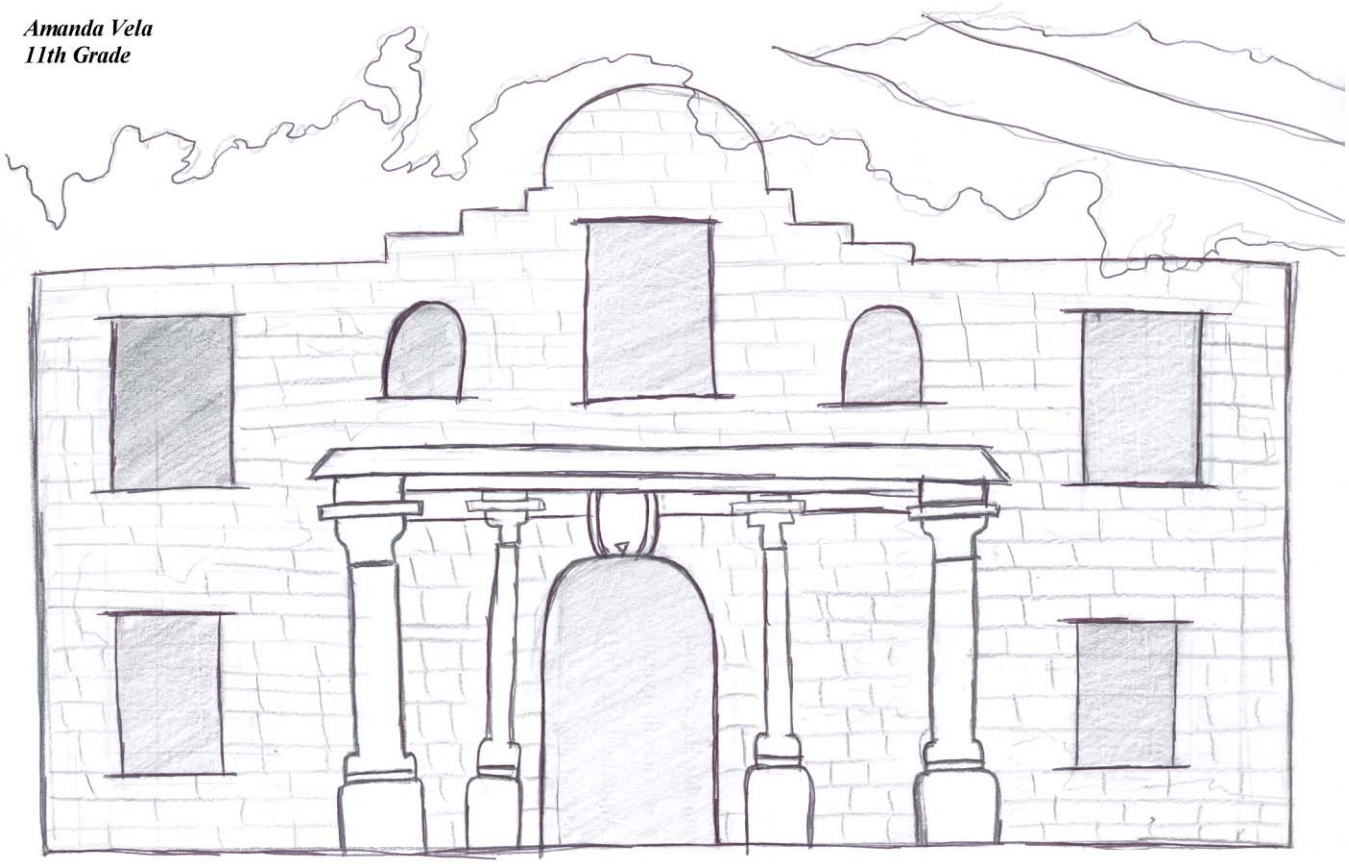

Amanda Vela
11th Grade

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

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

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IN THIS ISSUE

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

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

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

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

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

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

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

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

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

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

THE 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-0122-KP

Requestor:

The Honorable Dennis Bonnen

Chair, Committee on Ways & Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a municipality to use hotel occupancy tax revenue to fund a feasibility study and the construction, operation, and maintenance of a performing arts center (RQ-0122-KP)

Briefs requested by September 2, 2016

RQ-0123-KP

Requestor:

The Honorable Timothy Mason

Andrews County and District Attorney

121 North West Avenue A

Andrews, Texas 79714

Re: Authority of a reserve deputy sheriff to act as a surety on a bail bond (RQ-0123-KP)

Briefs requested by September 7, 2016

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

TRD-201604002
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: August 9, 2016

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Opinions

Opinion No. KP-0105

The Honorable Joe Deshotel

Chair, Committee on Land and Resource Management

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of the conflict of interest rules in chapter 171 of the Local Government Code to members of a planning and zoning commission or historic landmark commission who reside or own property within the historic district (RQ-0094-KP)

S U M M A R Y

Members of the Beaumont Planning and Zoning Commission and the Beaumont Historical Landmark Commission are local public officials subject to chapter 171 of the Local Government Code. A Beaumont city employee providing staff support for the two commissions is not a local public official subject to chapter 171. Any real property interest within the historic district owned by members of either commission and valued at $2,500 or more is a substantial property interest for which the members must file an affidavit stating the nature and extent of the interest before a vote or decision on any matter involving the property.

Whether the members must abstain from voting on matters involving their property interest depends on whether it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public. Such question involves fact issues and is outside the purview of an attorney general opinion.

Opinion No. KP-0106

The Honorable Angie Chen Button

Chair, Committee on Economic and Small Business Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether and to what extent limitations exist on the Texas Facilities Commission's ability to renew leases for space under §2167.055 of the Government Code (RQ-0095-KP)

S U M M A R Y

Section 2167.055(e) of the Government Code does not limit how early the Texas Facilities Commission may exercise a lease renewal option nor does it address whether the Commission may exercise multiple renewal options at the same time. A court would likely conclude that the Commission may concurrently exercise more than one renewal option

in a lease provided that the terms of the options in the aggregate do not exceed ten years.

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

TRD-201604003

Amanda Crawford
General Counsel
Office of the Attorney General
Filed: August 9, 2016

♦ ♦ ♦

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1013, §61.1014

The Texas Education Agency (TEA) proposes new §61.1013 and §61.1014, concerning school finance. The proposed new sections would implement the Texas Education Code (TEC), §42.2524 and §41.0931, by addressing the reimbursement of disaster remediation costs for schools in a designated disaster area.

The TEC, §42.2524 and §41.093, provide for the reimbursement of disaster remediation costs for school districts in an area declared a disaster area by the governor under Texas Government Code, Chapter 418. A school district or charter school may apply for assistance with paid disaster remediation costs that it does not anticipate recovering through insurance, federal disaster relief payments, or other sources.

Proposed new 19 TAC §61.1013 would implement the statutory requirements of TEC, §42.2524, by establishing provisions for a grant program that would be created should Foundation School Program (FSP) funds become available. The new section would establish what qualifies for eligible disaster remediation costs, the application process, eligibility and reporting requirements, the amount of the grant, prioritization of applicants, the finality of the award, and how funds would be distributed.

Proposed new 19 TAC §61.1014 would implement the statutory requirements of TEC, §41.0931, by establishing provisions for a credit against recapture costs for districts subject to the wealth equalization provisions of TEC, Chapter 41. The new section would establish what qualifies for eligible disaster remediation costs, the application process, eligibility and reporting requirements, the amount of the credit, the finality of the award, and how funds would be distributed.

The proposed rule action would require school districts and charter schools that wish to request assistance with disaster remediation costs to prepare and submit applications detailing the amount of the disaster remediation costs and reimbursements available from other sources. Districts and charter schools would be required to submit yearly updates documenting any changes to the amounts of reimbursement received from other sources until the disaster is considered finalized and closed.

The proposed rule action would require recipients of assistance for disaster remediation costs to maintain documents related to payments and application certifications for two years after the disaster is considered finalized and closed.

FISCAL NOTE. Kara Belew, deputy commissioner for finance, has determined that for the first five-year period the new sections are in effect, there will be no fiscal impact to the state beyond what the statute requires. School districts and charter schools that are awarded funds under this program would see an increase in FSP payments or a decrease in recapture payments owed to the state. There is no effect on local economy for the first five years that the proposed new sections are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Belew has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to allow the TEA, if surplus FSP funds are available, to provide school districts and charter schools with financial assistance in paying disaster relief costs. School districts subject to the wealth equalization provisions of TEC, Chapter 41, would receive credits against recapture owed to the state to assist with disaster relief costs. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

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 August 19, 2016, and ends September 19, 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 August 19, 2016.

STATUTORY AUTHORITY. The new sections are proposed under the Texas Education Code (TEC), §42.2524, which requires the commissioner to adopt rules for the reimbursement of disaster remediation costs for school districts located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418, if excess Foundation School Program funds are available; and the TEC, §41.0931, which requires the commissioner to adopt rules to provide a credit against recapture costs for districts subject to the wealth equalization provisions of

TEC, Chapter 41, that are located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418, and that have incurred disaster remediation costs.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §42.2524 and §41.0931.

§61.1013. Foundation School Program Funding for Reimbursement of Disaster Remediation Costs.

(a) General provisions. This section implements the Texas Education Code (TEC), §42.2524 (Reimbursement for Disaster Remediation Costs). The commissioner of education may make a grant application available and announce the amount of funds available and the due date for applications for that grant cycle for a school district or charter school to apply for an amount of Foundation School Program (FSP) funds determined by the commissioner if the commissioner determines that:

(1) amounts for this purpose have been appropriated in accordance with Texas Government Code, §418.073; or

(2) appropriated FSP funds are highly likely to exceed the amount to which school districts or charter schools are entitled under the TEC, Chapter 42 and Chapter 46, under the FSP for the biennium, after accounting for all critical FSP data required to make FSP expenditure estimates and all other required FSP grants or FSP awards are fulfilled in accordance with Texas law, and there is sufficient funding remaining to provide for a grant program under the TEC, §42.2524.

(b) Eligibility. A school district or charter school that meets the following criteria is eligible to apply:

(1) in accordance with TEC, §42.2524(a), all or part of the school district or charter school must be located in an area declared a disaster by the governor under Texas Government Code, Chapter 418;

(2) in accordance with TEC, §42.2524(b), the school district or charter school must have incurred and paid disaster remediation costs during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster that the school district or charter school does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source for reimbursement; and

(3) in accordance with TEC, §42.2524(b), the school district or charter school must apply for reimbursement during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster. The school district or charter school must submit a completed application by the application deadline. A school district or charter school that submits an incomplete application or submits an application after the application deadline may be deemed ineligible for funds.

(c) Definitions. The following terms have the following meanings when used in this section.

(1) Disaster remediation costs--Costs incurred by a school district or charter school for replacing school facilities, equipment, and supplies needed to provide instruction at a location where students eligible for FSP funding regularly attend classes.

(2) Paid disaster remediation costs--Costs that are paid or remitted resulting in an outflow of cash in exchange for goods or services evidenced by an invoice, receipt, voucher, or other such document, and in accordance with standards found in the Financial Accountability System Resource Guide adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide) and TEC, §42.2524(b), (e), and (h), that the school district or charter school does not anticipate recovering through insurance proceeds, federal disaster relief payment, or another similar source of reimbursement in accordance with TEC, §42.2524(b), and that were paid during the two-year period following the governor's initial proclamation or executive order declaring a state of disaster.

(d) Application process. A school district or charter school must submit a new application each time funds are made available under subsection (a) of this section on a form prescribed by the Texas Education Agency (TEA). The application shall contain, at a minimum, the following:

(1) identification of the governor's initial proclamation or executive order declaring a state of disaster and evidence that all or part of the school district or charter school is in the area declared a disaster;

(2) the total dollar amount of paid disaster remediation costs;

(3) the total dollar amount of paid disaster remediation costs paid during the two-year period following the governor's proclamation or executive order declaring a state of disaster that the school district or charter school anticipates to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement;

(4) the total difference between the amounts of paid disaster remediation costs specified in paragraphs (2) and (3) of this subsection and, of the total difference, the specific paid disaster remediation costs for which the school district or charter school is seeking reimbursement as part of the grant program supported by evidence of payment pursuant to subsection (c)(2) of this section;

(5) an explanation as to why the school district or charter school does not anticipate to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement for each specific paid disaster remediation cost identified in paragraph (4) of this subsection for which the school district or charter school is seeking reimbursement as part of the grant program;

(6) a certification from the school district or charter school board and school district superintendent or charter school chief executive officer that all paid disaster remediation costs for which the school district or charter school is seeking reimbursement under paragraph (4) of this subsection qualify as paid disaster remediation costs that the school district or charter school paid during the two-year period following the governor's initial disaster proclamation or executive order declaring a disaster and that the school district or charter school board and school district superintendent or charter school chief executive officer do not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement; and

(7) a certification from the school district or charter school board and school district superintendent or charter school chief executive officer that the school district or charter school, for any paid disaster remediation costs for which the school district or charter school is seeking reimbursement under paragraph (4) of this subsection, the school district or charter school has made and will continue to make efforts to seek reimbursement from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement as allowable or appropriate.

(e) Finality of award. Awards of assistance under this section will be made based only on paid disaster remediation costs. Prior to making an award, TEA may request additional documentation including, but not limited to, evidence described in subsection (c)(2) of this section and evidence supporting the certifications required by subsections (d)(6) and (7) of this section. A school district or charter school

is not entitled to any requested reimbursement, and a decision by the commissioner is final and may not be appealed.

(f) Deadlines. The commissioner will announce a deadline for grant applications in conjunction with making a determination of the amount of funds available for the grant program cycle. All applications received by the announced deadline will be reviewed. Applications will be funded if sufficient funds are available to fully fund each application. If sufficient funds are not available to fully fund each application, funding will be allocated in accordance with subsection (g) of this section.

(g) Prioritization of awards. Upon close of the application cycle, all eligible applications will be awarded priority status in accordance with the criteria outlined in paragraphs (1) and (2) of this subsection. All applications within Priority 1 will be fully funded before funds are allocated to Priority 2.

(1) Priority 1. Applications from school districts and charter schools that are not subject to the provisions of TEC, Chapter 41. If insufficient funds are available to fully fund Priority 1 eligible applications, award amounts will be reduced proportionately.

(2) Priority 2. Applications from school districts or charter schools that are subject to the provisions of TEC, Chapter 41. If sufficient funds are not available to fully fund Priority 2 eligible applications, award amounts will be reduced proportionately. Only expenses that were not reimbursed under the TEC, §41.0931 (Disaster Remediation Costs), are eligible to be reimbursed under this section.

(h) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or charter school payment ledger and be delivered as soon as is practicable after awards have been made.

(i) Reporting requirement. Annually after the date of the award under this grant program, the school district or charter school board and school district superintendent or charter school chief executive officer shall provide a certified report on a form prescribed by the TEA until all insurance proceeds, federal disaster relief, or other similar sources of reimbursements related to the disaster are finalized. On the report, the school district or charter school shall identify any insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or charter school received for which the school district or charter school previously received payment from TEA under subsection (g) of this section. TEA will adjust funding for any overpayments made to the school district or charter school based on the final report out of the school district's or charter school's future FSP payments or will require a refund from the school district or charter school.

(j) Finalization of award. When the school district or charter school determines that all insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or charter school anticipates receiving are finalized and there are no pending claims, the school district or charter school board and school district superintendent or charter school chief executive officer shall certify to the TEA in writing that the annual report in subsection (i) of this section is no longer necessary and disaster reporting is finalized.

(k) Record retention and audit. The school district or charter school shall maintain all documents necessary to substantiate payment and certifications made in subsections (c)(2), (d), (e), and (f) of this section, and the school district or charter school is subject to audit by the TEA until two years after the school district or charter school certifies to the TEA in writing that the disaster is finalized and closed in accordance with subsection (j) of this section.

§61.1014. Credit Against Recapture for Reimbursement of Disaster Remediation Costs.

(a) General provisions. This section implements the Texas Education Code (TEC), §41.0931 (Disaster Remediation Costs). The commissioner of education shall make an attendance credit application available. The commissioner may make a credit application available prior to a request for assistance.

(b) Eligibility. A school district that meets the following criteria is eligible to apply:

(1) all or part of the school district must be located in an area declared a disaster by the governor under TEC, Chapter 418;

(2) the school district must have incurred and paid disaster remediation costs during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster that the district does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source for reimbursement; and

(3) the district purchases attendance credits under TEC, §41.091.

(c) Definitions. The following terms have the following meanings when used in this section.

(1) Disaster remediation costs--Costs incurred by a school district or charter school for replacing school facilities, equipment, and supplies needed to provide instruction at a location where students eligible for FSP funding regularly attend classes.

(2) Paid disaster remediation costs--Costs that are paid or remitted resulting in an outflow of cash in exchange for goods or services evidenced by an invoice, receipt, voucher, or other such document, and in accordance with standards found in the Financial Accountability System Resource Guide adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide) and TEC, §42.2524(b), (e), and (h), that the school district does not anticipate recovering through insurance proceeds, federal disaster relief payment, or another similar source of reimbursement in accordance with TEC, §41.0931(b), and that were paid during the two-year period following the governor's initial proclamation or executive order declaring a state of disaster.

(d) Application process. A school district must submit an application seeking a credit against recapture on a form prescribed by the Texas Education Agency (TEA). The application shall contain, at a minimum, the following:

(1) identification of the governor's initial proclamation or executive order declaring a state of disaster and evidence that all or part of the school district is in the area declared a disaster;

(2) the total dollar amount of paid disaster remediation costs during the two-year period following the governor's proclamation or executive order declaring a state of disaster;

(3) the total dollar amount of paid disaster remediation costs paid during the two-year period following the governor's proclamation or executive order declaring a state of disaster that the school district anticipates to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement;

(4) the total difference between the amounts of paid disaster remediation costs specified in paragraphs (2) and (3) of this subsection and, of the total difference, the specific paid disaster remediation costs for which the school district is seeking to reduce attendance credits under TEC, §41.093, as part of this credit program supported by evidence of payment pursuant to subsection (c)(2) of this section;

(5) an explanation as to why the school district does not anticipate to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement for each paid disaster remediation cost identified in paragraph (4) of this subsection;

(6) a certification from the school district board and superintendent that all paid disaster remediation costs for which the school district is seeking reimbursement under paragraph (4) of this subsection qualify as paid disaster remediation costs and that the school district board and superintendent do not anticipate recovering these payments through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement; and

(7) a certification from the school district board and superintendent that the school district, for any paid disaster remediation costs for which the school district is seeking a credit under paragraph (4) of this subsection, the school district has made and will continue to make efforts to seek reimbursement from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement as allowable or appropriate.

(e) Amount of the credit. The total amount of the credit cannot exceed the total amount required to be paid by the school district for attendance credits under TEC, §41.093, during the two-year period following the date of the governor's initial proclamation or executive order declaring a disaster. This credit limit will be recalculated each May of the two school years for which the credit can apply. No changes to the size of the credit will be made for that school year after that time. The amount of credits to be paid by the school district under TEC, §41.093, will be reduced by the amount of any disaster remediation costs the school district identifies under subsection (d)(4) of this section that the school district paid during the two-year period following the governor's initial declaration of a disaster or executive order. Prior to providing a credit, TEA may request additional documentation including, but not limited to, evidence described in subsection (c)(2) of this section and evidence supporting the certifications required by subsections (d)(6) and (7) of this section.

(f) Updates for new payments. If a school district makes more paid disaster remediation cost payments after submission of its initial application to the TEA, the TEA will prescribe a form allowing the school district to submit additional paid disaster remediation cost payments and information consistent with the application process in subsection (d) of this section and will increase the amount of credit as appropriate pursuant to subsection (e) of this section.

(g) Reporting requirement. Annually the school district board and superintendent shall provide a certified report on a form prescribed by the TEA until all insurance proceeds, federal disaster relief, or other similar sources of reimbursements related to the disaster are finalized. On the report, the school district shall identify any insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district received for which the school district previously received a credit against student attendance credits under TEC, §41.093, and this program. The school district is required to refund the Foundation School Program the full amount for any payment received.

(h) Finalization of award. When the school district determines that all insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district anticipates receiving are finalized and there are no pending claims, the school district board and superintendent shall certify to the TEA in writing that the annual report required by subsection (g) of this section is no longer necessary and disaster reporting is finalized.

(i) Record retention and audit. The school district shall maintain all documents necessary to substantiate expenditures and certifications made in subsections (c)(2), (d), (e), and (f) of this section, and the school district is subject to audit by the TEA until two years after the school district certifies to the TEA in writing that the disaster is finalized and closed in accordance with subsection (h) of this section.

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

Filed with the Office of the Secretary of State on August 8, 2016.

TRD-201603999
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 18, 2016
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 152. ATTORNEYS' FEES

The Texas Department of Insurance, Division of Workers' Compensation (division) proposes the repeal and re-enactment of 28 Texas Administrative Code (TAC) §152.3, *Approval or Denial of Fee by the Commission,* and §152.4, *Guidelines for Legal Services Provided to Claimants and Carriers.* The division also proposes new §152.6, *Attorney Withdrawal,* along with the repeal and re-enactment of §152.3 and §152.4.

Labor Code §408.221, *Attorney's Fees Paid to Claimant's Counsel,* and §408.222, *Attorney's Fees Paid to Defense Counsel,* require the commissioner of workers' compensation to approve attorney fees for representing a claimant or defending an insurance carrier in a workers' compensation action. Chapter 152 implements the requirements set out in these sections. The repeal and re-enactment of §152.3 and §152.4 is necessary to update the attorney fee rules for the first time since 1991. The scope of the amendments required to reflect changes in the industry over the 25 years since the rules were originally adopted necessitate the repeal. The repeal is also necessary to permit the simultaneous adoption of new §152.3 and §152.4.

Under new §152.6, attorneys are required to comply with the Texas Disciplinary Rules of Professional Conduct when withdrawing representation. The requirements of new §152.6 are necessary to help prevent an attorney's withdrawal from having a materially adverse effect on a client, which is a violation of the Texas Disciplinary Rules of Professional Conduct. Additionally, the notification requirement will help the division track representation within the system, ensure communication with the correct parties, and inform the division when an injured employee may need assistance from the Office of Injured Employee Counsel (OIEC).

An informal working draft of the rule text was published on the division's website on April 1, 2016, and an informal stakeholder meeting was held April 25, 2016. The division received 47 comments.

The repeal of §152.3 and §152.4 becomes effective January 30, 2017, when the new §152.3, §152.4, and §152.6 rules become effective.

Section 152.3 addresses Approval or Denial of Fee by the Division. New §152.3(a) requires an attorney to submit a complete and accurate application for attorney fees in order to claim a fee. This application must be in the form and manner prescribed by the division. New §152.3(a) helps ensure the division receives the necessary information to fulfill its duties under Labor Code §408.221 and §408.222 to approve attorney fees, and that the information provided is not misleading or incorrect. Receiving the information necessary in the form of an application helps the division to process requests for attorney fees in an efficient and timely manner. The division has provided the DWC Form-152, *Application for Attorney Fees,* as a standardized form for attorneys to request attorney fees. The application may be submitted in paper form by hand delivery, mail, or facsimile, or it may be submitted through the Web-Enabled Attorney Fee Processing System (WAFPS). Attorneys can access WAFPS after submitting the DWC Form-151, *Attorney Application for Web Access,* and receiving an access code.

New §152.3(b) specifies the information that an attorney must provide to the division on an application for attorney fees, and is substantially similar to previous requirements. New §152.3(b)(1) and (2) require each attorney's name and bar card number, as well as the law firm's name, phone number, and mailing address. This information is necessary for efficient processing of attorney fee requests and to help the division identify not only the requestor, but where to direct payment of approved fees. New §152.3(b)(3) and (4) require the injured employee's name, date of injury, and DWC claim number, and when applicable, the beneficiary's name, type, contact information, and social security number. This information is necessary to ensure the requested attorney fees are properly attributed to the correct claimant. New §152.3(b)(5) requires the dates of legal service for the application. This information is necessary to help the division collect data relating to attorney fees and track representation within the workers' compensation system. This information also helps the division protect against mistaken or fraudulent billing, including duplicate bills, by specifying the dates of service to which the application applies. New §152.3(b)(6) requires the hourly rate and number of hours for each attorney and legal assistant providing services, and new §152.3(b)(7) requires an itemized list of the services performed and expenses incurred, the attorney or legal assistant who provided the service, the date it was provided, and the hours or amount requested. This information is necessary to determine the time and labor required to represent the claimant or insurance carrier, a factor Labor Code §408.221(d) and §408.222(b) require the division to consider in approving an attorney's fee. For purposes of billing under the guidelines for legal services, the itemized list of the services performed and expenses incurred should identify the type of action performed. The division emphasizes that, under this subsection, an attorney is not required to provide any information considered privileged or confidential. New §152.3(b)(6) and (7) are also necessary to determine compliance of an application for attorney fees with the hourly rate and the guidelines for legal services established in new §152.4. New §152.3(b)(8) requires a certification that every statement, numerical figure, and calculation in the application is within the attorney's personal knowledge, is true and correct, and represents services, charges, and expenses provided by the attorney or a legal assistant under the attorney's supervision. The certification is necessary to ensure the application for attorney fees contains true and correct information. Under Labor Code §408.221(b) an attorney's fee is based on the attorney's time and expenses according to written evidence provided to the division. The division relies on this written evidence of an attorney's fee when approving, partially approving, or denying an application. Therefore it is essential the information contained in an application is accurate. The attorney is in the best position to know whether the application is reflective of the accurate time and expenses, and so it is the attorney's responsibility to ensure the application is correct. New §152.3(b)(9) requires additional case-specific justification for any fee request that would exceed the guidelines for legal services contained in §152.4(c). This paragraph is necessary to ensure the division receives the justification required under new §152.4(b) when an attorney is requesting hours that exceed the guidelines for legal services. The justification is necessary for the division to determine whether the circumstances of the case warrant an exception to the number of hours provided for in §152.4(c). The division emphasizes that whether the attorney requests to exceed the guidelines for legal services in a single application, or over the course of multiple applications, additional case-specific justification for the fee request is required. If justification is not included, the portion of the fee request exceeding the guidelines for legal services may be denied automatically.

New §152.3(c) provides that the division may approve, partially approve, or deny an application based on the division's determination whether the requested time and expenses are reasonable according to new §152.4, Labor Code §408.221 and §408.222, and the written evidence presented to the division. New §152.3(c) further explains that the division will then issue an order approving, partially approving, or denying the application. This subsection is necessary to inform system participants of the possible outcomes of the division's review of an application for attorney fees and the factors the division will take into consideration when evaluating fee requests. Informed system participants will help the application process and workers' compensation system, generally, run more efficiently and effectively by limiting submission of applications that are incomplete or lacking sufficient justification. Additionally new §152.3(c) reminds attorneys that, as system participants, they are subject to review for compliance under Labor Code Chapter 414, and the issuance of a division order approving, partially approving, or denying an application for attorney fees does not limit the commissioner's enforcement authority. Labor Code §414.002(a), *Monitoring Duties,* requires the division to monitor for compliance with commissioner rules, the Texas Workers' Compensation Act (Act), and all laws relating to workers' compensation, the conduct of persons subject to the Act. Under §414.002(a), persons to be monitored include attorneys and other representatives of parties. Additionally, §414.002(b) requires the division to monitor the conduct described in Labor Code §415.001, *Administrative Violation by Representative of Employee or Legal Beneficiary,* and Labor Code §415.002, *Administrative Violation by Insurance Carrier.* Labor Code §415.001 and §415.002 make it an administrative violation to violate a commissioner rule. New §152.3(c) is necessary to remind attorneys of the division's enforcement authority, including the statutorily imposed duty to monitor attorneys for compliance, and emphasize that the issuance of an order in response to an application for attorney fees is not a defense against any administrative violations attached to that application or the actions of the attorney in submitting it. Last, new §152.3(c) states that at any time the division may refer an attorney whose application is found to contain false or inaccurate information

to enforcement or other authorities, including licensing agencies, district and county attorneys, or the attorney general for investigation and appropriate proceedings. This subsection is necessary to remind attorneys of the division's statutory authority to refer persons to other authorities under Labor Code §414.006, *Referral to Other Authorities.*

New §152.3(d) requires an attorney, claimant, or insurance carrier to request a contested case hearing (CCH) in order to contest a division order approving, partially approving, or denying an application for attorney fees. Submission of an application requesting fees for the same services or expenses addressed in any previous application is prohibited. This subsection is necessary to emphasize that resubmitting an application, or submitting a second application that includes requested fees for the same services or expenses addressed in a previous division order, is prohibited. A request for a CCH must comply with the dispute resolution process outlined in 28 TAC Chapters 140 - 144 and must be made no later than the 20th day after receipt of the order. It is necessary for the request to be made according to the established dispute resolution process to ensure timely and efficient resolution of disputes, and to further the division's duty under Labor Code §402.021(b)(8) to effectively educate and clearly inform participants of their rights, their responsibilities, and how to appropriately interact within the system. Labor Code §402.021, *Goals; Legislative Intent; General Workers' Compensation Mission of Department,* obligates the division to resolve disputes promptly and fairly when implementing the goals of the workers' compensation system. Requiring that a request for a CCH follow the established dispute resolution process helps the division meet the requirements of the Labor Code and encourages efficiency within the workers' compensation system. It is necessary for the division to receive the request for a CCH within 20 days after receipt of the order to ensure prompt resolution of any disputes and prevent issues from becoming stale. It is also necessary to conform to similar division dispute processes while allowing sufficient time for parties to receive notice, consider the options available, and, when applicable, make the necessary request. Additionally, the division recognizes that previous regulations required attorneys to send a copy of the application for attorney fees to their client at the same time as submitting it to the division, and allowed for 15 days to contest a fee after receipt of the order. Under new §152.3(a), attorneys are no longer required to send a copy of the application for attorney fees to the client because the Attorney Fees Processing System (AFPS) allows for issuance of an order in response to an application on the same day it is submitted. Thus, a client could receive the copy of the application at the same time as the corresponding division order, which fails to provide any additional notice to the attorney's client. By allowing for 20 days following receipt to contest an order, the division is aligning the process with similar dispute timeframes found in the rules and providing for a more efficient application process overall. A request for a CCH by the attorney or insurance carrier must be submitted by personal delivery, first class mail, or facsimile to the division, and a copy must be sent to the other parties by personal delivery, first class mail, or electronic transmission on the same day it is submitted to the division. It is necessary for a request for a CCH to be made by personal delivery, first class mail, or facsimile to ensure the division receives it in a timely manner and is able to begin the dispute resolution process immediately. It is necessary for a copy of the request for a CCH to be sent to the other parties by personal delivery, first class mail, or electronic transmission to put all parties to a dispute on notice of the issue and avoid any ex parte communications, which are prohibited under Labor Code §410.167, *Ex Parte Contacts Prohibited.* Electronic transmission is defined in 28 TAC §102.4(m), *General Rules for Non-Commission Communication,* as transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method and does not include telephonic communication. Therefore, unlike the requirements for submitting the request to the division, an attorney may e-mail a copy of the request to the other parties. A claimant may request a CCH by contacting the division in any manner. Allowing a claimant to request a CCH by contacting the division in any manner is necessary to help further the basic goals of the system found in Labor Code §402.021, including ensuring each injured employee has access to a fair and accessible dispute resolution process. A simplified process for requests helps provide access to claimants disputing their attorney's fees, who are often unrepresented on this issue.

New §152.3(e) requires an attorney, claimant, or insurance carrier who wishes to contest a division order after a CCH under subsection (d) to request review by the appeals panel. This is necessary to inform system participants of the dispute resolution process following a CCH on an issue. It is also necessary to further the division's duty under Labor Code §402.021(b)(8) to effectively educate and clearly inform participants of their rights, their responsibilities, and how to appropriately interact within the system. New §152.3(e) further states a request for review by the appeals panel must be made pursuant to the provisions of §143.3, *Requesting the Appeals Panel to Review the Decision of the Hearing Officer.* It is necessary that the request for review be made in accordance with §143.3 to help promptly and efficiently resolve the dispute. Labor Code §402.021 requires that the division resolve disputes promptly and fairly when implementing the goals of the workers' compensation system. Requiring that a request for review by the appeals panel follow the established dispute resolution process helps the division meet the requirements of the Labor Code and encourages efficiency within the workers' compensation system.

New §152.3(f) provides that a division order approving, partially approving, or denying an application for attorney fees is binding during a contest or an appeal. Additionally, the insurance carrier is not relieved of the obligation to pay attorney fees according to the division order despite a contest or appeal. Labor Code §415.021(a), *Assessment of Administrative Penalties,* states that a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with the Act or a rule, order, or decision of the commissioner. This subsection is necessary to ensure parties comply with the division order approving, partially approving, or denying an application for attorney fees until a subsequent decision or order requires otherwise.

New §152.3(g) provides that a final order or decision will be issued by the division following a contest or appeal under subsection (d) or subsection (e). This subsection is necessary to inform system participants of the outcome of a contest or appeal under the attorney fee rules and their rights in accordance with Labor Code §402.021. New §152.3(g) further states that when a final order or decision requires an attorney to reimburse funds, reimbursement must be made no later than 15 days after receipt of the final order or decision. It is necessary for an attorney to reimburse funds within 15 days of receipt of the final order or decision to accomplish timely recovery of the client's overpaid funds. In cases where a claimant's attorney is involved, timely recovery of the overpaid funds is important as the funds are part of the injured employee or beneficiary's benefits.

New §152.3(h) establishes a delayed effective date for §152.3 of January 30, 2017. A delayed effective date is necessary to ensure system participants and the division are afforded sufficient time to prepare and update the necessary systems to reflect the repeal and re-enactment of §152.3. The division emphasizes that attorney and legal assistant services rendered prior to January 30, 2017, must be billed in accordance with existing §152.3. An application for attorney fees may not contain dates of legal services spanning across the effective date. Therefore, one application must be submitted for services rendered as of January 30, 2017, and a separate application must be submitted for services provided prior to and including January 29, 2017. This subsection is necessary to inform system participants of the effective date of new §152.3.

Section 152.4 addresses Guidelines for Legal Services Provided to Claimants and Carriers. New §152.4(a) outlines the different factors the division will consider when determining the reasonableness of a request for attorney fees. Based on the guidelines for legal services, the maximum hourly rate for legal services, the criteria outlined in Labor Code §408.221 and §408.222, and the written evidence presented, the division will approve, partially approve, or deny the request for attorney fees. This subsection is necessary to inform system participants what factors the division will take into consideration when evaluating the fee request. Informed system participants help the processing of applications for attorney fees and the workers' compensation system run more efficiently and effectively by limiting the submission of applications that are incomplete or lacking sufficient justification.

New §152.4(b) allows an attorney to request additional hours that exceed the guidelines for legal services if the attorney demonstrates that the higher fee was justified based on the circumstances of the claim and the factors laid out in Labor Code §408.221 and §408.222. The division emphasizes that whether the attorney requests to exceed the guidelines for legal services in a single application or over the course of multiple applications additional case-specific justification for the fee request is required. If a justification is not included, the portion of the fee request exceeding the guidelines for legal services may be denied automatically. This subsection is necessary to account for circumstances where the case-specific considerations, such as the novelty and difficulty of the questions involved in the dispute, warrant additional hours.

New §152.4(c) establishes the guidelines for legal services provided to claimants and insurance carriers. Figure: 28 TAC §152.4(c) includes the allotted maximum hours for each service the division has identified as part of the attorney's representation. The figure reads as follows: one hour for initial interview and research; half of an hour for setting up the file and completing and filing forms; three hours each month for communications with the client, health care providers, and other persons involved in the case; three and a half hours each month for direct dispute resolution negotiation with the other party; two hours for preparation and submission of an agreement or settlement; the actual time in a benefit review conference (BRC) plus two additional hours for participation in a BRC; the actual time in the CCH plus four additional hours for participation in a CCH; five hours for participation in the administrative appeal process; and the actual costs that are reasonable and necessary for travel each month. This subsection is necessary to help fulfill the division's statutory duty to provide guidelines for maximum attorney fees for specific services, and is substantially similar to the previous requirements. In setting the maximum hours for each legal service, the division began by considering the applicable factors laid out in Labor Code §408.221, including the skill, time, and labor required to perform each specific legal service properly. The division then considered system goals, such as minimizing the likelihood of disputes by emphasizing informal mediation rather than litigation, providing injured employees with access to a fair and accessible dispute resolution process, and resolving disputes promptly and fairly when they do arise. Additionally, the division looked to the guidelines for legal services that have been in place since 1991. While the guidelines for legal services are substantially similar to previous requirements, additional hours have been allotted for direct dispute resolution negotiation, communications, and preparation and submission of an agreement or settlement form. These additional hours are necessary to encourage both early communication between the parties and resolution of disputes before the parties enter the formal administrative resolution process. The guidelines for legal services are intended to encourage early resolution of claim disputes by allowing time each month for activities such as communications with the client and other persons and negotiating with the other party. When negotiations are successful, a separate two hours are provided for the preparation and submission of an agreement or settlement. When they are not, hours have been allotted for the BRC and CCH stages of the dispute resolution process. At the BRC and CCH stage, actual time in each proceeding as well as two and four hours for preparation, respectively, have been allotted based on previous requirements, the goals of the workers' compensation system, and the factors in Labor Code §408.221 and §408.222. Last, five hours have been provided for participation in the administrative appeal process to account for disputes that are not resolved at the end of a CCH. Each of the service categories contained in the guidelines for legal services is necessary to allow time for attorney preparation and participation at each stage of representation, including initial interview, research and setting up the client's file, and the workers' compensation dispute resolution process. The service categories were determined based on a balancing of the system goals described above, the requirements of Labor Code §408.221 and §408.222, and the guidelines provided in previous regulations.

New §152.4(d) establishes a maximum hourly rate reasonable for workers' compensation disputes in Texas of $200 for attorneys and $65 for legal assistants (not to include hours for general office staff). This subsection is necessary to help fulfill the division's statutory duty to provide guidelines for maximum attorney fees for specific services. In setting the maximum hourly rate for legal services, the division considered the factors established in Labor Code §408.221(d), which include: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the fee customarily charged in the locality for similar legal services; (5) the amount involved in the controversy; (6) the benefits to the claimant that the attorney is responsible for securing; and (7) the experience and ability of the attorney performing the services. Labor Code §408.221(d) and §408.222(b) require the division to consider these factors when approving an attorney's request for attorney fees. According to the Texas Workforce Commission, the median hourly wage for all attorneys in 2014 was $57.00 and for legal assistants it was $24.93 *(http://www.texaswages.com/index3.aspx)*. The State Bar of Texas Department of Research & Analysis provides a median hourly rate for attorneys in private practice of $242 in 2013 *(https://www.texasbar.com/AM/Template.cfm?Section=Demo-*

graphic_and_Economic_TrTren&Template=/CM/ContentDisplay.cfm&ContentID=27264) and $121 for paralegals in 2014 (https://txpd.org/files/file/SalarySurvey/2014%20Salary%20Survey%20Results%20Final.pdf). While these numbers are helpful to quantify some of the factors required by Labor Code §408.221 and §408.222, namely the fee customarily charged in the locality for similar legal services, they are just one factor of the larger consideration by the division in fulfilling its statutory duty. Therefore, the division balanced the above numbers against other factors, including system goals, such as encouraging early resolution of disputes, providing access to effective attorney representation, limiting the adverse effect of attorney fee liens on a claimant's ability to obtain quality legal representation later in a dispute, the administrative nature of the workers' compensation dispute resolution process, and the statutory provision limiting attorney's fees to 25 percent of the injured employee's recovery. The division also considered Texas's position relative to other states that prescribe a maximum attorney fee rate for workers' compensation claims. After balancing the above considerations, the division determined that $200 an hour for attorneys and $65 an hour for legal assistants is the maximum hourly rate reasonable for workers' compensation disputes in Texas.

New §152.4(e) requires attorneys to bill using their own state bar card number. This subsection is necessary to help the division monitor against fraud and improper billing practices by requiring attorneys to use their own bar card number when requesting attorney fees. Providing a uniform, single identifier ensures that requested hours are attributed accurately to each attorney.

New §152.4(f) establishes a delayed effective date for §152.4 of January 30, 2017. A delayed effective date is necessary to ensure system participants and the division are afforded sufficient time to prepare and update the necessary systems to reflect the repeal and re-enactment of §152.4. The division emphasizes that attorney and legal assistant services rendered prior to January 30, 2017, must be billed in accordance with existing §152.4. An application for attorney fees may not contain dates of legal services spanning across the effective date. Therefore, one application must be submitted for services rendered as of January 30, 2017, and a separate application must be submitted for services provided prior to and including January 29, 2017. This subsection is necessary to inform system participants of the effective date of new §152.4.

Section 152.6 addresses Attorney Withdrawal. New §152.6(a) requires an attorney to submit a notice of withdrawal under subsection (b) or a motion to withdraw under subsection (d) when withdrawing representation. This is necessary to inform system participants of the differing requirements of withdrawal. The specific explanation and justification for both subsection (b) and subsection (d) are included below. New §152.6(a) also requires an attorney to comply with the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas when withdrawing representation. Labor Code §415.021(a) states it is an administrative violation for a person to violate, fail to comply with, or refuse to comply with, the Act or a rule, order, or decision of the commissioner. Additionally, Labor Code §415.001 and §415.002 state that it is an administrative violation for a representative of an employee, legal beneficiary, or insurance carrier to violate a commissioner rule. 28 TAC §150.1, *Minimum Standards of Practice for an Attorney,* requires an attorney in practice before the division to observe the rules, the Texas Disciplinary Rules of Professional Conduct, and the Texas Lawyer's Creed. Furthermore, §415.001(8) provides that it is an administrative violation for a representative of an employee or legal beneficiary to violate the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct governs declining or terminating representation. As such, new §152.6(a) emphasizes that attorneys in the workers' compensation system must comply with Rule 1.15 when withdrawing representation of a claimant or an insurance carrier. This section is necessary to emphasize that failure to comply with the Texas Disciplinary Rules of Professional Conduct when withdrawing is an administrative violation that may be referred to enforcement or other authorities. Additionally, §152.6 reiterates the Texas Disciplinary Rules of Professional Conduct requirement to surrender papers and property to the client upon withdrawal. This subsection is necessary to emphasize the requirement in Rule 1.15(c) and help ensure that claimants and insurance carriers obtain the portion of the case file they are entitled to. The proper transfer of appropriate papers and property to the client helps the transition between attorneys or to an OIEC ombudsman move more quickly and smoothly and contributes to an overall efficient dispute resolution process.

New §152.6(b) addresses withdrawal before notice of a BRC or CCH is received and requires an attorney withdrawing representation to notify the division in the form and manner prescribed. New §152.6(b) requires notice of withdrawal in two circumstances. The first circumstance is any time the attorney may withdraw representation without a motion to withdraw described by subsection (d). The notice of withdrawal requirement is necessary to allow for better tracking and data on how attorneys are operating within the workers' compensation system; ensure the correct parties are receiving communications from the division; and to put the division on notice when an injured employee may need assistance from the OIEC. The second circumstance is any time the attorney's client terminates the attorney's representation. This subsection is necessary to ensure there is no delay in a claimant or insurance carrier's ability to obtain subsequent representation or assistance when they choose to discharge their attorney. Under these circumstances, notification is necessary to ensure the division has the required data to track the operation of attorneys in the system; ensure the correct parties are receiving communications from the division; and to put the division on notice that an injured employee may need assistance from OIEC. The division emphasizes that when new §152.6(b)(1) is applicable both the attorney and the attorney's client may terminate the attorney-client relationship with immediate effect. The required notice of withdrawal informs the division of a change in the representative relationship, but does not affect the date of termination.

New §152.6(c) states the notice of withdrawal must be provided to the division by personal delivery, first class mail, or facsimile no later than the 10th day following withdrawal, and the attorney must provide a copy of the notice to their client and opposing party by personal delivery, first class mail, or electronic transmission on the same day the notice is submitted to the division. It is necessary for the notice of withdrawal to be submitted to the division by personal delivery, first class mail, or facsimile to ensure the division receives the notification in a timely manner and is able to update the claimant or insurance carrier's representative information. It is necessary for the copy to be provided by these means to avoid any miscommunication or delay in the notice to the attorney's client or the opposing party. Section 102.4(m) defines electronic transmission as facsimile, e-mail, electronic data interchange, or any other similar method, but it does not include telephone communication. It is necessary for the division to receive timely notification of an attorney's withdrawal to allow for

better tracking and data on how attorneys are operating within the system; ensure the correct parties are receiving communications from the division; and to put the division on notice when an injured employee may need assistance from OIEC. It is necessary for the attorney's client and opposing party to receive a copy of the notice of withdrawal to ensure all parties are up to date on the representation involved in the dispute. The division has provided the DWC Form-150a, *Notice of Withdrawal of Representation,* as a standardized form for attorneys to notify the division of withdrawal of representation. The notice may be submitted to the division by personal delivery, mail, or facsimile. New §152.6(c) further specifies the information that an attorney must provide to the division on the notice of withdrawal. New §152.6(c)(1) and (2) require the attorney's name, bar card number, and contact information, as well as the law firm's name, when applicable. This information is necessary for the division to efficiently process attorney withdrawal notifications, ensure the system accurately reflects the claimant or carrier's current representation, if any, and properly process any future applications for attorney fees. New §152.6(c)(3) and (4) require the injured employee's information, including name, date of injury, and DWC claim number, and the beneficiary's information, when applicable. This information is necessary to ensure the correct claimant's information is properly updated to note the withdrawal of representation, and helps the division collect data and track representation of claimants in the workers' compensation system. New §152.6(c)(5) requires the insurance carrier name. This information is necessary to help the division collect data and track representation of carriers in the workers' compensation system. New §152.6(c)(6) requires the effective date of the attorney's withdrawal of representation. The effective date is necessary to ensure proper tracking of attorney representation within the system; facilitate processing of any future applications for attorney fees; and to verify the attorney met the requirement to submit the notification to the division within the 10 day period established by rule. The division emphasizes that the effective date of the attorney's withdrawal is the actual date the representative relationship ended under paragraph (1) or (2) of subsection (b), and it is not tied to the submission date of the notice of withdrawal. New §152.6(c)(7) requires the attorney's signature. The DWC Form-150a, *Notice of Withdrawal of Representation,* may also be used by the attorney's client to notify the division that the attorney-client relationship has been terminated. The attorney's signature is necessary to ensure the division can verify the party submitting the notice of withdrawal.

New §152.6(d) addresses withdrawal after notice of a scheduled BRC or CCH is received and before resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E. When new §152.6(d) applies, an attorney seeking withdrawal from representation may do so only after submitting a motion to withdraw and receiving a division order granting the motion. Labor Code §415.021(a) states that a person commits an administrative violation if they violate, fail to comply with, or refuse to comply with this subtitle or a rule, order, or decision of the commissioner. Additionally, Labor Code §415.001 and §415.002 state that it is an administrative violation for a representative of an employee, legal beneficiary, or insurance carrier to violate a commissioner rule. Section 150.1 requires an attorney in practice before the division to observe the rules, the Texas Disciplinary Rules of Professional Conduct, and the Texas Lawyer's Creed. Furthermore, §415.001(8) provides that it is an administrative violation for a representative of an employee or legal beneficiary to violate the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. Under the Texas Disciplinary Rules of Professional Conduct, Rule 1.15, an attorney may not withdraw from representing a client unless withdrawal can be accomplished without material adverse effect on the interests of the client. Oftentimes, the withdrawal of an attorney prior to a scheduled BRC or CCH can lead to continuances, which delay the resolution of the dispute, provide the claimant with inadequate subsequent representation or assistance due to timing constraints, and affect the efficiency of the overall dispute resolution process. Unnecessary delays can also prevent injured employees from receiving needed medical attention, income benefits, or returning to work. Once a BRC or CCH has been scheduled by the division, the time for a new attorney or ombudsman to prepare for the proceeding after the current attorney has withdrawn is cut short and can affect the resolution of the dispute. Once the CCH is completed, the deadline to file a written request for appeals panel review is statutorily set and cannot be extended. Thus, an attorney's withdrawal during this time period may affect the client's ability to timely appeal the decision of the hearing officer. If neither party files a request for appeals panel review, the division's dispute resolution process has resolved the disputed issues. If a request for appeals panel review is filed and the appeals panel reverses the decision of the hearing officer and renders a new decision, or affirms the decision of the hearing officer, the division's dispute resolution process has resolved the disputed issues. Additionally, if at any time the parties resolve all of the disputed issues by agreement or settlement under Labor Code §410.029, the division's dispute resolution process has resolved the disputed issues. However, if the appeals panel reverses the decision of the hearing officer and remands the case for further consideration in accordance with Labor Code §410.203(b), a motion to withdraw is still required for an attorney to withdraw representation. Under Labor Code §410.203(d), a hearing on remand must be accelerated and the commissioner must adopt rules to give priority to hearings in these circumstances. Thus, an attorney's withdrawal after a decision has been remanded would provide little time for a new attorney or ombudsman to prepare for the proceeding and can affect the resolution of the disputed issues. If appeals panel review is requested by a party after the expedited, or accelerated, CCH, the appeals panel may either reverse and render a new decision or affirm the decision of the hearing officer. At this point, the division's dispute resolution process has resolved the disputed issues. This subsection is necessary to help prevent a materially adverse effect on the interests of claimants and insurance carriers by an attorney's withdrawal during the division's dispute resolution process. Additionally, continuances and delays during the dispute resolution process can negatively impact the effectiveness and fairness of the workers' compensation system. Labor Code §402.061, *Adoption of Rules,* provides the commissioner with authority to adopt rules as necessary for the implementation and enforcement of the Act. Labor Code §402.021(a)(2) states a basic goal of the workers' compensation system is that each injured employee must have access to a fair and accessible dispute resolution process, and (b)(5) establishes the prompt and fair resolution of disputes as another system goal. Labor Code §402.00128(b), *General Powers and Duties of Commissioner,* provides the commissioner with the power to hold hearings and to exercise other powers as necessary to implement and enforce the Act. Thus, new §152.6(d) is also necessary to help the division meet the statutorily imposed duty under Labor Code §402.021(a)(2) to provide a fair and accessible dispute resolution process and Labor Code §402.021(b)(5) to resolve disputes promptly and fairly.

New §152.6(e) requires that a motion to withdraw provide good cause for withdrawing from the case. Good cause is necessary to prevent a materially adverse effect on the attorney's client as a result of the withdrawal. As described above, the withdrawal of an attorney during the dispute resolution process may have a material adverse effect on the claimant and the insurance carrier. Therefore, the division requires good cause to show that the attorney's withdrawal from the case is warranted. This requirement is consistent with the Texas Disciplinary Rules of Professional Conduct, which state an attorney may not withdraw representation unless withdrawal can be accomplished without a material adverse effect on the interests of the client. Texas Disciplinary Rule 1.15(c) states a lawyer shall continue representation notwithstanding good cause for terminating the representation when ordered to do so by a tribunal. New §152.6(e) simply requires a showing of good cause to withdraw during the dispute resolution process. New §152.6(e) further requires the motion to withdraw include a certification that the attorney's client has knowledge of and has approved, or refused to approve, the withdrawal or that the attorney made a good faith effort to notify the client and the client could not be located. The certification is necessary to ensure the participants, namely the attorney and the attorney's client, are communicating with one another and to provide information necessary under new §152.6(g)(5) when the hearing officer considers the motion to withdraw. The division emphasizes that the client's approval of an attorney's withdrawal is not the same as the client's termination of the attorney-client relationship under new §152.6(b)(2).

New §152.6(f) requires the attorney submit the motion to withdraw to the division by personal delivery, first class mail, or facsimile, and to provide a copy of the motion to the attorney's client and the opposing party. It is necessary for the motion to withdraw to be submitted to the division by personal delivery, first class mail, or facsimile to help ensure the division receives and considers the motion in a timely manner. It is necessary for the attorney's client and opposing party to receive a copy of the motion to withdraw to ensure all parties are up to date on the representation involved in the dispute and to avoid any ex parte communications, which are prohibited under Labor Code §410.167. The copy must be provided by personal delivery, first class mail, or electronic transmission on the same day the motion is submitted to the division. It is necessary for the copy to be provided by these means to avoid any miscommunication or delay in the notice to the attorney's client or the opposing party. Electronic transmission is defined in §102.4(m) as transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method and does not include telephonic communication. Therefore, unlike the requirements for submitting the motion to the division, an attorney may e-mail a copy of the motion to the other parties.

New §152.6(g) outlines the factors the hearing officer will rely on in determining whether good cause exists for the attorney's withdrawal, beginning with Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct. This subsection is necessary to inform system participants how a hearing officer determines whether to approve or deny a motion to withdraw. The considerations are necessary to help protect the attorney's client from experiencing a material adverse effect due to the attorney's withdrawal. Labor Code §415.021(a) states that a person commits an administrative violation if they violate, fail to comply with, or refuse to comply with this subtitle or a rule, order, or decision of the commissioner. Additionally, Labor Code §415.001 and §415.002 state that it is an administrative violation for a representative of an employee, legal beneficiary, or insurance carrier to violate a commissioner rule. Section 150.1 requires an attorney, in practice before the division to observe the rules, the Texas Disciplinary Rules of Professional Conduct, and the Texas Lawyer's Creed. Furthermore, §415.001(8) provides that it is an administrative violation for a representative of an employee or legal beneficiary to violate the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct governs declining or terminating representation. It is necessary for the hearing officer to begin by considering Rule 1.15 to help ensure the attorney is not committing an administrative violation by withdrawing representation at that time. New §152.6(g)(1) states the hearing officer will consider how close in time the withdrawal is to the scheduled BRC or CCH. Oftentimes, the withdrawal of an attorney prior to a scheduled BRC or CCH can lead to a continuance, which delays the resolution of the dispute, provide the claimant with inadequate subsequent representation or assistance due to timing constraints, and affects the efficiency of the overall dispute resolution process. Unnecessary delays can also prevent injured employees from receiving needed medical attention, income benefits, or returning to work. Once a BRC or CCH has been scheduled by the division, the time for a new attorney or ombudsman to prepare for the proceeding once the current attorney has withdrawn is cut short and can affect the resolution of the dispute. This paragraph is necessary to help ensure the attorney's withdrawal is not so close in time as to lead to a rescheduled dispute proceeding or continuance. New §152.6(g)(2) and (3) state the hearing officer will consider the amount of attorney fees that have been requested and approved, as well as the attorney's willingness to waive payment of any portion of the approved fees outstanding at the time of withdrawal. Under Labor Code §408.221, a claimant attorney's fee is paid out of the claimant's recovery and may not exceed 25 percent of the recovery. Under Labor Code §408.203, *Allowable Liens,* any unpaid income or death benefits are subject to liens for attorney fees. Because attorney fees are capped at 25 percent of each income or death benefit check, there are often approved attorney fees operating as a lien on the claimant's benefits, sometimes through exhaustion of the available benefits. Therefore, unless an attorney is willing to waive outstanding fees when withdrawing from a case, any subsequent attorney will only receive a fee for representing the claimant after the original lien has been paid out. This can operate as a hindrance to injured employees and beneficiaries seeking access to an attorney in their dispute. The workers' compensation dispute resolution process does not require attorney representation in order for injured employees or beneficiaries to navigate their claim or obtain effective assistance, or any party to obtain private counsel. The OIEC ombudsman program is available to assist injured employees, and parties are able to obtain other forms of qualifying non-attorney representation. The considerations in new §152.6(g)(2) and (3) are necessary to help enable claimants in the system who want attorney representation to obtain a subsequent attorney if their current attorney withdraws. New §152.6(g)(4) considers the attorney's reason for withdrawing representation. This consideration is necessary as a corollary to Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct. Under Rule 1.15, there are specific circumstances where an attorney is required to withdraw or is permitted to withdraw barring an order stating otherwise from a tribunal. This paragraph is necessary to encompass those reasons and put the hearing officer on notice of the attorney's reason for withdrawing representation during the dispute resolution process. However, the division emphasizes that an

attorney is not required to provide any information that is considered privileged or confidential in stating the reason for withdrawal. Finally, new §152.6(g)(5) considers whether the attorney's client refused to approve the withdrawal. New §152.6(e) requires the motion to withdraw to include a statement reflecting whether the attorney's client has approved or refused to approve the withdrawal, unless the attorney certifies a good faith effort to notify the client regarding the withdrawal was made and the client could not be located. It is necessary for the hearing officer to consider whether the attorney's client has refused to approve the withdrawal, where applicable, to provide the claimant or insurance carrier an opportunity for their position to be heard. A consideration of good cause that includes the claimant or insurance carrier's voice helps encourage communication within the representation relationship and the workers' compensation system as a whole, as well as notify the hearing officer that there is a possible material adverse effect to the client if withdrawal occurs at that time.

New §152.6(h) requires an attorney to continue to represent the client until resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E. Rule 1.15(c) of the Texas Disciplinary Rules of Professional Conduct states that a lawyer shall continue representation notwithstanding good cause for terminating the representation when ordered to do so by a tribunal. Under the Texas Disciplinary Rules of Professional Conduct, a "tribunal" is defined as any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy and includes administrative agencies when engaging in adjudicatory activities, arbitrators, mediators, hearing officers, and comparable persons. New §152.6(e) requires a motion to withdraw show good cause for withdrawing from the case during the dispute resolution process, and is necessary to prevent a materially adverse effect on the attorney's client. It is necessary for an attorney to continue representation if their motion to withdraw is denied because withdrawal at that point would have a material adverse effect on the client that is not otherwise justified. This subsection tracks the requirements of the Texas Disciplinary Rules of Professional Conduct.

New §152.6(i) clarifies that nothing in §152.6 prevents a client from terminating the attorney-client relationship with immediate effect, or notifying the division of the termination of the attorney-client relationship. This subsection is necessary to emphasize that when the attorney's client terminates the representative relationship, these rules should not hinder the claimant or insurance carrier from obtaining immediate subsequent assistance from OIEC or representation from another attorney. Additionally, under §152.6(b) the attorney has 10 days to meet the requirement of submitting a notice of withdrawal. However, the client may seek immediate assistance from OIEC or subsequent representation following the attorney's withdrawal. In these instances, the attorney's client should not be prevented from notifying the division and obtaining assistance from OIEC or subsequent representation just because the attorney has not yet submitted the notice of withdrawal. Lastly, the division emphasizes that new §152.6(i) still requires the attorney to submit a notice of withdrawal under §152.6(b), regardless of whether the attorney's client has provided notification. This requirement helps to ensure the division is receiving the necessary information for tracking and data on how attorneys are operating within the system; to ensure the correct parties are receiving communications; and to provide consistent and clear application of the requirements. Consistent and clear application of the withdrawal requirements is necessary to ensure the division is receiving all of the requested information on the DWC Form-150a. While an injured employee, beneficiary, or insurance carrier may submit the form to the division, participants other than the attorney are not required to. Therefore, new §152.6(i) requires attorneys to always submit the notice of withdrawal when applicable and helps ensure the division is receiving all of the necessary required information established in new §152.6(b).

New §152.6(j) establishes a delayed effective date for §152.6 of January 30, 2017. A delayed effective date is necessary to ensure system participants and the division are afforded sufficient time to prepare and update the necessary systems to reflect the new requirements contained in §152.6.This subsection is necessary to inform attorneys when the requirements of §152.6, including a notice of withdrawal under subsection (b) or a motion to withdraw under subsection (e), become effective.

Kerry Sullivan, Deputy Commissioner for Hearings, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed new sections. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed below.

Mr. Sullivan has also determined that for each of the first five years new §152.3, §152.4, and §152.6 are in effect there will be a number of public benefits. The public benefits anticipated as a result of the proposed sections include: (i) helping to ensure there is quality representation available within the workers' compensation system; (ii) allowing for additional time at the beginning of a dispute for preparation and case management in order to encourage early resolution of claim disputes; (iii) helping to prevent an attorney's withdrawal from having a material adverse effect on their client; (iv) establishing clear and consistent guidelines for submission of required information and requests; (v) resolving disputes fairly and promptly by minimizing delays and continuances in the dispute resolution process; (vi) ensuring injured employees have access to a fair and accessible dispute resolution process by protecting against disparate impact between parties, and; (vii) educating and clearly informing system participants of their rights under the system by providing for consistent notice of all disputes and issues.

Mr. Sullivan anticipates that, for each of the first five years new §152.3, §152.4, and §152.6 are in effect, there will be costs to persons required to comply with the new sections. The division notes that many of these costs, particularly under new §152.3 and §152.4, are substantially similar to the costs experienced under repealed §152.3 and §152.4.

New §152.3(a) requires an attorney to submit an application for attorney fees to the division in order to request a fee. Labor Code §408.221 and §408.222 require the division or court to approve all attorney fees based on written evidence presented to the division. Thus, the only costs to an attorney resulting from new §152.3 are the actual costs relating to submitting the application to the division. There are a number of options available to the attorney for submitting the application, including the free online WAFPS. The proposed subsection allows the attorney the flexibility to determine which allowable method of submission to use when requesting a fee, and costs will vary depending on the method the attorney chooses. If an attorney decides to mail, facsimile, or personally deliver the application there is an estimated printing cost associated of $.10 per 8.5 x 11" piece of paper. A

blank application for attorney fees is five pages in length and, when printed front and back, would result in a printing cost of approximately $.30 per application. If an attorney decides to mail the application there is also a mailing cost of approximately $.47 per application. Additionally, the division notes that the proposed subsection provides flexibility for the attorney to determine how often to submit the application for attorney fees, and costs will vary depending on the frequency the attorney chooses.

New §152.3(d) and (e) require a party other than the claimant, such as the attorney or the insurance carrier, who contests an attorney fee order to request a CCH or an appeals panel review, respectively. The request must be submitted to the division by personal delivery, first class mail, or facsimile. Thus, there is a printing cost associated of approximately $.10 per 8.5 x 11" piece of paper for any requests submitted to the division under (d) or (e). If the party mails the request to the division, there is also a mailing cost of approximately $.47. Additionally, (d) and (e) require a copy be sent to the other parties, including the claimant, attorney, and insurance carrier. Under §152.3(d), the copies may be sent at no cost by email. However, if the copies are sent by one of the other available means there are printing and mailing costs associated, which are consistent with those described above, for each required party. The division also recognizes that there may be costs to parties under new §152.3 resulting from the time it takes to complete the request for a CCH or review by the appeals panel. However, these costs are not feasible for the division to quantify, as the party is in the best position to determine the time it will take to fulfill the requirements. Additionally, costs may vary depending on the complexity of the circumstances or the person's familiarity with the processes. Parties who opt to request a CCH under new §152.3 may incur certain legal costs or costs in the form of time as a result of attending these hearings. However, these costs are ultimately the result of division policies regarding the rights of parties to request CCHs, and are substantially similar to the costs associated with the processes found in repealed §152.3.

New §152.4 establishes the maximum hourly rate for attorneys and legal assistants, as well as the legal services guidelines outlining the services and hours that may be requested. Mr. Sullivan anticipates that there will be probable costs to the workers' compensation system as a result of the repeal and re-enactment because new §152.4 increases the maximum hourly rate for attorneys and legal assistants, and includes increased hours under the legal services guidelines. Specifically, the maximum hourly rate will increase by $50 for attorneys and $15 for legal assistants with the repeal and re-enactment of §152.4. Additionally, amendments to §152.4(c) increase the number of hours an attorney may request for communications per month (with client, health care providers, or other persons involved in the case) by 30 minutes, for direct dispute resolution negotiation per month by 30 minutes, and for preparation and submission of an agreement or settlement by one hour. It is challenging for the division to estimate the exact fiscal impact of the repeal and re-enactment to claimants and insurance carriers for a number of reasons. For example, to estimate the fiscal impact, the division must rely on past billing behavior; however, increases in the hourly rate and guidelines for legal services may result in a change in billing behavior, which would affect any calculation of costs. Additionally, the division anticipates the increase in costs to claimants and insurance carriers will be at least partially offset by the quicker resolution of cases resulting from increased available hours at the front end of the dispute resolution process. Last, the division is able to determine the total amount of attorney fees approved, but does not have available data on the total amount of attorney fees actually paid out in the system. For claimant attorneys, this is due in part to the statutory cap of 25 percent found in Labor Code §408.221, which only allows 25 percent of each benefit check to be allocated to attorney fees and does not provide for further recovery of any outstanding approved balance once the benefits are exhausted. For insurance carrier attorneys, there are often contracts between the attorney and the insurance carrier that provide for a fee below the amount approved by the division. Essentially, the division may approve a specific amount of fees, but the division does not have information on the actual fees paid out by the parties, which is often less than what was approved. There are also no previous amendments for the division to base an estimate of costs on, as the rules have been in place since originally adopted in 1991. All of these circumstances operate to hinder the division's ability to provide an exact estimate of the costs to participants and the system as a whole that would result from the increase in the hourly rate and guidelines for legal services. However, the division can provide estimates based on the information readily available, including the total amount in attorney fees approved each year, which is subject to the 25 percent statutory cap for claimant attorneys and contracts for insurance carrier attorneys, and the total amount that could possibly be requested if billing behavior were to change and attorneys began billing at the maximum allowable rate and hours.

For attorney fees, the division estimates that the total amount approved by the division would increase by approximately $20 million per year. The division reached this estimate by relying on past billing behavior and the total number of approved hours in Calendar Year 2015; multiplying the difference in the maximum hourly rate, $50, by the total number of approved attorney fees in 2015. Overall, at a new hourly rate of $200--multiplied by the 2015 approved hours--the division would approve approximately $81 million in attorney fees. For legal assistants, the division estimates an increase of approximately $1.2 million per year as a result of the repeal and re-enactment of §152.4. This estimate is based on multiplying the difference in the maximum hourly rate, $15, by the total number of approved hours of legal assistant fees in 2015. Another approach the division took to estimate the impact was to look at the total amount of attorney fees that could possibly be billed in the system. This estimate does not take into account actual billing practices, such as the total number of hours actually billed or the current data showing that attorneys do not bill the maximum amount of hours allowed in every dispute. Instead, this estimate focuses on the total amount that could be billed by multiplying the new hourly rate of $200 by the new maximum number of hours allowed in the legal services guidelines. Per dispute, a total of approximately $4,200 can be billed under new §152.4, which is an increase of $1,350 from the repealed version. If billing behavior were to change and attorneys began billing at or near the maximum hours allowed in the guidelines for legal services, as well as the maximum hourly rate each time, a total of approximately $152 million could be billed in the workers' compensation system under new §152.4. This is a change of approximately $50 million from the repealed rule. Finally, new §152.4(b) allows attorneys to request hours above the guidelines for legal services when case-specific justification is attached. An additional cost of $200 per additional hour would be applicable in those instances where additional hours are requested and approved by the division.

New §152.6(b) and (d) require an attorney to submit a notice of withdrawal or a motion to withdraw, respectively, to the division when withdrawing their representation. There is a printing cost

associated with the notification and motion of $.10 per 8.5 x 11" piece of paper, and when mailed, a mailing cost of approximately $.47. Under (b) and (d), the notification and motion must also be provided to the attorney's client and the opposing party. The proposed subsection allows the attorney the flexibility to determine which allowable method of submission to use when providing a copy of the notification or motion, and costs will vary depending on the method the attorney chooses. The copies may be sent at no cost by email. If the copies are sent by one of the other available means, there are printing and mailing costs associated, which are consistent with those described above, for each required party. The division also recognizes that there may be costs to attorneys under new §152.6 resulting from the time it takes to complete the notice of withdrawal or motion to withdraw. However, these costs are challenging for the division to quantify, as the attorney is in the best position to determine the time it will take to fulfill the requirements. Additionally, costs may vary depending on the complexity of the circumstances or the attorney's familiarity with each document.

Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

In accordance with Government Code §2006.002(c), the division has determined that the costs to comply with the proposed new sections may have an adverse economic impact on attorneys and insurance carriers who qualify as small or micro-businesses. According to the United States Census Bureau's North American Industry Classification System (NAICS), in 2014 there were 547,190 employers doing business in the state of Texas. Of those, 532,229 have 99 or less employees and 460,181 have 19 or less employees (http://censtats.census.gov/cbpnaic/cbpnaic.shtml). The division is not able to determine the total number of regulated entities that will be required to comply with §152.3 and §152.6 because information regarding attorney and insurance specific industries is not available. However, the cost of compliance with the proposal will not vary between large businesses and small or micro-businesses. Thus, the division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small and micro-businesses.

Two possible alternative regulatory methods of achieving the purposes of the proposed sections without adversely affecting small or micro-businesses are (i) modifying the proposed requirements for small and micro-businesses; and (ii) exempting small or micro-businesses from the requirements of the proposed sections. Under Government Code §2006(c-1), an agency is required to consider alternative regulatory methods only if the alternative methods are consistent with the health, safety, environmental and economic welfare of the state. The division has determined that the proposed new sections substantially contribute to the economic welfare of the state and system participants by ensuring all parties to a dispute receive notice regarding any new issues and avoid ex parte communications, which are prohibited under Labor Code §410.167. The purposes of the regulations also include furthering the system goals as laid out in Labor Code §402.021; resolving disputes fairly and promptly by minimizing delays in dispute resolution; ensuring injured employees have access to a fair and accessible dispute resolution process by protecting against disparate impact between parties; and educating and clearly informing system participants of their rights under the system by providing for consistent notice of all disputes and issues. Any variance in the requirements of §152.3 and §152.6 would defeat the purposes of the rules, would not be consistent with the economic welfare of the state, and would result in a disparate effect between parties to a dispute, particularly an attorney's client when an attorney fee order is being contested or the attorney is withdrawing representation. Additionally, in establishing the requirements the division has included less burdensome options for complying with many of the proposed new sections. In §152.3(a), an attorney may submit an application through WAFPS, which would eliminate the printing and mailing costs of submitting the application in a paper format. WAFPS is provided as a free online system for attorneys to submit applications for attorney fees. In §152.3(d), the party requesting a CCH to dispute an attorney fee order may provide copies to the other parties, including the insurance carrier, claimant, or their attorney, by email. In §152.6(b) and §152.6(d), an attorney may provide the required copies of the notice of withdrawal and motion to withdraw to their client and opposing party via email. Therefore, the division has determined that there are no regulatory alternatives, including waiving or modifying the requirements of proposed sections, which will sufficiently protect the health, safety, and economic welfare of the state.

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

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 19, 2016. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *Rulecomments@tdi.texas.gov* or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

28 TAC §152.3, §152.4

Existing §152.3 and §152.4 are repealed under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation, Separation of Authority, Rulemaking;* and Labor Code §402.061, *Adoption of Rules.*

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and enforcement of the Act.

§152.3. Approval or Denial of Fee by the Commission.

§152.4. Guidelines for Legal Services Provided to Claimants and Carriers.

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

Filed with the Office of the Secretary of State on August 8, 2016.

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Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: September 18, 2016
For further information, please call: (512) 804-4703

28 TAC §§152.3, 152.4, 152.6

New §§152.3, 152.4, and 152.6 are proposed under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation, Separation of Authority, Rulemaking;* Labor Code §402.061, *Adoption of Rules,* Labor Code §402.021, *Goals, Legislative Intent, General Workers' Compensation Mission of Department;* Labor Code §408.221, *Attorney's Fees Paid to Claimant's Counsel;* Labor Code §408.222, *Attorney's Fees Paid to Defense Counsel;* Labor Code §415.021, *Assessment of Administrative Penalties;* Labor Code §402.00128, *General Powers and Duties of Commissioner;* Labor Code §415.001, *Administrative Violation by Representative of Employee or Legal Beneficiary,* Labor Code §415.002, *Administrative Violation by Insurance Carrier;* Labor Code §414.002, *Monitoring Duties;* Labor Code §414.006, *Referral to Other Authorities;* Labor Code §408.203, *Allowable Liens;* and Labor Code §410.167, *Ex Parte Contacts Prohibited.*

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and enforcement of the Act.

Labor Code §402.021 requires that, in implementing the goals described in the section, the workers' compensation system must minimize the likelihood of disputes and resolve them promptly and fairly when identified, as well as promptly detect and appropriately address acts or practices of noncompliance with the Act and rules. Labor Code §402.021 states a basic goal of the workers' compensation system is that each injured employee must have access to a fair and accessible dispute resolution process. The section further requires the workers' compensation system effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system.

Labor Code §408.221 requires an attorney's fee, including a contingency fee, for representing a claimant before the division or court under the Act to be approved by the commissioner or court, to be paid from the claimant's recovery, and to be based on the attorney's time and expenses according to written evidence presented to the division or court. Labor Code §408.221 further requires the commissioner or court to consider a number of factors when approving an attorney's fee and to provide guidelines for maximum attorney's fees for specific services by rule.

Labor Code §408.222 requires an attorney's fee for defending an insurance carrier in a workers' compensation action brought under the Act to be approved by the division or court and determined by the division or court to be reasonable and necessary. Labor Code §408.222 further requires the division or court consider issues analogous to those listed under §408.221(b) when determining whether a fee is reasonable.

Labor Code §415.021 states that a person commits an administrative violation if they violate, fail to comply with, or refuse to comply with the Act or a rule, order, or decision of the commissioner.

Labor Code §402.00128(b) provides the commissioner with the power to hold hearings and to exercise other powers and perform other duties as necessary to implement and enforce the Act.

Labor Code §415.001 states it is an administrative violation for a representative of an employee or legal beneficiary to violate the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas or a commissioner rule.

Labor Code §415.002 states it is an administrative violation for an insurance carrier or its representative to violate a commissioner rule or fail to comply with a provision of the Act.

Labor Code §414.002 requires the division to monitor for compliance with commissioner rules, the Act, and other laws relating to workers' compensation the conduct of persons subject to this title, including attorneys and other representatives of parties. Labor Code §414.002 further requires the division to monitor the conduct described in Labor Code §415.001 and §415.002 and refer persons engaging in that conduct to the division of hearings.

Labor Code §414.006 authorizes the division to refer persons involved in a case subject to an investigation to other appropriate authorities for further investigation or the institution of appropriate proceedings, including licensing agencies, district and county attorneys, or the attorney general.

Labor Code §408.203 provides that an income or death benefit is subject to liens or claims for an attorney's fee for representing an employee or legal beneficiary in a matter arising under the Act.

Labor Code §410.167 states that a party and a hearing officer may not communicate outside a CCH unless the communication is in writing with copies provided to all parties or relates to a procedural matter.

§152.3. Approval or Denial of Fee by the Division.

(a) To claim a fee, an attorney representing any party must submit to the division a complete and accurate application for attorney fees in the form and manner prescribed by the division.

(b) An application for attorney fees must include:

(1) each attorney's name and bar card number;

(2) the law firm name, phone number, and mailing address;

(3) the injured employee's name, date of injury, and DWC claim number;

(4) the beneficiary's name, type, contact information, and social security number, if applicable;

(5) the dates of legal service;

(6) the hourly rate and number of hours for each attorney and legal assistant providing legal services;

(7) an itemized list of each legal service performed and expense incurred representing the claimant or insurance carrier that identifies the attorney or legal assistant who provided the service, the date the service was provided, and the hours or amount requested;

(8) a certification that every statement, numerical figure, and calculation in the application for attorney fees submitted to the division is within the attorney's personal knowledge, is true and correct, and represents services, charges, and expenses provided by the attorney or a legal assistant under the attorney's supervision; and

(9) additional case-specific justification for any fee that exceeds the guidelines for legal services.

(c) The division may approve, partially approve, or deny an application for attorney fees based on the division's determination of whether the requested time and expenses are reasonable according to the guidelines for legal services and maximum hourly rate established in §152.4 of this title, Labor Code §408.221 and §408.222, and written evidence presented to the division. The division will issue an order approving, partially approving, or denying an application for attorney fees. Submission of an application requesting fees for the same services or expenses addressed in any previous application is prohibited. Attorneys are subject to review for compliance with commissioner rules, the Act, and other laws under Labor Code Chapter 414. An order approving, partially approving, or denying an application for attorney fees does not limit the commissioner's authority to enforce a sanction, administrative penalty, or other remedy authorized by the Act. At any time an attorney whose application is found to contain false or inaccurate information may be referred to enforcement or other authorities, including licensing agencies, district and county attorneys, or the attorney general for investigation and appropriate proceedings.

(d) To contest a division order approving, partially approving, or denying an application for attorney fees, an attorney, claimant, or insurance carrier must request a contested case hearing through the dispute resolution process outlined in Chapters 140 - 144 of this title. A request must be submitted by personal delivery, first class mail, or facsimile to the division no later than the 20th day after receipt of the division's order. A claimant may request a hearing by contacting the division in any manner no later than the 20th day after receipt of the division's order. A contesting party other than a claimant must send a copy of the request by personal delivery, first class mail, or electronic transmission to the insurance carrier and the other parties, including the claimant and attorney, on the same day the request is submitted to the division.

(e) After a contested case hearing under subsection (d), an attorney, claimant, or insurance carrier must request review by the appeals panel pursuant to the provisions of §143.3 of this title (Requesting the Appeals Panel To Review the Decision of the Hearing Officer) to contest the division order approving, partially approving, or denying an application for attorney fees.

(f) The division's order approving, partially approving, or denying an application for attorney fees is binding during the pendency of a contest or an appeal of the order. Notice of a contest or an appeal does not relieve the insurance carrier of the obligation to pay attorney fees according to the division order.

(g) Following a contested case hearing or appeals panel review of an order approving, partially approving, or denying an application for attorney fees under subsection (d) or subsection (e), the division will issue a final order or decision. If the final order or decision of the division requires an attorney to reimburse funds, the reimbursement must be made no later than the 15th day after receipt of the final order or decision.

(h) This section is effective January 30, 2017.

§152.4. Guidelines for Legal Services Provided to Claimants and Insurance Carriers.

(a) The division will consider the guidelines for legal services outlined in subsection (c), the maximum hourly rate for legal services in subsection (d), Labor Code, §408.221 and §408.222, and written evidence presented to the division, when approving, partially approving, or denying an application for attorney fees.

(b) An attorney may request, and the division may approve, a number of hours greater than those allowed by the guidelines for legal services if the attorney demonstrates to the satisfaction of the division that the higher fee was justified based on the circumstances of the specific claim and Labor Code, §408.221 and §408.222.

(c) The guidelines for legal services provided to claimants and insurance carriers are as follows:
Figure: 28 TAC §152.4(c)

(d) The maximum hourly rate for legal services shall be as follows. Hourly rate:

(1) attorney--$200; and

(2) legal assistant (not to include hours for general office staff)--$65.

(e) Each attorney must bill for hours using that attorney's state bar card number.

(f) This section is effective January 30, 2017.

§152.6. Attorney Withdrawal.

(a) An attorney withdrawing representation must submit a notice of withdrawal under subsection (b) or a motion to withdraw under subsection (d) and comply with the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, including surrendering papers and property to the client as required.

(b) An attorney must submit a notice of withdrawal in the form and manner prescribed by the division when:

(1) the attorney withdraws representation and a motion to withdraw under subsection (d) is not required; or

(2) the attorney's representation is terminated by the attorney's client.

(c) An attorney must submit a notice of withdrawal under subsection (b) to the division by personal delivery, first class mail, or facsimile no later than the 10th day following withdrawal. An attorney must provide a copy of the notice to the attorney's client and the opposing party by personal delivery, first class mail, or electronic transmission on the same day the notice is submitted to the division. The notice of withdrawal must include:

(1) the attorney's name, bar card number, and contact information;

(2) the law firm name, if applicable;

(3) the injured employee's name, contact information, date of injury, and DWC claim number;

(4) the beneficiary's name, contact information, and social security number, if applicable;

(5) the insurance carrier name;

(6) the effective date of the attorney's withdrawal of representation under paragraph (1) or (2) of subsection (b); and

(7) the attorney's signature.

(d) Except when the attorney's representation is terminated by the attorney's client, an attorney withdrawing representation must submit a motion to withdraw to the division, and receive a division order granting the motion to withdraw, after notice of a scheduled benefit review conference or contested case hearing has been received and until resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E.

(e) The motion to withdraw must provide good cause for withdrawing from the case and a certification that states:

(1) the attorney's client has knowledge of and has approved or refused to approve the withdrawal; or

(2) the attorney made a good faith effort to notify the attorney's client and the attorney's client cannot be located.

(f) An attorney must submit the motion to withdraw to the division by personal delivery, first class mail, or facsimile. An attorney must also provide a copy of the motion to the attorney's client and the opposing party by personal delivery, first class mail, or electronic transmission on the same day the motion is submitted to the division.

(g) The hearing officer will determine whether good cause exists for the attorney's withdrawal based on Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct and other factors, including:

(1) how close in time the attorney withdrawal is to a scheduled benefit review conference or contested case hearing;

(2) the amount of attorney fees that have been requested and approved by the division;

(3) whether the attorney is willing to waive payment of any portion of the approved fees;

(4) the attorney's reason for the withdrawal; and

(5) whether the attorney's client refused to approve the withdrawal, if applicable.

(h) If the hearing officer determines good cause does not exist for the attorney's withdrawal, the attorney must continue to represent the party until resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E.

(i) This section does not prevent the attorney's client from terminating the attorney-client relationship or notifying the division of the termination of the attorney-client relationship. If the attorney's client notifies the division of a termination, the attorney is not relieved of the duty to submit to the division a notice of withdrawal under subsection (b).

(j) This section is effective January 30, 2017.

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

Filed with the Office of the Secretary of State on August 8, 2016.

TRD-201603996

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: September 18, 2016
For further information, please call: (512) 804-4703

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 11. CONTRACTS

SUBCHAPTER E. CONTRACTS MONITORING ROLES AND RESPONSIBILITIES

30 TAC §11.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §11.202, concerning Enhanced Contract Monitoring.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB) 20 (84th Texas Legislature, 2015) added Texas Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies.

Section Discussion

The commission proposes new §11.202, Enhanced Contract Monitoring, to incorporate this reference now required by statute. The proposed new rule establishes a procedure to ensure that all TCEQ contracts are assessed to determine the level and type of contract monitoring required. The proposed new rule requires the executive director, or his designee, to use risk assessment criteria to identify certain contracts for enhanced contract and performance monitoring. TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the risk-based assessment of contracts as well as the agency's Contract Management Handbook. The proposed new rule also requires regular reporting to the executive director on contracts identified for enhanced monitoring. The executive director shall notify the commission of serious issues or risks with those contracts.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rule implements SB 20, which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced or performance monitoring and to submit information related to these contracts to the agencies' governing bodies.

TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the monitoring of contracts that complies with the

proposed rule. TCEQ has a Contract Management Handbook that outlines standard contract monitoring and identifies when enhanced monitoring is required. Agency Program Areas also maintain more detailed Standard Operating Procedures. No fiscal implications are anticipated for the agency or for any other unit of state or local government as a result of the implementation of the proposed rule.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and to ensure that agencies have established and consistent procedures for their contracts.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rule. TCEQ's Procurements and Contracts Section within the Financial Administration Division currently maintains internal agency operating procedures for the monitoring of contracts in accordance with the new statute. No changes are anticipated from current agency policies and procedures.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule is not anticipated to result in fiscal implications for any large or small business. The proposed rule is not expected to result in any changes from current agency policies and procedures.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule is required by state law and does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule." The intent of the proposed rulemaking is to conform to Texas Government Code, §2261.253(c). The changes are not expressly to protect the environment and reduce risks to human health and environment.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of proposed new §11.202 is to conform to Texas Government Code, §2261.253(c). Promulgation and enforcement of this proposed new rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); 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 regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 13, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-030-011-AD. The comment period closes on September 19, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact LaTresa Stroud, Procurements and Contracts Section, Financial Administration Division, (512) 239-5555.

Statutory Authority

The new rule is proposed under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The proposed new rule implements Texas Government Code, §2261.253(c), as added by Senate Bill 20.

§11.202. Enhanced Contract Monitoring.

(a) Pursuant to Texas Government Code, §2261.253, the commission shall assess each contract to determine appropriate contract and performance monitoring requirements.

(b) The executive director or his designee shall ensure that risk assessment factors are used to determine when enhanced contract or performance monitoring is required for a contract. The criteria for evaluating risk include:

(1) the total contract amount;

(2) the funding source(s);

(3) the scope and complexity of the goods or services;

(4) the risk of fraud, waste, or abuse; and

(5) the importance of the work to the agency's mission or infrastructure.

(c) Contracts shall be monitored in accordance with the agency's policies and Contract Management Handbook.

(d) The executive director will receive regular reports on contracts identified for enhanced monitoring, and where serious issues or risks are identified, the executive director shall notify the commission.

(e) This section does not apply to a memorandum of understanding, memorandum of agreement, interagency contract, inter-local agreement, intergovernmental contract or contract for which there is not a cost.

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

Filed with the Office of the Secretary of State on August 5, 2016.

TRD-201603976
David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 18, 2016
For further information, please call: (512) 239-2613

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§336.2, 336.315, 336.357, 336.1105, and 336.1113.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes changes to Chapter 336, Subchapters A, D, and L that will revise the commission's rules concerning definitions, general requirements for surveys and monitoring, physical protection of category 1 and 2 quantities of radioactive materials, and notification requirements to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

Section by Section Discussion

The commission proposes administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

§336.2, Definitions

The commission proposes to amend §336.2 by updating the definitions of "Agreement state" and "Category 2 quantity of radioactive material." The amendment to §336.2(7) would clarify the definition of "Agreement state" by adding that a Non-agreement State means any other state. The amendment to §336.2(24) would clarify the definition of "Category 2 quantity of radioactive material" by adding that any fuel assembly, subassembly, fuel rod, or fuel pellet are not included in this definition.

§336.315, General Requirements for Surveys and Monitoring

The commission proposes to amend §336.315 to clarify the general requirements for surveys and monitoring.

The commission proposes to amend §336.315(a)(2)(C) to clarify that potential radiological hazards are radiation levels and residual radioactivity that have been detected.

The commission proposes to add §336.315(e) to require that records from surveys describing the location and amount of subsurface residual radioactivity identified at the site are to be stored at the same location and with the same retention schedule as records important to decommissioning.

§336.357, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

The commission proposes to amend the requirements regarding physical protection of category 1 and 2 quantities of radioactive materials in §336.357.

The commission proposes to amend §336.357(c)(2)(B) to update a cross-reference.

The commission proposes to amend §336.357(e)(3)(A) and (B) to update NRC contact information.

The commission proposes to amend §336.357(g)(4) to replace "NRC" with "commission."

The commission proposes to amend §336.357(i)(1)(C) to replace "NRC" with "commission."

The commission proposes to amend §336.357(j) to replace "NRC" with "commission" and to change the point of contact from the federal to the state level for all applicable subsections within this subsection.

The commission proposes to amend §336.357(q)(1) and (2) to update relevant NRC contact information. Additionally, the commission proposes to amend subsection (q)(3) to replace "NRC" with "commission."

The commission proposes to amend §336.357(u) throughout the subsection to replace "NRC" with "commission" and update relevant NRC contact information. Additionally, the commission proposes to add §336.357(u)(6) that will require that state officials, state employees, and other individuals who receive schedule information on the transport of category 1 or 2 quantities of radioactive material must protect this information against unauthorized disclosure.

The commission proposes to amend §336.357(w) throughout the subsection to update reporting notification requirements and contact information.

§336.1105, Definitions

The commission proposes to amend §336.1105(10) to clarify the definition of "Commencement of construction" versus construction. Additionally, the commission proposes to add the definition for "Construction" at §336.1105(12), which adds additional information on what activities are not included in the definition of construction. The commission also proposes to amend existing §336.1105(35) to update the definition of "Unrefined and unprocessed ore" to clarify that processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

§336.1113, Specific Terms and Conditions of Licenses

The commission proposes to amend §336.1113(2)(A) to add the requirement that the licensee must notify TCEQ for any unusual conditions in the by-product material retention system that could result in a release of by-product material into unrestricted areas.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would revise the commission's rules concerning definitions, general requirements for surveys and monitoring, and physical protection of category 1 and 2 quantities of radioactive materials. This proposed rulemaking is required to ensure compatibility with federal regulations promulgated by the NRC. Compatibility with federal regulations is necessary to preserve the status of Texas as an Agreement State under 10 CFR Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

This rulemaking would not adopt any fees and does not change any standards or procedures currently in place. There are no costs expected for the agency or any other unit of state or local government to implement or administer the proposed rules.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be an improvement in the rules that ensure that radioactive material is used, stored, and transported safely. No fiscal implications are anticipated for businesses or individuals due to implementation or administration of the proposed rules.

Small Business and Micro-Business Assessment

No significant fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. However, five TCEQ licensees which are small businesses would potentially be affected by the proposed rules. One micro-business would be affected by the proposed rules.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect. This rulemaking is required. In order to maintain its status as an Agreement State under 10 CFR Part 150, Texas must comply with federal rules.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action 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 statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks 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 the state or a sector of the state. The proposal to Chapter 336 is not anticipated to 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 the state or a sector of the state, because these revisions are required for the commission to maintain compatibility with the NRC for these licensing programs. Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). 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. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

Texas Health and Safety Code (THSC), Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rules are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The proposed rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." This rulemaking is proposed under the specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to this proposed rulemaking because these rules implement Senate Bill (SB) 1604, 80th Texas Legislature, 2007, transferring certain regulatory responsibilities from Texas Department of State Health Services to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Nevertheless, the commission further evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 6, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-035-336-WS. The comment period closes on September 19, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Hans Weger, Radioactive Materials Unit, (512) 239-6465.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the TRCA. The amendment is also proposed as authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements THSC, Chapter 401, and is proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material--Any material made radioactive by a particle accelerator.

(3) Access control--A system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(4) Activity--The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(5) Adult--An individual 18 or more years of age.

(6) Aggregated--Accessible by the breach of a single physical barrier that allows access to radioactive material in any form, including any devices containing the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(7) Agreement state--Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended. Non-agreement State means any other State. [~~through October 24, 1992 (Public Law 102-486).~~]

(8) Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(9) Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(10) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(11) Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2 of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(12) Approved individual--An individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with §336.357(b) - (h) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) and who has completed the training required by §336.357(j)(3) of this title.

(13) As low as is reasonably achievable--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(14) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(15) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators and self-contained breathing apparatus units.

(16) Background investigation--The investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(17) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of State Health Services, United States Nuclear Regulatory Commission [~~NRC~~], or an Agreement State.

(18) Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(19) Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(20) Byproduct material--

(A) a [~~A~~] radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material;

(B) the [~~The~~] tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition;

(C) any [~~Any~~] discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) any [~~Any~~] material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) any [~~Any~~] discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the United States Nuclear Regulatory Commission [~~NRC~~], in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(21) CFR--Code of Federal Regulations.

(22) Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(23) Category 1 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(24) Category 2 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(25) Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(26) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(27) Committed dose equivalent ($H_{T,50}$) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(28) Committed effective dose equivalent ($H_{E,50}$) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(29) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(30) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(31) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(32) Constraint (dose constraint)--A value above which specified licensee actions are required.

(33) Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(34) Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(35) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(36) Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(37) Deep-dose equivalent (H_d) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(38) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(39) Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(40) Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(41) Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours.

A licensee shall take 2,000 DAC-hours to represent one, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(42) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(43) Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(44) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only Self-Contained breathing apparatus [~~SCBA~~].

(45) Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(46) Diversion--The unauthorized movement of radioactive material subject to §336.357 of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(47) Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(48) Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (S_v).

(49) Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(50) Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(51) Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(52) Embryo/fetus--The developing human organism from conception until the time of birth.

(53) Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(54) Environmental Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.306.

(55) Escorted access--Accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(56) Exposure--Being exposed to ionizing radiation or to radioactive material.

(57) Exposure rate--The exposure per unit of time.

(58) External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(59) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(60) Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(61) Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter (relating to Licensing Requirements for [~~Requirement of~~] Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(62) Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(63) Fingerprint Orders--Orders issued by the Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

(64) Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(65) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(66) General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(67) Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(68) Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(69) Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(70) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(71) High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(72) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(73) Host state--A party state in which a compact facility is located or is being developed. The state of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(74) Individual--Any human being.

(75) Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices;

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, derived air concentration-hour; or

(C) dose equivalent by the use of survey data.

(76) Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters, pocket ionization chambers, and personal ("lapel") air sampling devices.

(77) Inhalation class--See "Class."

(78) Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act and rules, orders, and license conditions of the commission.

(79) Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(80) Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 Code of Federal Regulations §60.2 as amended through October 27, 1988 (53 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(81) Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(82) License--See "Specific license."

(83) Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(84) Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(85) Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(86) Local law enforcement agency (LLEA)--A public or private organization that has been approved by a federal, state, or local government to carry firearms; make arrests; and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(87) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(88) Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(89) Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of State Health Services rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 Code of Federal Regulations (CFR) §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined in this section;

(iv) byproduct material as defined by paragraph (20)(B) - (E) of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(90) Lung class--See "Class."

(91) Member of the public--Any individual except when that individual is receiving an occupational dose.

(92) Minor--An individual less than 18 years of age.

(93) Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(94) Mobile device--A piece of equipment containing licensed radioactive material that is either mounted on wheels or cast-

ers, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(95) Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(96) Movement control center--An operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(97) Nationally tracked source--A sealed source containing a quantity equal to or greater than category 1 or category levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 2 threshold but less than the category 1 threshold.

(98) Naturally occurring or accelerator-produced radioactive material (NARM)--Any NARM except source material or special nuclear material.

(99) Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of State Health Services adopted under Texas Health and Safety Code, §401.106.

(100) Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(101) Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(102) No-later-than arrival time--The date and time that the shipping licensee and receiving licensee have established as the time an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(103) Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(104) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(105) Oil and gas naturally occurring radioactive material (NORM) waste--NORM waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(106) On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(107) Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(108) Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(109) Perpetual care account--The Environmental Radiation and Perpetual Care Account as defined in this section.

(110) Personnel monitoring equipment--See "Individual monitoring devices."

(111) Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(112) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(113) Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(114) Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(115) Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(116) Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(117) Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(118) Quality factor (Q)--The modifying factor listed in Table I or II of §336.3(c) or (d) of this title (relating to Units of Radiation Exposure and Dose) that is used to derive dose equivalent from absorbed dose.

(119) Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(120) Quarter (Calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(121) Rad--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(122) Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(123) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(124) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(125) Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(126) Radioactive substance--Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and naturally occurring radioactive material (NORM) NORM waste, excluding oil and gas NORM waste.

(127) Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(128) Radiobioassay--See "Bioassay."

(129) Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection (ICRP) report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(130) Rem--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(131) Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 Code of Federal Regulations Part 20.

(132) Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(133) Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(134) Reviewing official--The individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

(135) Roentgen (R)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(136) Sabotage--Deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

(137) Safe haven--A readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(138) Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(139) Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(140) Security zone--Any temporary or permanent area established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(141) Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(142) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

(143) SI--The abbreviation for the International System of Units.

(144) Sievert (S_v)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(145) Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(146) Source material--

(A) uranium [~~Uranium~~] or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores [~~Ores~~] that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(147) Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 Code of Federal Regulations §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(148) Special nuclear material--

(A) plutonium [~~Plutonium~~], uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the National Regulatory Commission, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(149) Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this paragraph for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(150) Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(151) State--The state of Texas.

(152) Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(153) Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(154) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(155) Telemetric position monitoring system--A data transfer system that captures information from instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(156) Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(157) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(158) Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(159) Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(160) Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(161) Trustworthiness and reliability--Characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(162) Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A 1 for special form radioactive material or A2 for normal form radioactive material, where A1 and A2 are given in or shall be determined by procedures in Appendix A to 10 Code of Federal Regulations Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(163) Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(164) Unescorted access--Solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(165) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(166) Unrestricted area--Any area that is not a restricted area.

(167) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(168) Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(169) Violation--An infringement of any provision of the Texas Radiation Control Act (TRCA) or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(170) Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as

high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (20)(B) - (E) of this section.

(171) Week--Seven consecutive days starting on Sunday.

(172) Weighting factor (w_T) for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:
Figure: 30 TAC §336.2(172) (No change.)

(173) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(174) Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(175) Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(176) Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(177) Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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 Commission on Environmental Quality
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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §336.315, §336.357

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the TRCA. The amendments are also proposed as authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.315. General Requirements for Surveys and Monitoring.

(a) Each licensee shall make, or cause to be made, surveys that:

(1) are necessary for the licensee to comply with the rules in this chapter or conditions of the license; and

(2) are reasonable under the circumstances to evaluate:

(A) the magnitude and extent of radiation levels;

(B) concentrations or quantities of radioactive material; and

(C) the potential radiological hazards <u>of the radiation levels and residual radioactivity detected</u>.

(b) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated:

(1) by a person licensed by the Texas Department of State Health Services, another Agreement State, a Licensing State, or the United States Nuclear Regulatory Commission to perform this service;

(2) at intervals not to exceed 12 months, unless a more restrictive time interval is specified in another part of this chapter or in the license; and

(3) for the types of radiation measured and at appropriate energies.

(c) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees to comply with §336.305 of this title (relating to Occupational Dose Limits for Adults), with other applicable provisions of this chapter, or with conditions specified in a license shall be processed and evaluated by a dosimetry processor:

(1) holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(2) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(d) Each licensee shall ensure that individuals who are required to use an individual monitoring device follow appropriate procedures in regard to selection of the type of device, location where it is worn, period of use, and precautions to prevent exposures that are not occupational dose to that individual.

<u>(e) Regardless of §336.343(a) of this title (relating to Records of Surveys), records from surveys describing the location and amount</u>

of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with §336.621 of this title (relating to Record-keeping for Decommissioning), as applicable.

§336.357. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.

(a) Specific exemption. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of subsections (b) - (w) of this section. However, any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kilograms (4,409 pounds) is not exempt from the requirements of subsections (b) - (w) of this section. The licensee shall implement the following requirements to secure the radioactive waste:

(1) use [~~Use~~] continuous physical barriers that allow access to the radioactive waste only through established access control points;

(2) use [~~Use~~] a locked door or gate with monitored alarm at the access control point;

(3) assess [~~Assess~~] and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(4) immediately [~~Immediately~~] notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

(b) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(1) General.

(A) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subsection and subsections (c) - (h) of this section.

(B) An applicant for a new license and each licensee, upon application for modification of its license, that would become newly subject to the requirements of this subsection and subsections (c) - (h) of this section, shall implement the requirements of this subsection and subsections (c) - (h) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (c) - (h) of this section shall implement the provisions of this subsection and subsections (c) - (h) of this section before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. The licensee's access authorization program must ensure that the individuals specified in paragraph (3)(A) of this subsection are trustworthy and reliable.

(3) Applicability.

(A) Licensees shall subject the following individuals to an access authorization program:

(i) any [~~Any~~] individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) reviewing [~~Reviewing~~] officials.

(B) Licensees need not subject the categories of individuals listed in subsection (f)(1) of this section to the investigation elements of the access authorization program.

(C) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(D) Licensees may include individuals needing access to safeguards information-modified handling under 10 Code of Federal Regulations (CFR) Part 73, in the access authorization program under this subsection and subsections (c) - (h) of this section.

(c) Access authorization program requirements.

(1) Granting unescorted access authorization.

(A) Licensees shall implement the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section for granting initial or reinstated unescorted access authorization.

(B) Individuals determined to be trustworthy and reliable shall also complete the security training required by subsection (j)(3) of this section before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Reviewing officials.

(A) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(B) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with subsection (d)(3) [~~(d)(2)~~] of this section.

(C) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(D) Reviewing officials cannot approve other individuals to act as reviewing officials.

(E) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) the [~~The~~] individual has undergone a background investigation that included fingerprinting and a Federal Bureau of Investigations (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) the [~~The~~] individual is subject to a category listed in subsection (f)(1) of this section.

(3) Informed consent.

(A) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is found during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of subsection (d)(2) of this section. A signed consent must be obtained prior to any reinvestigation.

(B) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) if [~~If~~] an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) the [~~The~~] withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by subsection (b) of this section, this subsection, and subsections (d) - (h) of this section is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(A) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section.

(B) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(C) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(D) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(E) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirements, the licensee shall remove the person from the approved list as soon as possible, but no-later-than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(A) Prior to any final adverse determination, licensees shall provide each individual subject to subsection (b) of this section, this subsection, and subsections (d) - (h) of this section with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(B) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306, as set forth in 28 CFR §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record is made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(B) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(C) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

(d) Background investigations.

(1) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investiga-

tion or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(A) fingerprintings [~~Fingerprinting~~] and an FBI identification and criminal history records check in accordance with subsection (e) of this section;

(B) verification [~~Verification~~] of true identity. Licensees shall verify the true identity of the individual applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with subsection (g) of this section. Licensees shall certify in writing that the identification was properly reviewed and shall maintain the certification and all related documents for review upon inspection;

(C) employment [~~Employment~~] history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;

(D) verification [~~Verification~~] of education. Licensees shall verify the individual's education during the claimed period;

(E) character [~~Character~~] and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under subsections (b) and (c) of this section, this subsection, and subsections (e) - (h) of this section must be limited to whether the individual has been and continues to be trustworthy and reliable;

(F) the [~~The~~] licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the individual (e.g., seek references not supplied by the individual); and

(G) if [~~If~~] a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee, but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation and attempt to obtain the information from an alternate source.

(2) Grandfathering.

(A) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(B) Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the Security Orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or a Security Order. Security Order, in this context, refers to any order that was issued by the United States Nuclear Regulatory Commission (NRC) that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(3) Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(e) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(1) General performance objective and requirements.

(A) Except for those individuals listed in subsection (f) of this section and those individuals grandfathered under subsection (d)(2) of this section, each licensee subject to the provisions of subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(B) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(C) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) the [~~The~~] individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) the [~~The~~] previous access was terminated under favorable conditions.

(D) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this section, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of subsection (g)(3) of this section.

(E) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determin-

ing an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(A) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) an [~~An~~] arrest more than one year old for which there is no information of the disposition of the case; or

(ii) an [~~An~~] arrest that resulted in dismissal of the charge or an acquittal.

(B) Licensees may not use information received from a criminal history records check obtained under subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(A) For the purpose of complying with subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section, licensees shall use an appropriate method listed in 10 CFR §37.7 to submit to the United States Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-03B46M [~~TWB-05 B32M~~], Rockville, Maryland 20852-2738, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer [~~Information Services~~], U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by calling (630) 829-9565; or by e-mail to *FORMS.Resource@nrc.gov.* Guidance on submitting electronic fingerprints can be found at *http://www.nrc.gov/site-help/e-submittals.html.*

(B) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at (301) 415-7513 [~~492-3531~~].) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Electronic Submittals page at *http://www.nrc.gov/site-help/e-submittals.html* and see the link for the Criminal History under Electronic Submission Systems.)

(C) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(f) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(1) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation, are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(A) an [~~An~~] employee of the NRC or of the Executive Branch of the United States (U.S.) Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(B) a [~~A~~] Member of Congress;

(C) an [~~An~~] employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(D) the [~~The~~] Governor of a State or his or her designated State employee representative;

(E) Federal, State, or local law enforcement personnel;

(F) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(G) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under §274.i. of the Atomic Energy Act;

(H) representatives [~~Representatives~~] of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(I) emergency [~~Emergency~~] response personnel who are responding to an emergency;

(J) commercial [~~Commercial~~] vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(K) package [~~Package~~] handlers at transportation facilities such as freight terminals and railroad yards;

(L) any [~~Any~~] individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(M) any [~~Any~~] individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(2) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be pro-

vided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

(A) National Agency Check;

(B) Transportation Worker Identification Credentials under 49 CFR Part 1572;

(C) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR Part 555;

(D) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR Part 73;

(E) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR Part 1572; and

(F) Customs and Border Protection's Free and Secure Trade Program.

(g) Protection of information.

(1) Each licensee who obtains background information on an individual under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section shall establish and maintain a system of files and written procedures for protection of the records and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(A) upon [~~Upon~~] the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(B) the [~~The~~] recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(4) The licensee shall make background investigation records obtained under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section available for examination by an authorized representative of the commission [~~NRC~~] to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI or a copy of these records if the individual's file has been transferred on an individual for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(h) Access authorization program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of subsections (b) - (g) of this section and this subsection and that comprehensive actions are taken to correct any noncompliance identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access authorization program content and implementation.

(2) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) Review records must be maintained for three years.

(i) Security program.

(1) Applicability.

(A) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subsection and subsections (j) - (q) of this section.

(B) An applicant for a new license, and each licensee that would become newly subject to the requirements of this subsection and subsections (j) - (q) of this section upon application for modification of its license, shall implement the requirements of this subsection and subsections (j) - (q) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (j) - (q) of this section shall provide written notification to the commission [~~NRC regional office specified in 10 CFR §30.6~~] at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(3) Program features. Each licensee's security program must include the program features, as appropriate, described in subsections (j) - (p) of this section.

(j) General security program requirements.

(1) Security plan.

(A) Each licensee identified in subsection (i)(1) of this section shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by subsection (i) of this section, this subsection, and subsections (k) - (q) of this section [~~this subsection~~]. The security plan must, at a minimum:

(i) describe [~~Describe~~] the measures and strategies used to implement the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section [~~this subsection~~]; and

(ii) identify [~~Identify~~] the security resources, equipment, and technology used to satisfy the requirements of subsection (i)

of this section, this subsection, and subsections (k) - (q) of this section [~~this subsection~~].

(B) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(C) A licensee shall revise its security plan as necessary to ensure the effective implementation of the executive director's requirements. The licensee shall ensure that:

(i) the [~~The~~] revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) the [~~The~~] affected individuals are instructed on the revised plan before the changes are implemented.

(D) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(A) The licensee shall develop and maintain written procedures that document how the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section and the security plan will be met.

(B) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(C) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(A) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) the [~~The~~] licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material and the purposes and functions of the security measures employed;

(ii) the [~~The~~] responsibility to report promptly to the licensee any condition that causes or may cause a violation of the requirements of the commission, the NRC, or any Agreement State;

(iii) the [~~The~~] responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) the [~~The~~] appropriate response to security alarms.

(B) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(C) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) review [~~Review~~] of the training requirements of this paragraph and any changes made to the security program since the last training;

(ii) reports [~~Reports~~] on any relevant security issues, problems, and lessons learned;

(iii) relevant [~~Relevant~~] results of commission [~~NRC~~] inspections; and

(iv) relevant [~~Relevant~~] results of the licensee's program review and testing and maintenance.

(D) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(A) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(B) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(C) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) evaluate [~~Evaluate~~] an individual's need to know the security plan or implementing procedures; and

(ii) if [~~If~~] the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in subsection (d)(1)(B) - (G) of this section.

(D) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) the [~~The~~] categories of individuals listed in subsection (f)(1) of this section; or

(ii) security [~~Security~~] service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in subsection (d)(1)(B) - (G) of this section, has been provided by the security service provider.

(E) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access

authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no-later-than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(G) When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in non-removable electronic form must be password protected.

(H) The licensee shall retain as a record for three years after the document is no longer needed:

(i) a [~~A~~] copy of the information protection procedures; and

(ii) the [~~The~~] list of individuals approved for access to the security plan or implementing procedures.

(k) LLEA coordination.

(1) A licensee subject to subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(A) a [~~A~~] description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section; and

(B) a [~~A~~] notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(2) The licensee shall notify the executive director within three business days if:

(A) the [~~The~~] LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(B) the [~~The~~] LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for three years.

(4) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(l) Security zones.

(1) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

(2) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(3) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(A) isolation [~~Isolation~~] of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(B) direct [~~Direct~~] control of the security zone by approved individuals at all times; or

(C) a [~~A~~] combination of continuous physical barriers and direct control.

(4) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(5) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(m) Monitoring, detection, and assessment.

(1) Monitoring and detection.

(A) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source or provide for an alarm and response in the event of a loss of the capability to continuously monitor and detect unauthorized entries.

(B) Monitoring and detection must be performed by:

(i) a [~~A~~] monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(ii) electronic [~~Electronic~~] devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) a [~~A~~] monitored video surveillance system;

(iv) direct [~~Direct~~] visual surveillance by approved individuals located within the security zone; or

(v) direct [~~Direct~~] visual surveillance by a licensee designated individual located outside the security zone.

(C) A licensee subject to subsections (i) - (l) of this section, this subsection, and subsections (n) - (q) of this section shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) for [~~For~~] category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(I) electronic [~~Electronic~~] sensors linked to an alarm;

(II) continuous [~~Continuous~~] monitored video surveillance; or

(III) direct [~~Direct~~] visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(A) maintain [~~Maintain~~] continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(B) provide [~~Provide~~] an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(4) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(n) Maintenance and testing.

(1) Each licensee subject to subsections (i) - (m) of this section, this subsection, and subsections (o) - (q) of this section shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this section must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(2) The licensee shall maintain records on the maintenance and testing activities for three years.

(o) Requirements for mobile devices. Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(1) have [~~Have~~] two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(2) for [~~For~~] devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

(p) Security program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of subsections (i) - (o) of this section, this subsection, and subsection (q) of this section and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

(2) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) The licensee shall maintain the review documentation for three years.

(q) Reporting of events.

(1) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~and the NRC's Operations Center at (301) 816-5100~~]. In no case shall the notification to the commission or the NRC be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(2) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~and the NRC's Operations Center at (301) 816-5100~~].

(3) The initial telephonic notification required by paragraph (1) of this subsection must be followed, within a period of 30 days, by a written report submitted to the executive director [~~and the NRC by an appropriate method listed in 10 CFR §37.7~~]. The report must include sufficient information for commission [~~NRC~~] analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(r) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the commission, the NRC, or an Agreement State shall meet the license verification provisions listed in this subsection instead of those listed in §336.331(d) of this title (relating to Transfer of Radioactive Material):

(1) Any licensee transferring category 1 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(2) Any licensee transferring category 2 quantities of radioactive material to a licensee of the commission, the NRC, or an

Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(3) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(4) The transferor shall keep a copy of the verification documentation as a record for three years.

(s) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit. The shipping licensee shall be responsible for meeting the requirements of subsection (r) of this section, this subsection, and subsections (t) - (w) of this section unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under subsection (r) of this section, this subsection, and subsections (t) - (w) of this section.

(t) Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(1) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(A) preplan [~~Preplan~~] and coordinate shipment arrival and departure times with the receiving licensee;

(B) preplan [~~Preplan~~] and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(i) discuss [~~Discuss~~] the state's intention to provide law enforcement escorts; and

(ii) identify [~~Identify~~] safe havens; and

(C) document [~~Document~~] the preplanning and coordination activities.

(2) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(3) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (2) of this subsection, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof as a record for three years.

(u) Advance notification of shipment of category 1 quantities of radioactive material. As specified in paragraphs (1) and (2) of this subsection, each licensee shall provide advance notification to the NRC and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(A) The notification must be made to the commission [~~NRC~~] and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at *https://scp.nrc.gov/special/designee.pdf* [*~~http://nrc-stp.ornl.gov/special/designee.pdf~~*]. A list of the contact information is also available upon request from the Director, Division of Material, State, Tribal, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards [~~Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs~~], U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. [~~Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by e-mail to RAMQC_SHIPMENTS@nrc.gov or by fax to (301) 816-5151.~~]

(B) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(C) A notification delivered by any means other than mail must reach the commission [~~NRC~~] at least four days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(A) the [~~The~~] name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(B) the [~~The~~] license numbers of the shipper and receiver;

(C) a [~~A~~] description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(D) the [~~The~~] point of origin of the shipment and the estimated time and date that shipment will commence;

(E) the [~~The~~] estimated time and date that the shipment is expected to enter each state along the route;

(F) the [~~The~~] estimated time and date of arrival of the shipment at the destination; and

(G) a [~~A~~] point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(A) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the commission [~~NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001~~].

(B) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with paragraph (2) of this subsection and subparagraph (A) of this paragraph. The licensee shall also immediately notify the commission [~~NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001,~~] of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified and to the commission [~~NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, United States Nuclear Regulatory Commission, Washington, DC 20555-0001~~]. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(6) Protection of information. State officials, State employees, and other individuals, whether or not licensees of the commission, NRC, or an Agreement State, who receive schedule information of the kind specified in paragraph (2) of this subsection shall protect that information against unauthorized disclosure as specified in subsection (j)(4) of this section.

(v) Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(1) Shipments by road.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(I) notifications [~~Notifications~~] to the communication center and law enforcement agencies;

(II) communication [~~Communication~~] protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(III) loss [~~Loss~~] of communications; and

(IV) responses [~~Responses~~] to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(B) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(C) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) use [~~Use~~] carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) use [~~Use~~] carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) use [~~Use~~] carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(2) Shipments by rail.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of

and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(B) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) use [~~Use~~] carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) use [~~Use~~] carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) use [~~Use~~] carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(3) Investigations. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(w) Reporting of events.

(1) The shipping licensee shall notify the appropriate LLEA and [~~,~~] the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~, and the NRC's Operations Center at (301) 816-5100~~] within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by subsection (v)(3) of this section, the shipping licensee will provide agreed upon updates to the executive director [~~and the NRC's Operations Center~~] on the status of the investigation.

(2) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~and the NRC's Operations Center at (301) 816-5100~~] within four hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the executive director [~~and the NRC's Operations Center~~].

(3) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~and the NRC's Operations Center at (301) 816-5100~~] upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment of category 1 radioactive material.

(4) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~and the NRC's Operations Center at (301) 816-5100~~] as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224[~~, the NRC's Operations Center at (301) 816-5100,~~] and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 [~~and the NRC's Operations Center at (301) 816-5100~~] as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(7) The initial telephonic notification required by paragraphs (1) - (4) of this subsection must be followed within a period of 30 days by a written report submitted to the executive director [~~and NRC by an appropriate method listed in 10 CFR §37.7~~]. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. [~~In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.~~] The report must set forth the following information:

(A) a [~~A~~] description of the licensed material involved, including kind, quantity, and chemical and physical form;

(B) a [~~A~~] description of the circumstances under which the loss or theft occurred;

(C) a [~~A~~] statement of disposition, or probable disposition, of the licensed material involved;

(D) actions [~~Actions~~] that have been taken, or will be taken, to recover the material; and

(E) procedures [~~Procedures~~] or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(x) Form of records. Each record required by this section must be legible throughout the retention period specified in regulation by the licensing authority. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(y) Record retention. Licensees shall maintain the records that are required in this section for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the executive director terminates the facility's license. All records related to this section may be destroyed upon executive director termination of the facility license.

(z) Category 1 and category 2 radioactive materials. The terabecquerel (TBq) values are the regulatory standard. The curie (Ci)

values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only.
Figure: 30 TAC §336.357(z) (No change.)

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

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SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1105, §336.1113

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the TRCA. The amendments are proposed as authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.1105. Definitions.

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

(1) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is:

(A) hydraulically interconnected to a natural aquifer;

(B) capable of discharge to surface water; or

(C) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with §336.1131 of this title (relating to Land Ownership of By-Product Material Disposal Sites).

(2) As expeditiously as practicable considering technological feasibility--As quickly as possible considering the physical characteristics of the by-product material and the site, the limits of "available technology" (as defined in this section), the need for consistency with mandatory requirements of other regulatory programs, and "factors beyond the control of the licensee" (as defined in this section). The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "Available technology."

(3) Available technology--Technologies and methods for emplacing a final radon barrier on by-product material piles or impoundments. This term must not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (for example, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs must be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4) By-product material--Tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute "by-product material" within this definition.

(5) By-product material disposal cell--A man-made excavation and/or construction designed, sited, and built in accordance with the requirements of §336.1129 of this title (relating to Technical Requirements) for the purpose of disposal of by-product material.

(6) By-product material pond--A man-made excavation designed, constructed, and sited in accordance with the requirements of §336.1129 of this title (relating to Technical Requirements).

(7) Capable fault--As used in this section, "Capable fault" has the same meaning as defined in Section III(g) of Appendix A of Title 10 Code of Federal Regulations (CFR) Part 100.

(8) Closure--The post-operational activities to decontaminate and decommission the buildings and site used to produce by-product materials and/or reclaim the tailings or disposal area, including groundwater restoration, if needed.

(9) Closure plan--The plan approved by the agency to accomplish closure. The closure plan consists of a decommissioning plan and may also include a reclamation plan.

(10) Commencement of construction--Initiating activity defined as "construction" or any other activity at the site of a facility subject to regulations in this subchapter that has a reasonable nexus to radiological health and safety. [~~Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but does not include changes desirable for the temporary use of the land for public recreational uses, necessary borings to determine site characteristics or other preconstruction monitoring to establish background information related to the suitability of a site, or to the protection of the environment.~~]

(11) Compliance period--The period of time that begins when the agency sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal government for long-term care, if applicable.

(12) Construction--The installation of wells associated with radiological operations (e.g., production, injection, or monitoring well networks associated with in-situ recovery or other facilities), the installation of foundations, or in place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security. The term "construction" does not include:

(A) changes for the temporary use of the land for public recreational purposes;

(B) site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of a site, the environmental impacts of construction or operation, or the protection of environmental values;

(C) preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(D) erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(E) excavation;

(F) erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(G) building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(H) procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(I) initiating activity that has no reasonable nexus to radiological health and safety.

(13) [~~(12)~~] Decommissioning plan--The plan approved by the agency to accomplish decommissioning. Decommission is defined in §336.2(29) of this title (relating to Definitions).

(14) [~~(13)~~] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(15) [~~(14)~~] Disposal area--The area containing by-product materials to which the requirements of §336.1129(p) - (aa) of this title (relating to Technical Requirements) apply.

(16) [~~(15)~~] Existing portion--As used in §336.1129(i)(1) of this title (relating to Technical Requirements), "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium by-product materials had been placed prior to September 30, 1983.

(17) [~~(16)~~] Factors beyond the control of the licensee--Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with §336.1129(x) of this title (relating to Technical Requirements). These factors may include, but are not limited to:

(A) physical conditions at the site;

(B) inclement weather or climatic conditions;

(C) an act of God;

(D) an act of war;

(E) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(F) labor disturbances;

(G) any modifications, cessation or delay ordered by state, federal, or local agencies;

(H) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from government agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(I) an act or omission of any third party over whom the licensee has no control.

(18) [~~(17)~~] Final radon barrier--The earthen cover (or approved alternative cover) over by-product material constructed to comply with §336.1129(p) - (aa) of this title (relating to Technical Requirements) (excluding erosion protection features).

(19) [~~(18)~~] Groundwater--Water below the land surface in a zone of saturation. For purposes of this subchapter, groundwater is the water contained within an aquifer as defined in this section.

(20) [~~(19)~~] Hazardous constituent--Subject to §336.1129(j)(5) of this title (relating to Technical Requirements), "hazardous constituent" is a constituent that meets all three of the following tests:

(A) the constituent is reasonably expected to be in or derived from the by-product material in the disposal area;

(B) the constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the constituent is listed in 10 Code of Federal Regulations Part 40, Appendix A, Criterion 13.

(21) [~~(20)~~] In situ leach--Refers to the actual oxidation and dissolution of uranium in an underground formation.

(22) [~~(21)~~] In situ recovery--Refers to the process of stripping, precipitating, de-watering, and drying uranium in a surface processing plant.

(23) [~~(22)~~] Leachate--Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the by-product material.

(24) [~~(23)~~] Licensed site--The area contained within the boundary of a location under the control of persons generating or storing by-product materials under a license.

(25) [~~(24)~~] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that restricts the downward or lateral escape of by-product material, hazardous constituents, or leachate.

(26) [~~(25)~~] Maximum credible earthquake--That earthquake that would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(27) [~~(26)~~] Milestone--An action or event that is required to occur by an enforceable date.

(28) [~~(27)~~] Operation--

(A) the [~~The~~] period of time during which a by-product material disposal area is being used for the continued placement of by-product material or is in standby status for such placement. A disposal area is in operation from the day that by-product material is first placed in it until the day final closure begins; and

(B) the [~~The~~] period of time during which an in situ leach uranium recovery operation is actively leaching or recovering uranium.

(29) [~~(28)~~] Point of compliance--The site-specific location in the uppermost aquifer where the groundwater protection standard shall be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(30) [~~(29)~~] Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(31) [~~(30)~~] Reclamation--Those activities at a uranium recovery licensed facility that work towards achieving the criteria under this subchapter for release of equipment, facilities and/or the site (including land) to unrestricted use or termination of the license.

(32) [~~(31)~~] Reclamation plan--

(A) for [~~For~~] the purposes of paragraph (22) [~~(21)~~] of this section and §336.1115 of this title (relating to In situ recovery and Expiration and Termination of Licenses; Decommissioning of Sites; Separate Buildings or Outdoor Areas, respectively), "reclamation plan" is the plan detailing activities to accomplish reclamation of the licensed site (land surface) where in situ recovery and related activities are licensed to occur. The reclamation plan shall include a schedule for reclamation milestones that are key to the clean-up of the in situ recovery plant location, well fields, and any by-product waste storage location; or

(B) for [~~For~~] the purposes of §336.1129(p) - (aa) of this title (relating to Technical Requirements), "reclamation plan" is the plan detailing activities to accomplish reclamation of the by-product material disposal area in accordance with the technical criteria of this section. The reclamation plan shall include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, windblown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of by-product material shall also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(33) [~~(32)~~] Restoration--Those activities that seek to return the groundwater at an underground injection control permitted site to restoration levels established by permit.

(34) [~~(33)~~] Security--This term has the same meaning as financial assurance.

(35) [~~(34)~~] Surface impoundment--A natural topographic depression, man-made excavation, or diked area at a conventional uranium mill, which is designed to receive waste from the milling process which may contain liquid wastes or wastes containing free liquids, solid wastes, mill site demolition materials and debris, and other by-product materials from the milling site.

(36) [~~(35)~~] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

(37) [~~(36)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(38) [~~(37)~~] Uranium recovery--Any uranium extraction or concentration activity that results in the production of "by-product material" as it is defined in this chapter and as it pertains to uranium ore only. As used in this definition, "Uranium recovery" has the same meaning as "uranium milling" in 10 Code of Federal Regulations §40.4.

§336.1113. Specific Terms and Conditions of Licenses.

Unless otherwise specified, each license issued in accordance with this section is subject to the requirements of §305.125 of this title (relating to Standard Permit Conditions) and the following.

(1) Daily inspection of any by-product material retention systems shall be conducted by the licensee. General qualifications for individuals conducting inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(2) In addition to the applicable requirements of §336.350 and §336.352 of this title (relating to Reports of Stolen, Lost, or Missing Licensed Radioactive Material and Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits), the licensee shall immediately notify the agency of the following:

(A) any failure in a by-product material retention system that results in a release of by-product material into unrestricted areas or of any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could indicate the potential or lead to failure of the system and result in a release of by-product material into unrestricted areas;

(B) any release of radioactive material that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title (relating to Appendix B. Annual Limits in Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage) and that extends beyond the licensed boundary;

(C) any spill that exceeds 20,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title; or

(D) any release of solids that exceeds the limits in §336.1115(e) of this title (relating to Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas) and that extends beyond the licensed boundary.

(3) In addition to the applicable requirements of Chapter 327 of this title (relating to Spill Prevention and Control) and §336.350 and §336.352 of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill that exceeds 2,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title.

(4) A written report to the executive director within 30 days after learning of the occurrence of a spill as described in subparagraph (A) or (B) of this paragraph. The report shall include the following:

(A) location of the spill;

(B) cause of the spill;

(C) corrective steps taken or planned to ensure against a recurrence; and

(D) timely schedule for remediation of the spill or release, if required.

(5) At any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked.

(6) The licensee shall be subject to the applicable provisions of Texas Health and Safety Code, Chapter 401, also known as the Texas Radiation Control Act (TRCA) now or hereafter in effect and to applicable rules and orders of the commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to TRCA or by reason of rules and orders issued in accordance with terms of TRCA.

(7) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of TRCA, or because of conditions revealed by any application or statement of fact or any report, record or inspection or other means that would warrant the commission to refuse to grant a license on the original application, or for failure to operate the facility in accordance with the terms of the license, or for any violation of or failure to observe any of the terms and conditions of TRCA or the license or of any rule or order of the commission.

(8) Each person licensed by the commission under this subchapter shall confine possession and use of radioactive materials to the locations and purposes authorized in the license.

(9) No by-product may be disposed of until the executive director has inspected the facility and has found it to be conformance with the description, design, and construction described in the application for a by-product disposal license. No by-product may be received for disposal at the facility until the executive director has approved financial assurance.

(10) The commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, additional requirements or conditions with respect to the licensee's receipt, possession, or disposal of by-product as it deems appropriate or necessary in order to:

(A) protect the health and safety of the public and the environment; or

(B) require reports and recordkeeping and to provide for inspections of activities under the licenses that may be necessary or appropriate to effectuate the purposes of TRCA and rules thereunder.

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

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.36

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.36, which is located in Title 34, Part 3, Chapter 41, Subchapter C, of the Texas Administrative Code. Chapter 41 addresses the two health benefit programs (TRS-Care and TRS-ActiveCare) administered by TRS, as trustee, and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter C concerns TRS-ActiveCare.

The proposed amendments to §41.36(a) simplify the wording of the initial enrollment opportunity afforded therein to a full-time or part-time employee and clarify that this enrollment opportunity also applies to the eligible dependents of the employee. However, due to the existing definitions of a full-time and part-time employee found in §41.33, these changes do not make any substantive changes to this enrollment opportunity.

The proposed, new §41.36(b) creates an additional enrollment opportunity for a part-time employee eligible for TRS-ActiveCare who later becomes a full-time employee eligible for TRS-ActiveCare during the current plan year. This enrollment opportunity also applies to the employee's eligible dependents. This enrollment opportunity exists even if this employee previously declined enrollment in TRS-ActiveCare during the current plan year. An eligible part-time employee who later becomes a full-

time employee eligible for TRS-ActiveCare during the current plan year may also become eligible for employer mandated coverage under the Patient Protection and Affordable Care Act (aka the "PPACA"). This additional enrollment opportunity will allow participating entities to offer TRS-ActiveCare coverage to such individuals, which will allow the participating entities to avoid a penalty that they may otherwise incur under the PPACA.

The proposed amendments to current §41.36(b) clarify that the initial enrollment period for an eligible full-time or part-time employee whose employer becomes a participating entity is equally applicable to the employee's eligible dependents.

Current §41.36(d) addresses special enrollment events associated with TRS-ActiveCare that arise under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on or after September 1, 2011. Current §41.36(e) addresses special enrollment events associated with TRS-ActiveCare that arose on or before August 31, 2011, as defined by TRS-ActiveCare itself. With the passage of time, for the sake of clarity, the introductory language in current §41.36(d) and the entire current §41.36(e) are no longer necessary and can be deleted.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §41.36 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amendments to §41.36 will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to provide a new enrollment opportunity for an eligible part-time employee who later becomes an eligible full-time employee during the current plan year, to clarify and update provisions concerning the administration of TRS-ActiveCare, and to remove a subsection of the rule that is no longer necessary due to the passage of time.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS's regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments to §41.36 are proposed under the authority of §1579.052 of the Insurance Code, which authorizes TRS as trustee of the TRS-ActiveCare program to adopt rules it considers necessary to implement and administer the program.

Cross-Reference to Statute: The proposed amendments affect Chapter 1579 of the Insurance Code, which provides for the establishment and administration of TRS-ActiveCare.

§41.36. Enrollment Periods for TRS-ActiveCare.

(a) An individual who becomes an eligible [~~A~~] full-time or eligible part-time employee [~~who becomes employed in an eligible capacity with a participating entity~~] has an initial enrollment period, for both himself or herself as well as for his or her eligible dependents, [~~of 31 days,~~] beginning on the first day that the individual becomes an eligible [~~full-time or part-time~~] employee [~~becomes employed in an eligible capacity with a participating entity~~] and ending at 11:59:59 [~~11:59~~] p.m. Austin Time on the 31st day thereafter.

(b) If a current employee of a participating entity was an eligible part-time employee during an enrollment opportunity for the current plan year, and, later during the current plan year, this employee becomes an eligible full-time employee, then this employee has an enrollment period, for both himself or herself as well as for his or her eligible dependents, beginning on the first day that this individual becomes an eligible full-time employee and ending at 11:59:59 p.m. Austin Time on the 31st day thereafter. This enrollment opportunity exists even if this employee previously declined enrollment in TRS-ActiveCare during the current plan year.

(c) [~~(b)~~] An eligible [~~A~~] full-time or part-time employee whose employer becomes a participating entity has an initial enrollment period, for both himself or herself as well as for his or her eligible dependents, beginning no later than 31 days prior to the date on which the employer becomes a participating entity and ending on the last calendar day of the month immediately preceding the date on which the employer becomes a participating entity ("end date"). Notwithstanding the preceding sentence, a large school district, as defined hereafter, that becomes a participating entity after September 1, 2003, may recommend an initial enrollment period of not less than 31 days that closes before the end date. A recommended initial enrollment period that closes before the end date is subject to approval by TRS. As used in this section, a large school district shall mean a school district that had 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS from that school district for a reporting period in that school year.

(d) [~~(c)~~] A full-time or part-time employee's eligible dependents, if covered, must be enrolled in the same coverage plan as the full-time or part-time employee under whom they qualify as a dependent. Except as otherwise provided under applicable state or federal law, an eligible full-time or part-time employee may not change coverage plans or add dependents during a plan year.

(e) [~~(d)~~] The [~~On or after September 1, 2011, the~~] enrollment period for an individual who becomes eligible for coverage due to a special enrollment event, as described in §41.34(8) of this chapter (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program), shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.

[~~(e) On or before August 31, 2011, the enrollment period for an individual who becomes eligible for coverage due to a special enrollment provision of TRS-ActiveCare, as described in §41.34(9) of this chapter, shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.~~]

(f) Eligible full-time and part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is not renewed for the next plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or

the health plan administrator of TRS-ActiveCare during the plan enrollment period. Coverage under the elected option becomes effective on September 1 of the next plan year. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(g) Eligible full-time or part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is terminated during the plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after notice of the contract termination is sent to the eligible full-time or part-time employee by TRS or its designee. Coverage under the elected option becomes effective on a date determined by TRS. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employees and their eligible dependents are eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(h) Eligible full-time or part-time employees and their eligible dependents enrolled in an approved HMO whose eligibility status changes because the eligible full-time or part-time employee no longer resides, lives, or works in the HMO service area may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after the employee's change in eligibility status. Coverage under the elected option becomes effective on the first day of the month following the date the employee's eligibility status changed. One of the following elections may be made under this subsection:

(1) enroll in another approved HMO for which the full-time or part-time employee is eligible; or

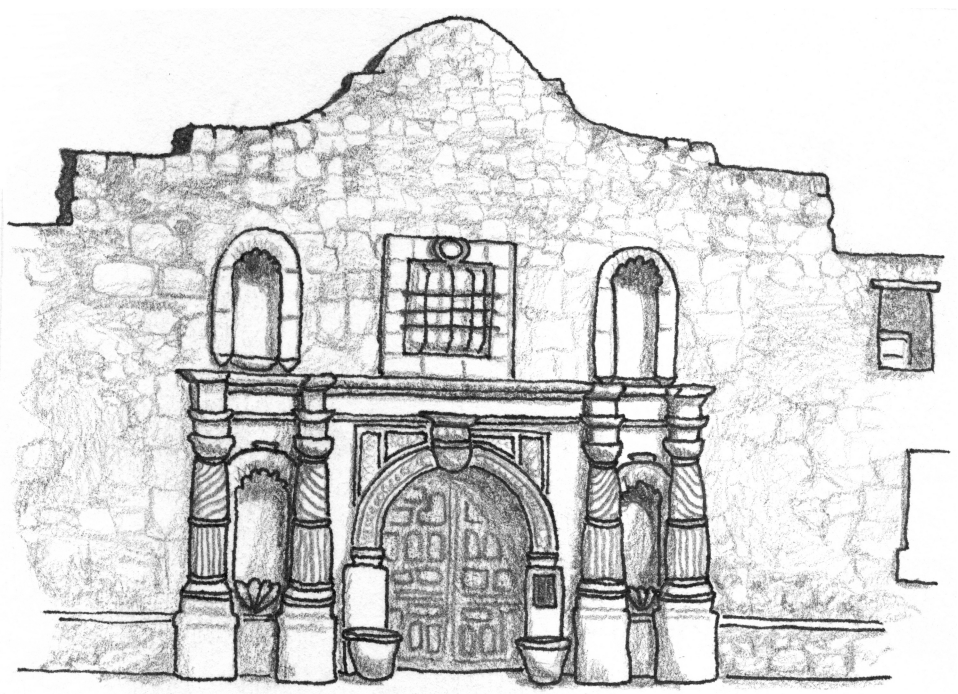
(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, subject to applicable preexisting condition limitations.

(i) On behalf of the trustee, the executive director or a designee may prescribe open-enrollment periods and the conditions under which an eligible full-time or part-time employee and his eligible dependents may enroll during an open-enrollment 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.

Filed with the Office of the Secretary of State on August 1, 2016.

TRD-201603873
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: September 18, 2016
For further information, please call: (512) 542-6513



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 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.57

The Texas Board of Professional Land Surveying withdraws the proposed amendment to §661.57 which appeared in the February 5, 2016, issue of the *Texas Register* (41 TexReg 912).

Filed with the Office of the Secretary of State on August 2, 2016.

TRD-201603909
Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Effective date: August 2, 2016
For further information, please call: (512) 239-5263

♦ ♦ ♦

Devin McQueen
10th Grade

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 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21, §230.25

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §230.21 and §230.25, concerning professional educator preparation and certification. The amendment to §230.21 is adopted with changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1772). The amendment to §230.25 is adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1772) and will not be republished. The sections establish guidelines and procedures for the assessment of educators. The adopted amendments to 19 TAC §230.21 and §230.25 implement the requirement from the 84th Texas Legislature, Regular Session, 2015, to enforce a limit of five attempts on any certification examination, unless the SBEC approves an additional attempt based on an individual's demonstration of good cause. The adopted amendments to 19 TAC §230.21 and §230.25 also implement a clarification from the 84th Texas Legislature, Regular Session, 2015, that the commissioner of education approves the satisfactory level of performance required for certification examinations.

REASONED JUSTIFICATION. The SBEC rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter C, provide for rules that establish guidelines and procedures for the assessment of educators. The adopted amendments to 19 TAC Chapter 230, Subchapter C, identify changes based on recent legislation passed during the 84th Texas Legislature, Regular Session, 2015, and reflect input received from the SBEC, stakeholders, and Texas Education Agency (TEA) staff.

§230.21. Educator Assessment

Subsection (a) was removed because the basic skills assessment that was required for admission to an educator preparation program (EPP) is described in 19 TAC Chapter 227. Subsections (b)-(e) were relettered accordingly.

In accordance with the TEC, §21.048, as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, language was amended in adopted subsection (a) to limit the number of times an individual may retake a certification examination to four unless the limitation is waived for good cause. A candidate seeking a waiver of the limitation is responsible for providing proof of the good cause.

Adopted subsection (a)(1) was added to define an examination retake. An examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate. An examination score that is cancelled is not considered an examination retake.

Adopted subsection (a)(2) was added to define good cause in one of six ways. The first four ways are based on the candidate's highest score on an examination and a conditional standard error of measurement (CSEM) table that will be published annually on the TEA website. A CSEM is the measure of the precision of scores for an assessment based on a specific score point and the design of the assessment. CSEM are used in this context to determine how likely a candidate can pass an examination on his or her next attempt if a candidate completed a number of clock-hours of additional educational activity. If a candidate's highest examination score is within one, two, or three CSEMs from passing, the candidate needs to participate in 50, 100, or 150 clock-hours of additional educational activity, respectively. If a candidate's highest examination score is not within three CSEMs from passing, the candidate needs to participate in 200 clock-hours of additional educational activity.

If a candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the fifth way of determining good cause is the combination of the number of clock-hours of educational activities required for each individual core subject examination as described in the first four ways of determining good cause. The maximum number of required clock-hours may not exceed 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50 for each examination.

The sixth way of determining good cause is if a CSEM is not appropriate for an examination. One reason a CSEM may not be appropriate for an examination is if an examination does not use a scale score. The examinations that are currently used for certification and do not use a scale score are the Texas Assessment of Sign Communication examinations and the language examinations administered by the American Council for the Teaching of Foreign Languages. A second reason a CSEM may not be appropriate for an examination is if an examination does not have enough test takers to determine a CSEM. The examinations that are currently used for certification and have very low numbers of

test takers are the Languages other than English Latin examination and the examinations administered by the American Association of Family and Consumer Sciences. In the event that a candidate is not successful after five attempts on an examination that did not have a CSEM, the candidate will request a waiver, and TEA staff will identify individuals who are familiar and knowledgeable with the examination content. These individuals review the candidate's performance on the five most recent examinations, identify the areas of deficit, and determine the number of clock-hours of additional educational activity required to demonstrate good cause.

Adopted subsection (a)(3) was added to define educational activity. An educational activity is provided by an approved EPP or an approved continuing professional education (CPE) provider or sponsor. Approved CPEs currently include all accredited institutions of higher education, education service centers, Texas public school districts, accredited private schools, and non-profit organizations that have offered professional development in Texas for at least five years. Approved CPEs also currently include private entities and individuals who have been approved by TEA staff to offer CPE activities. An educational activity needs to be directly related to the knowledge and skill competencies in which the candidate answered less than 70 percent of questions correctly on the past five examinations. A competency is a grouping of knowledge and skills on a certification examination that defines what an entry-level educator in Texas public schools should know and be able to do. To provide consistency among candidates when identifying deficit competencies, a candidate adds the number of questions answered correctly in each competency on each of the five most recent examinations, adds the number of questions asked for each competency on each of the five most recent examinations, and then, for each competency, divides the total number of questions answered correctly by the total number of questions asked. If a candidate did not correctly answer 70 percent of the questions in a competency across the past five examinations, the candidate will identify the competency as a deficit area that should be addressed by an educational activity.

Adopted subsection (a)(4) was added to identify how a candidate must document an educational activity. This documentation includes the provider, sponsor, or program's name, address, telephone number, and email address; the name of the educational activity; the competency or competencies addressed by the educational activity; the provider, sponsor, or program's description of the educational activity; and the provider, sponsor, or program's written verification of the dates of participation in and the number of clock-hours completed for the educational activity.

One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted do not count toward meeting the educational activity required to show good cause for a waiver.

Adopted subsection (a)(5) was added to identify how a candidate requests a waiver. A candidate seeking certification based on the completion of an EPP needs the approval of an EPP to request a waiver. Candidates seeking certification through routes other than an EPP need to meet the eligibility requirements of the appropriate route. A candidate needs to pay a waiver request fee of $160, which is the same amount for an out-of-state/out-of-country review of credentials. A candidate needs to request a waiver on a form developed by TEA staff and approved by the SBEC. Waiver requests are not accepted for 45 calendar days after the fourth unsuccessful retake, 90 calendar days after a denied waiver request, or 180 calendar days after the most recent unsuccessful attempt that was the result of an approved waiver request. After a waiver request is received by TEA staff, the request is reviewed and TEA staff makes a decision to approve or deny the request based on the criteria in adopted §230.21(a)(2)-(5). An applicant who does not meet the criteria in adopted §230.21(a)(2)-(5) may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

Since published as proposed, a technical edit in subsection (a)(5)(B) was made to clarify that individuals are required to pay the $160 waiver request fee beginning September 1, 2016.

In accordance with the TEC, §21.048, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language was amended in adopted subsection (d) to clarify that the commissioner of education approves the satisfactory level of performance required for each certification examination. The adopted amendment does not change the authority of the SBEC to approve a schedule of examination fees and a plan for administering the examinations. Adopted subsection (e) establishes in rule the list of appropriate examinations required for certification.

Minor technical edits were made in subsections (f) and (g) to conform to *Texas Register* style and format requirements and update cross references.

§230.25. Test Exemptions for Persons with a Hearing Impairment

Minor technical edits were made in subsection (b)(2) to align terminology with current SBEC rules.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §230.21 and §230.25.

Comment: Three individuals commented that there should be a provision to allow candidates an opportunity to attempt a test after their fifth attempt. The individuals suggested that good cause for allowing another attempt could be that the candidate almost passed the test or has made progress toward passing the test.

Board Response: As the comments relate to creating a provision to allow candidates an opportunity to attempt a test after their fifth attempt, the SBEC agreed. The proposed amendments create such a provision. As the comments relate to defining good cause as how close a candidate came to passing a test, the SBEC agreed. The proposed amendments would require a candidate to present evidence of the number of hours of educational activities that are correlated to how close a candidate's score was to passing. As the comments relate to how much progress has been made toward passing the test, the SBEC disagreed because the proposed amendments take into account a candidate's highest score and evidence of a candidate's efforts to improve his or her understanding of the knowledge and skills assessed on the test.

Comment: Three individuals commented that there should not be a limit of five attempts for certification examinations.

Board Response: HB 2205, 84th Texas Legislature, Regular Session, 2015, mandates a limit of five attempts for certification examinations. The proposed amendments would provide an opportunity for individuals to request a waiver from the limitation.

The SBOE took no action on the review of the proposed amendments to 19 TAC §230.21 and §230.25 at the July 22, 2016, SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which 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; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.045(a)(1), as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); §21.048(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC, specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination, and that the commissioner shall require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; §21.048(a-1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that the SBEC may not require that more than 45 days elapse before a person may retake an examination and a person may not retake an examination more than four times, unless the SBEC waives the limitation for good cause as prescribed by the SBEC; §21.048(a-2), as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that for purposes of the limitation imposed by Subsection (a-1) on the number of administrations of an examination, a person who initially took an examination before September 1, 2015, may retake the examination up to four times after that date, regardless of the number of times that the person attempted to perform satisfactorily on the examination before that date. This subsection expires September 1, 2018; §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c-1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057; and §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; and the Texas Occupations Code (TOC), §54.003(a), which defines "dyslexia" as having the same meaning assigned by the TEC, §51.970; §54.003(b), which states that, for each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia; and §54.003(c), which states that each state agency shall adopt rules necessary to implement the TOC, §54.003, including rules to establish the eligibility criteria an examinee must meet for accommodation under the TOC, §54.003.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.031; 21.041(a), (b)(1), (4), (7), and (8), and (c); 21.045(a)(1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.048, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; and the TOC, §54.003.

§230.21. Educator Assessment.

(a) A candidate seeking certification as an educator must pass the examination(s) required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by the TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Core Subjects; Generalist). An examination score that is cancelled is not considered an examination retake.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals), or an approved educator preparation program (EPP), pursuant to §228.10 of this title (relating to Approval Process); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

(iii) the name of the educational activity;

(iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of $160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 45 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in the TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent denied waiver of the limitation request; or

(iii) 180 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection.
Figure: 19 TAC §230.21(e)

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification.

(g) The following provisions concern test security and confidential integrity.

(1) An educator who participates in the development, design, construction, review, field testing, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator who violates subsection (a) or (b) of this section is subject to sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases).

(4) An educator who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(5) An educator who violates this subsection is subject to:

(A) sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title;

(B) voiding of a score from an examination in which a violation specified in this subsection occurred; and

(C) disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2016.

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Proposal publication date: March 11, 2016
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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27, concerning certificate renewal and continuing professional education (CPE) requirements. The amendments to §§232.7, 232.9, 232.11, 232.21, and 232.23 are adopted with changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1777). The amendments to §§232.13, 232.15, 232.17, and 232.19 and repeal of §232.27 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1777) and will not be republished. The sections establish the renewal requirements relating to types and classes of certificates issued and CPE. The adopted amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 implement the requirement from the 84th Texas Legislature, Regular Session, 2015, to allow educators to receive credit for completion of an instructional course on the use of an automated external defibrillator (AED) and further clarify certificate renewal and CPE requirements. The adopted repeal of 19 TAC §232.27 further clarifies certificate renewal and CPE requirements.

REASONED JUSTIFICATION. Current 19 TAC Chapter 232, General Certification Provisions, establishes the renewal requirements relating to types and classes of certificates issued, CPE, and national criminal history record information review.

The adopted rule actions amend 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal 19 TAC §232.27. The adopted rule actions to 19 TAC Chapter 232 identify necessary changes based on recent legislation passed during the 84th Texas Legislature, Regular Session, 2015, and reflect input received from the SBEC and Texas Education Agency (TEA) staff-convened stakeholder meetings. The adopted rule actions also result from the SBEC's rule review of 19 TAC Chapter 232 conducted in accordance with Texas Government Code, §2001.039.

§232.7. Requirements for Certificate Renewal

Language was amended to delete subsection (c) that required licensure, certification, or registration to be current and in good standing before career and technical education (CTE) certificates could be renewed. This rule change was necessary to ensure no classroom certificate area is treated differently from others as it relates to certificate renewal requirements. Because current CPE requirements state that at least 80% of the hours should be directly related to the certificate(s) being renewed, the SBEC believed that CTE certificate holders can maintain fo-

cused training in their area(s) of certification and remain current in the knowledge and skills necessary to successfully deliver instruction and positively influence student learning.

Since published as proposed, language in subsection (a)(2) was moved to new subsection (b) to clarify the criteria by which TEA staff administratively approve requests for hardship exemptions to renewal requirements because it is more efficient for TEA staff to administratively approve hardship exemption requests than for each request to be approved by the SBEC. Current subsection (b) was relettered accordingly. In addition, subsection (e), which requires the staying of a renewal while an educator who is a respondent in a disciplinary proceeding is waiting for the resolution of the disciplinary action, was deleted so that educators are not sanctioned before a disciplinary proceeding is completed.

§232.9. Inactive Status and Late Renewal

Language was amended in subsection (d) to require a person whose certificate has become inactive because of failure to renew to verify through an affidavit that the person is in compliance with renewal requirements. Adopted new subsection (e) confirms that TEA staff is responsible for completing audits of educator CPE hours. The auditing procedures is dependent on the availability of TEA resources and may include random audits. TEA staff are responsible for contacting educators directly and providing them with all information needed to submit required documentation for completion of certificate renewal audits. The language also confirms that the TEA staff may require written documentation of all activities applied toward CPE requirements. These adopted changes clarify the process to reactivate an inactive certificate as well as the process that TEA staff use to verify that the renewal requirements have been met.

Since published as proposed, language from subsection (b) was amended and included in subsection (a) to clarify the actions taken by TEA staff and an educator when a certificate is placed on inactive status. This rule change is necessary because it was not clear when TEA staff needed to notify an educator regarding an inactive certificate. Language was also amended in subsection (a) to remove the reference to procedures adopted by TEA staff because the language is redundant to the application process that is referenced in this subsection. Subsection (b) was deleted because the procedures approved by SBEC are redundant to the TEA staff notification process described in subsection (a). Language was amended in subsection (a) to clarify that TEA staff administratively approve reactivation requests based on the requirements described in 19 TAC §232.7 because it is more efficient for TEA staff to administratively approve reactivation requests than for each request to be approved by the SBEC. Language was amended in adopted new subsection (c) to remove the reference to the manner by which an individual verifies that he or she is in compliance with renewal requirements because the language is redundant to the affidavit process that is referenced in this subsection. In addition, adopted subsection (f), which restates other rules regarding educator certification sanctions related to falsifying information submitted on a renewal affidavit, was deleted because the language is redundant to rules described in 19 TAC Chapter 249.

§232.11. Number and Content of Required Continuing Professional Education Hours

Language was amended in subsection (c) to clarify that at least 80% of the required CPE activities be directly related to the renewal of the certificate(s) being renewed and focus on the standards required for initial issuance of the certificate(s). As a result of SB 382, 84th Texas Legislature, Regular Session, 2015, adopted new subsection (h) was added to allow an educator to receive credit toward CPE requirements by completing an instructional course on the use of an AED that meets specified AED training guidelines. Adopted new subsection (i) allows educators to receive CPE credit for completing suicide prevention training that meets the guidelines in the TEC, §21.451, as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015.

Since published as proposed, a minor technical edit was made in subsections (h) and (i) to change the word *towards* to *toward.*

§232.13. Number of Required Continuing Professional Education Hours by Classes of Certificates

Language was amended in subsections (c) and (d) to match current wording in subsections (e), (f), and (g) that clearly states the 200-clock-hour CPE requirement. Language was also amended in subsections (c) and (d) to reference the renewal requirements that are specific to the school counselor and school librarian certificates. These adopted changes clarify and align the requirements for certification renewal.

§232.15. Types of Acceptable Continuing Professional Education Activities

Language was amended in subsection (a)(1) and (3) to clarify that the activities need to be in the content area knowledge and skills related to the certificate(s) being renewed. This adopted change aligns the types of acceptable CPE activities.

§232.17. Pre-Approved Professional Education Provider or Sponsor

Language was amended in subsection (a)(5) to include Texas public open-enrollment charter schools to the list of pre-approved professional education providers or sponsors. This adopted change allows certified educators employed by an open-enrollment charter school to receive CPE credit for acceptable CPE activities provided by their employer.

§232.19. Approval of Private Companies, Private Entities, and Individuals

Language was amended to clarify that this section is only for private companies, private entities, and individuals who seek to provide CPE on their own behalf and not through the sponsorship of a pre-approved provider or sponsor.

§232.21. Provider Registration Requirements

Language was amended in subsection (c) to require providers to maintain a record of CPE activity for a period of seven years after the activity. This adopted change assists TEA staff in confirming CPE credits when auditing an educator's renewal requirements. Language was amended in subsection (d) to clarify that the withdrawal of approval to provide CPE does not entitle a provider or sponsor to a contested-case hearing before the SBEC. Adopted new subsection (f) allows TEA staff to review the documentation that is required for provider or sponsor approval. If TEA staff determines that a provider or sponsor is operating in violation of applicable laws or rules, the TEA staff may withdraw the approval that had been granted.

Since published as proposed, in response to stakeholder input, subsection (g) was added to specify the procedures and jurisdiction for investigating complaints and/or violations of any applicable provision under this chapter as it relates to a CPE provider or sponsor approval. This rule change is necessary because

it allows a provider or sponsor an opportunity to respond to alleged violations of rule before a final decision regarding the allegations is made. Also since published as proposed, language was amended in subsection (e) to clarify that violations of rules in this chapter could result in the withdrawal of approval to provide continuing professional education. This rule change is necessary because it defines the jurisdiction of TEA staff in investigating alleged violations. Language was also amended in subsections (e) and (f) to clarify that a provider or sponsor must come into compliance with the provisions of this chapter in order to be eligible for approval. This rule change is congruent with subsection (g).

§232.23. Verification of Renewal Requirements

Current subsection (c) was replaced to confirm that TEA staff is responsible for completing audits of educator CPE hours. The auditing procedures are dependent on the availability of TEA resources and may include random audits. TEA staff are responsible for contacting educators directly and providing them with all information needed to submit required documentation for completion of certificate renewal audits. The language also confirms that the TEA staff may require written documentation of all activities applied toward CPE requirements. Language in subsection (b) was moved to adopted new subsection (d).

Since published as proposed, subsection (d), which restates other rules regarding educator certification sanctions related to falsifying information submitted on a renewal affidavit, was deleted because the language was redundant to rules described in 19 TAC Chapter 249.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27.

Comment: One individual commented that a certificate should be automatically extended to the end of the academic year if an educator is planning to retire at the end of the academic year. The individual added that if a certificate was extended in this manner, it would not be allowed to be renewed. The individual also commented that an educator should be allowed to pay for the number of years he or she plans to use a certificate if the educator does not plan to use the certificate for all five years.

Board Response: The SBEC disagreed. The anticipated costs associated with modifying and connecting various technology systems within and across multiple agencies would outweigh the anticipated benefits to individuals seeking an extension of certifications and/or a proration of certification fees.

Comment: One individual commented that an educator should not be required to renew his or her certificate after the first five-year renewal period because it is redundant and expensive.

Board Response: The SBEC disagreed. All educators who have been issued a standard certificate are required to participate in a minimum number of CPE requirements that are directly related to the certificate that qualifies an individual to be hired as an educator. Because the Texas Essential Knowledge and Skills and other components of the required curriculum are continually updated, educators need to stay abreast of these changes as well as other knowledge and skills they need to be effective in their respective roles. Most practicing educators should be able to meet the minimum requirements at no cost through the CPE activities that are offered through their school or district. For educators who are not currently employed in a school or district, there are a number of CPE activities that are provided at little or no cost to the educator.

The SBOE took no action on the review of the proposed amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27 at the July 22, 2016, SBOE meeting.

19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, 232.23

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which 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; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and §21.0541, as added by Senate Bill (SB) 382, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator that meets the guidelines for automated external defibrillator training approved under the Texas Health and Safety Code, §779.002; and the Texas Occu-

pations Code (TOC), §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (7)-(9), 21.054; and 21.0541, as added by SB 382, 84th Texas Legislature, Regular Session, 2015; and the TOC, §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015.

§232.7. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff shall develop procedures to:

(1) notify educators at least six months prior to the expiration of the renewal period to the email address as specified in §230.91 of this title (relating to Procedures in General);

(2) confirm compliance with all renewal requirements pursuant to this subchapter;

(3) notify educators who are not renewed due to noncompliance with this section; and

(4) verify that educators applying for reactivation of certificate(s) under §232.9 of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (c)(2)-(6) of this section.

(b) The TEA staff shall administratively approve each hardship exemption request that meets the criteria specified in paragraphs (1)-(3) of this subsection.

(1) A hardship exemption must be due to one of the following circumstances that prevented the educator's completion of renewal requirements:

(A) catastrophic illness or injury of the educator;

(B) catastrophic illness or injury of an immediate family member; or

(C) military service of the educator.

(2) The request for a hardship exemption must include documentation from a licensed physician or verified military records.

(3) The request for the amount of time allowed for renewal is equal to:

(A) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the educator's catastrophic illness or injury; or

(B) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the catastrophic illness or injury of an immediate family member; or

(C) two years of additional time for a military service member, in accordance with the Texas Occupations Code, §55.003.

(4) If a hardship exemption request is approved, the educator must pay the appropriate renewal fee, pursuant to §232.25 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation).

(c) To be eligible for renewal, an educator must:

(1) satisfy continuing professional education requirements, pursuant to §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours);

(2) hold a valid standard certificate that is not currently suspended and has not been surrendered in lieu of revocation or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(4) successfully resolve any reported criminal history, as defined by §249.3 of this title (relating to Definitions);

(5) not be in default on a guaranteed student loan reported by the Texas Guaranteed Student Loan Corporation or a judgment debt for a student loan owed to the Texas Higher Education Coordinating Board, unless repayment arrangements have been made;

(6) not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232;

(7) pay the renewal fee, pursuant to §232.25 of this title, which shall be a single fee regardless of the number of certificates being renewed; and

(8) submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

(d) The TEA staff shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

§232.9. Inactive Status and Late Renewal.

(a) The certificate(s) of an educator holding a valid standard certificate who does not satisfy the requirements of this subchapter shall be placed on inactive status, subject to the requirements of the Texas Education Code, §21.0031(f). Texas Education Agency (TEA) staff shall notify a person by email of the reason(s) for denying the renewal and the actions or conditions required for removal from inactive status. At any time, the educator may apply to have his or her certificate(s) reactivated and submit the reactivation fee. The TEA staff shall administratively approve reactivation of the educator's certificate(s) subject to verification that the educator is in compliance with §232.7 of this title (relating to Requirements for Certificate Renewal). The renewal date of a reactivated certificate(s) shall be five years after the last day of the certificate holder's next birth month.

(b) A person who satisfies all requirements for renewal after the renewal date of a certificate shall pay a late renewal fee in addition to the standard renewal fee. A person whose certificate has become inactive because of failure to renew shall also pay a reactivation fee. The amount of these fees shall be as provided in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(c) If a person does not satisfy the required continuing professional education (CPE) hours at the expiration of the renewal period, the person may have the certificate(s) removed from inactive status and reactivated by verifying through an affidavit whether he or she is in compliance with renewal requirements, including CPE hours, and paying any applicable fee(s).

(d) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff

at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).

§232.11. Number and Content of Required Continuing Professional Education Hours.

(a) The appropriate number of clock-hours of continuing professional education (CPE), as specified in §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) At least 80% of the CPE activities shall be directly related to the certificate(s) being renewed and focus on the standards required for the initial issuance of the certificate(s), including:

(1) content area knowledge and skills;

(2) professional ethics and standards of conduct;

(3) professional development, which should encompass topics such as the following:

(A) district and campus priorities and objectives;

(B) child development, including research on how children learn;

(C) classroom management;

(D) applicable federal and state laws;

(E) diversity and special needs of student populations;

(F) increasing and maintaining parental involvement;

(G) integration of technology into educational practices;

(H) ensuring that students read on or above grade level;

(I) diagnosing and removing obstacles to student achievement; and

(J) instructional practices.

(4) Not more than 25% of the CPE activities for a classroom teacher shall include instruction regarding:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) integrating technology into classroom instruction; and

(D) educating diverse student populations, including:

(i) students with disabilities, including mental health disorders;

(ii) students who are educationally disadvantaged;

(iii) students of limited English proficiency; and

(iv) students at risk of dropping out of school.

(5) Not more than 25% of the CPE activities for a principal shall include instruction regarding:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) integrating technology into campus curriculum and instruction; and

(D) educating diverse student populations, including:

(i) students with disabilities, including mental health disorders;

(ii) students who are educationally disadvantaged;

(iii) students of limited English proficiency; and

(iv) students at risk of dropping out of school.

(6) Not more than 25% of the CPE activities for a school counselor shall include instruction regarding:

(A) assisting students in developing high school graduation plans;

(B) implementing dropout prevention strategies; and

(C) informing students concerning:

(i) college admissions, including college financial aid resources and application procedures; and

(ii) career opportunities.

(d) Educators are encouraged to identify CPE activities based on results of his or her annual appraisal required under the Texas Education Code, Chapter 21, Subchapter H.

(e) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(f) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.13 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

(g) An educator may fulfill up to 12 clock-hours of required CPE activities by participating in a mental health first aid training program offered by a local mental health authority under the Texas Health and Safety Code, §1001.203. The number of clock-hours of CPE an educator may fulfill under this subsection may not exceed the number of clock-hours the educator actually spends participating in a mental health first aid training program.

(h) An educator may receive credit toward CPE requirements for completion of an instructional course on the use of an automated external defibrillator (AED) that meets the guidelines for AED training approved under Texas Health and Safety Code, §779.002, in accordance with the Texas Education Code (TEC), §21.0541.

(i) An educator may receive credit toward CPE requirements for completion of suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451.

§232.21. Provider Registration Requirements.

(a) Procedures adopted by the Texas Education Agency (TEA) staff require all pre-approved and all other continuing professional education (CPE) providers or sponsors to register with the State Board for Educator Certification (SBEC) by submitting the relevant sections of the provider registration form designated by the TEA staff in order to accomplish any or all of the following, as applicable:

(1) notify the TEA staff of the intent to offer CPE activities;

(2) affirm compliance with all applicable statutes and rules;

(3) prohibit discrimination in the provision of CPE activities to any certified educator;

(4) document that each CPE activity:

(A) complies with applicable SBEC rules codified in the Texas Administrative Code, Title 19, Part 7;

(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the SBEC for each certificate;

(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(D) specifies the content under §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock-hours; and

(5) on a biennial or more frequent basis, conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.

(b) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing, at a minimum, the provider's name and provider number, the educator's name, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements.

(c) All providers are required to maintain a record of CPE activities that includes a list of attendees, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements. Providers shall retain a record of CPE activity for a period of seven years after the activity is completed.

(d) A provider or sponsor that is not granted approval or has its approval withdrawn by the TEA staff is not entitled to a contested-case hearing before the SBEC or a person designated by the SBEC to conduct contested-case hearings.

(e) The TEA staff shall investigate complaints against a provider or sponsor alleging noncompliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision under this chapter, the TEA staff may withdraw the approval granted under this section to the provider or sponsor until the provider or sponsor can demonstrate compliance.

(f) The TEA staff at any time may review the documentation required for provider registration under this section. If a review determines that the provider or sponsor is operating in violation of any applicable provision under this chapter, the TEA staff may withdraw the approval granted under this section to the provider or sponsor until the provider or sponsor can demonstrate compliance.

(g) Before withdrawing approval under subsection (e) or (f) of this section, TEA staff will notify the provider or sponsor in writing that an alleged violation has occurred, provide a summary of the allegation, and request that the provider or sponsor respond to the allegation.

(1) A provider or sponsor shall:

(A) cooperate fully with any TEA investigation or review; and

(B) respond within 21 business days of receipt of requests for information regarding the allegation and other requests for information from the TEA, except where:

(i) TEA staff imposes a different response date; or

(ii) the provider or sponsor is unable to meet the initial response date and requests and receives a different response date from TEA staff.

(2) TEA staff may request further information from the provider or sponsor.

(3) If a provider or sponsor fails to comply with paragraph (1)(B) of this subsection, the TEA may deem admitted the violation of rules under this chapter.

(4) Upon completion of an investigation or review, TEA staff will notify the provider or sponsor in writing of the findings.

(A) If TEA staff finds that a violation occurred, the notice will specify each rule that was violated and that the approval granted under this section has been withdrawn until the provider or sponsor can demonstrate compliance.

(B) If TEA staff finds that no violation has occurred, the notice will specify that no rule was violated.

§232.23. Verification of Renewal Requirements.

(a) Written documentation of completion of all activities applied toward continuing professional education (CPE) requirements shall be maintained by each educator.

(b) By the date renewal is required, the educator shall verify through an affidavit in a manner determined by the Texas Education Agency (TEA) staff whether he or she is in compliance with renewal requirements, including CPE.

(c) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
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Proposal publication date: March 11, 2016
For further information, please call: (512) 475-1497

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19 TAC §232.27

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which 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; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and §21.0541, as added by Senate Bill (SB) 382, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator that meets the guidelines for automated external defibrillator training approved under the Texas Health and Safety Code, §779.002; and the Texas Occupations Code (TOC), §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (7)-(9), 21.054; and 21.0541, as added by SB 382, 84th Texas Legislature, Regular Session, 2015; and the TOC, §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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State Board for Educator Certification
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CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §§234.1, 234.3, 234.5, 234.7

The State Board for Educator Certification (SBEC) adopts new 19 TAC §§234.1, 234.3, 234.5, and 234.7, concerning requirements for military service members, military spouses, and military veterans. New §§234.1, 234.3, 234.5, and 234.7 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1784) and will not be republished. The sections establish requirements for the certification of a military service member, military veteran, or military spouse and the renewal and continuing education requirements for military service members. Adopted new 19 TAC §§234.1, 234.3, 234.5, and 234.7 address recent legislation, consolidate rules specific to the military community into one chapter, and streamline future military-related rulemaking opportunities.

REASONED JUSTIFICATION. The 84th Texas Legislature, Regular Session, 2015, passed Senate Bill (SB) 807, which requires all state licensing agencies to adopt rules that implement the requirements of the Texas Occupations Code (TOC), Chapter 55, regarding the licensing of military service members, military spouses, and military veterans and the waiving of licensing and application fees paid to the state. The 84th Texas Legislature also passed SB 1307, which clarifies definitions of military spouses and military veterans in key sections of the TOC, allows for the adoption of rules to establish alternative methods for military groups to meet requirements for licensure, grants the executive director of a state agency to review applicant credentials and waive requirements for licensure, and incorporates the use of verified military service to satisfy apprenticeship requirements for licensure.

In addition, the 84th Texas Legislature passed House Bill 2014, which allows military service members seeking certification in career and technical education to substitute experience in a particular trade for the license or professional credential in the specific trade.

Adopted new 19 TAC Chapter 234 consolidates all military-related provisions into one chapter. The military-related provisions currently outlined in 19 TAC §230.15, Certification of Military Service Members, Military Spouses, and Military Veterans, and 19 TAC §232.27, Renewal and Continuing Education Requirements

for Military Service Members, will be repealed as applicable from 19 TAC Chapter 230 and 19 TAC Chapter 232. These provisions are incorporated into the new military chapter as adopted new 19 TAC §234.5 and 19 TAC §234.7, respectively. Adopted new 19 TAC §234.5(g) and (h) satisfy the provisions in SB 807 and align with current SBEC rules.

Adopted new 19 TAC Chapter 234 also streamlines future military-related rulemaking opportunities by having all military-related provisions in one chapter.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. No comments were received regarding proposed new 19 TAC §§234.1, 234.3, 234.5, and 234.7.

The SBOE took no action on the review of proposed new 19 TAC §§234.1, 234.3, 234.5, and 234.7 at the July 22, 2016, SBOE meeting.

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; and §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and the Texas Occupations Code (TOC), §55.001, as amended by Senate Bill (SB) 1307, 84th Texas Legislature, Regular Session, 2015, which defines *active duty, armed forces of the United States, license, military service member, military spouse, military veteran,* and *state agency;* §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member; §55.004, as amended by SB 1307 and House Bill (HB) 3742, 84th Texas Legislature, Regular Session, 2015, which provides an alternative licensing procedure for military service members, military veterans, and military spouses; §55.005, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which provides an expedited licensing procedure for military service members, military veterans, and military spouses; §55.006, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which provides for renewal of an expedited license issued to a military service member, military veteran, or military spouse; §55.007, which provides that verified military service, training, and education be credited toward licensing requirements; §55.008, as amended by SB 1296 and SB 1307, 84th Texas Legislature, Regular Session, 2015, which requires state agencies to credit military service, training or education toward apprenticeship requirements for applicants with military experience; and §55.009, as added by SB 807 and SB 1307, 84th Texas Legislature, Regular Session, 2015, which waives the license application and examination fees for certain military service members, military veterans, and military spouses and requires a state agency that issues a license to prominently post a notice of the provisions in the TOC, Chapter 55, that are available to military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The adopted new sections implement the TEC, §§21.041(b)(2) and (4); 21.044(a); and 21.054; and Texas Occupations Code, §§55.001-55.003, 55.005, and 55.006, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; 55.004, as amended by SB 1307 and HB 3742, 84th Texas Legislature, Regular Session, 2015; 55.007; 55.008, as amended by SB 1296 and SB 1307, 84th Texas Legislature, Regular Session, 2015; and 55.009, as added by SB 807 and SB 1307, 84th Texas Legislature, Regular Session, 2015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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

CHAPTER 241. PRINCIPAL CERTIFICATE

The State Board for Educator Certification (SBEC) adopts the repeal of 19 TAC §241.15 and new 19 TAC §241.15, concerning the principal certificate. The repeal of and new §241.15 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1786) and will not be republished. The section provides standards required for the principal certificate. The adopted new section updates the standards required for principal certification, including those standards taught by principal preparation programs and tested on the state certification examination, and align the standards with the commissioner of education's principal appraisal standards.

REASONED JUSTIFICATION. In December 2014, Texas Education Agency (TEA) staff held a stakeholder meeting to discuss the rules in 19 TAC Chapter 241 as part of the rule review process. During the review process, the stakeholder group determined that the principal certificate standards in 19 TAC §241.15 needed to be modernized and aligned with the commissioner's principal appraisal standards found in 19 TAC Chapter 149.

At its March 2015 meeting, the SBEC approved the standards review committee for 19 TAC Chapter 241. The committee met in April 2015 to develop recommended changes to the principal standards. The committee subsequently worked with TEA staff to provide additional feedback prior to presenting draft rule changes to the SBEC at the December 2015 meeting. The

adopted rule actions repeal the current principal standards and replace them with new principal standards.

Adopted new 19 TAC §241.15 better aligns the standards with the knowledge and skills required for today's principals and with the commissioner's principal appraisal standards. The adopted new section also elevates school culture and instructional leadership as two areas of principal development that should receive additional and focused attention by preparation programs. The adopted rule actions also result from the SBEC's rule review of 19 TAC Chapter 241 conducted in accordance with Texas Government Code, §2001.039.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. No comments were received regarding the proposed repeal of and new 19 TAC §241.15.

The SBOE took no action on the review of proposed repeal of and new 19 TAC §241.15 at the July 22, 2016, SBOE meeting.

19 TAC §241.15

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; and §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.003(a), 21.041(b)(4), and 21.046(b)-(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497

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19 TAC §241.15

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; and §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

CROSS REFERENCE TO STATUTE. The adopted new section implements the TEC, §§21.003(a), 21.041(b)(4), and 21.046(b)-(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

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State Board for Educator Certification

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §573.10, concerning Supervision of Non-Veterinarians, §573.14, concerning Alternate Therapies, §573.15, concerning Use of Ultrasound in Diagnosis, §573.29, concerning Complaint Information, §573.41, Use of Prescription Drugs, §573.44, Compounding Drugs, §573.45, Extra-Label or Off-Label Use of Drugs, §573.51, Rabies Control, §573.52, Veterinarian Patient Record Keeping, §573.53, Equine Dental Provider Patient Record Keeping, §573.65, Proof of Acceptable Continuing Education, and §573.69, Conditions Relative to License Suspension. The amendments are adopted without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4153) and will not be republished.

One comment was received on the adoption of rule 573.41, regarding Use of Prescription Drugs. The commenter recommends that the rule incorporate the Texas Pharmacy Act's licensure requirements and limit relationships between veterinarians and pharmacies or, in the alternative, require disclosure of any remunerative arrangements between a veterinarian and a pharmacy. The Board respectfully declines to make the amendments that the commenter suggests, as they are outside the scope of the Board's proposed amendments to the rule.

No other comments were received regarding the adoption of the amendments to the rules.

In general, the purpose of these amendments to 22 TAC Chapter 573 is to implement changes resulting from the Board's review of the chapter under Texas Government Code §2001.039. The notice of intention to review the chapter was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8705). No comments were received in response to the notice. The notice of the adopted rule review was published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2180).

Overall, the adopted amendments make clarifications and technical corrections.

The amendment to §573.10 serves to make all items in the list parallel. The amendments to §§573.14, 573.15, and 573.41 conform the term "veterinarian-client-patient relationship" to its appearance in the Veterinary Licensing Act. The amendment to §573.29 clarifies what is required on a licensee's notice to clients about complaint information. The amendments to §573.44 and §573.45 conform the term "food-producing animals" to its appearance in the Veterinary Licensing Act. The amendment to §573.51 modernizes the language of the rule.

The amendments to §573.52 and §573.53 will reflect the original intent of the rule to require a veterinarian or an equine dental provider to maintain patient records for a minimum of five years from the date of the last treatment. The amendments to §573.65 are technical corrections as is the amendment to §573.69.

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §§573.10, 573.14, 573.15

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.29

The amendment is adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.203, which states that the Board by rule shall establish methods by which consumers and service recipients are notified of how to direct a complaint to the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §§573.41, 573.44, 573.45

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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. RECORDS KEEPING

22 TAC §§573.51 - 573.53

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.65, §573.69

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.307, which states that the Board may adopt rules relating to continuing education.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §573.82

The Texas Board of Veterinary Medical Examiners (Board) adopts new §573.82, concerning Laser Therapy. The new rule is adopted without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4156) and will not be republished.

The Board adopts this new rule to comply with Texas Occupations Code §801.151(c)(2), which requires the Board to adopt rules ensuring that laser therapy is performed only by a veterinarian or under the supervision of a veterinarian.

The Board received two comments in response to the proposal. The commenters express concern that laser therapy should be treated as the other treatments listed as "alternative treatments" in Texas Occupations Code §801.151(c)(2), specifically suggesting that pet owners should be informed that laser therapy is an alternative therapy. The commenters also suggest that laser therapy has not been shown to be effective.

The Board respectfully disagrees with the suggestion that the rule as proposed treats laser therapy differently than other treatments adopted under the same statutory authority. Rule 573.15, regarding Use of Ultrasound in Diagnosis or Therapy, does not require written consent from the client or notification that the use of ultrasound is an alternative therapy.

The commenters also express concern that laser therapy has not been shown to be effective. The Board respectfully disagrees with this position, and notes that laser therapy has been proved efficacious for such treatments as pain management and wound healing.

The new rule is adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public and to ensure that laser therapy is performed only by a veterinarian or under the supervision of a veterinarian.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Executive Assistant
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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §577.15, concerning the Fee Schedule. The amendments are adopted with one technical change to the proposed text published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157). The change adds a comma to the fee for the Equine Dental Certification approval review process.

Although the change to the proposed text is a technical change, the rule will be republished.

In accordance with Senate Bill 195, passed during the 84th Legislative Session, the amendments increase the renewal fee for certain veterinary licenses by $7.85. Senate Bill 195 transfers the Texas Prescription Program (TPP) from the Department of Public Safety to the Texas State Board of Pharmacy (TSBP) and authorizes the Board to collect a fee in an amount sufficient to cover the cost of administering the TPP. Fees collected for the purpose of administering TPP are transferred to the TSBP.

No comments were received regarding the adoption of the amendments to the rule.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendments are also adopted under the authority of Texas Occupations Code 554.006, as amended by Senate Bill 195, which authorizes the Board to increase fees for the purpose of funding the TPP.

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

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.
Figure: 22 TAC §577.15

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.31, concerning Definitions, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 910)

The amendment proposed to §661.31 is intended to clarify the definition of "direct supervision" by specifying that the professional land surveyor is to be in the firm's office or in the field. This will allow the land surveyor to be familiar with the project he/she is supervising and better able to provide direction and instructions.

Comments were received by the Board stating that the proposed change of §661.31(6) conflicts with the previously proposed rule §661.57(2) (being withdrawn) in regards to "Being on site either in the Firm office or in the field." The Board agreed with the comments and addressed them by removing part of the previously proposed language. No comments were submitted regarding the proposed change to §661.31(4) thus no changes to the previously proposed language were made.

The rule amendments are adopted under Texas Occupations Code §1071.151, §1071.252, and Government Code §2001.004.

§661.31. 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 Professional Land Surveying Practices Act and Amendment.

(2) Board seal--The seal of the Board shall be as authorized by the Board.

(3) Certificate of registration and certificate of licensure--A license to practice professional land surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

(4) Construction estimate--"construction estimate", as used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

(5) Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(6) Direct supervision--To be able to recognize and respond to any problem that may arise; give instruction for the solution to a problem; give instructions for such research of adequate thoroughness to support collection of relevant data; the placement of all monuments; the preparation and delivery of all Documents.

(7) Firm--Any business entity including but not limited to a partnership, limited partnership, association, corporation, limited liability company, limited liability partnership and/ or other entity conducting business under an assumed name.

(8) Offer of surveying services--Any form of advertisement which contains the firm contact information and offers land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.

(9) Renewal--The payment of a fee annually as set by the Board within the limits of the law for the certificate of registration or the certificate of licensure.

(10) Report--Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

(11) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board. The term includes

the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the Board and not affecting the private rights or procedures.

(12) Seal--An embossed or stamped design authorized by the Board that authenticates, confirms, or attests that a person is authorized to offer and practice land surveying services to the public in the State of Texas and has legal consequence when applied.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2016.

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Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5263

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SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.55

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.55, concerning Registration of Land Surveying Firms, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 911).

The amendment to §661.55(g) clarifies that the statement signed on behalf of the firm is to be submitted to the Board and requires the responsible party signing the oath to indicate their position with the firm. The new subsection, §661.55(h), would require the submission of a newly signed oath if the responsible party leaves the firm.

A comment was received by the Board suggesting that the addition of the proposed language in subsection (h) was unnecessary. The Board agreed with the comment and removed the proposed language. No comments were submitted regarding the proposed amendment to subsection (g) thus no change was made to the previously proposed amendment.

The amendments are adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

§661.55. Registration of Land Surveying Firms.

(a) A Firm shall not offer land surveying services until the Firm applies for and receives a Firm Registration Certificate with the Board, which identifies:

(1) The business and legal names and addresses of the association, partnership, or corporation;

(2) The names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any Firm employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by a Firm shall notify the Board in writing within five (5) business days prior to leaving employment or no later than five (5) business days after leaving employment.

(d) The Board may refuse to issue or renew and may suspend or revoke the registration of a firm and may impose an administrative penalty against the owner of a firm for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity at the time of the violation.

(e) The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any Firm offering surveying services that fails to comply with this section.

(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following and submit it to the Board: I, _____, _____, (state position with Firm) on behalf of _____, Business Entity Certificate Number_____, hereby affirm that this Business Entity will always place the interest of the public above all others in our practice of Professional Land Surveying and this Business Entity will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board.

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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Tony Estrada
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For further information, please call: (512) 239-5263

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SUBCHAPTER E. CONTESTED CASES

22 TAC §661.99

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.99, concerning Sanctions and Penalty Matrix, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 912)

The amendment to §661.99 adds a penalty matrix and reflects language adopted after the major rule revision in August 2013.

No comments regarding the proposal were received by the Board.

The amendments are adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201603912

Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5263

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CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

The Texas Board of Professional Land Surveying (Board) adopts the repeal of §663.14 and replaces it with new §663.11, concerning Criminal Convictions, without changes to the proposed text and adopts an amendment to §663.19, concerning Survey Drawing/Written Description/Report, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 913).

The Board is renumbering §663.14 to §663.11 because the rule currently falls under the subchapter labeled Professional and Technical Standards. Criminal convictions are not a standard and so the rule should be moved outside that subchapter.

The amendment to §663.19, Survey Drawing/Written/Description/Report, removes the "/", a typographical error, from between "Written" and "Description". The amendment to §663.19(e) would require the land surveyor to not only describe the monuments found, or placed, but to also describe how the monument is traceable to the responsible registrant or employer.

Comments were submitted to the Board in favor of the proposed amendment to §663.19(e). However, after further consideration, the Board voted to remove the proposed language.

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.11

The new section is adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2016.

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Tony Estrada
Executive Director
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For further information, please call: (512) 239-5263

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SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.14

The repeal of §663.14 is adopted under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-5263

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22 TAC §663.19

The amendments are adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

§663.19. Survey Drawing/Written Description/Report.

(a) All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed; such relationship shall be shown on the survey drawing, if a drawing is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all monuments found or placed.

(c) Courses shall be referenced by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.

(d) The survey drawing shall bear the Firm name and Firm Registration Number, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Oath), and date surveyed.

(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) A reference shall be cited on the drawing and prepared description to the record instrument that defines the location of adjoining boundaries.

(g) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(h) If a land surveyor provides a written narrative in lieu of a drawing/sketch to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2016.

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Tony Estrada
Executive Director
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8. DRAYAGE TRUCK INCENTIVE PROGRAM

30 TAC §114.680, §114.682

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §114.680, concerning Definitions, and §114.682, concerning Eligible Vehicle Models.

Section 114.680 and §114.682 are adopted *without changes* to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2127) and will not be republished.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The rulemaking amends existing rules implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

Under THSC, §386.183(f), the commission may modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan (TERP). The amendments to the DTIP rules are intended to improve the effectiveness of the DTIP to reduce emissions at and near seaports and rail yards in the state's nonattainment areas. The amendments include non-road cargo handling equipment as eligible for replacement under the program and remove the requirement that the drayage truck being purchased must have a day cab only. In addition, language is added to the definition of a seaport to include publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. The Houston Ship Channel Security District (HSCSD) is the only district established in Texas under this provision.

Section by Section Discussion

§114.680, Definitions

Section 114.680(1) is amended to remove the definition term, "Day cab," under the DTIP and replace it with the term, "Cargo handling equipment." The removal of "Day cab" is made because, with the change to §114.682 to remove the requirement that a new drayage truck purchased under the DTIP have a day cab only, the definition is no longer needed. The term "Cargo handling equipment" is added in conjunction with the addition of cargo handling equipment to §114.682 as eligible for replacement and purchase under the DTIP. The definition of cargo handling equipment includes any heavy-duty, non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. The equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

Section 114.680(6) is amended to add language to the definition of "Seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

In the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located in proximity to, but not at, the cargo transfer locations. The HSCSD includes property where many businesses and facilities associated with port activities in some manner are located and provides an appropriate defined boundary that can be used to delineate an expanded area considered a seaport under the DTIP. The addition to the definition of "Seaport" in §114.680(6) makes drayage trucks operating on or transgressing through the properties included in the HSCSD eligible for replacement under the DTIP.

§114.682, Eligible Vehicle Models

Section 114.682(a)(1) is amended to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. Based on visits to many of the rail and port facilities and discussion with port administrators and drayage truck owners, the commission has determined that the goals of the DTIP will be better addressed by allowing on-road heavy-duty vehicles with sleeper cabs to be eligible for purchase under the program. The commission has determined that a number of the drayage truck owners are individual truck owners who contract to provide drayage services and that use vehicles with sleeper berths. The day cab requirement is removed in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

Section 114.682(a)(3) and (b)(3) are amended to add "other cargo handling equipment" to the list of drayage truck models eligible for replacement and purchase under the DTIP. Along with the addition of a definition for cargo handling equipment in §114.680, this change expands the program to include replacement and purchase of heavy-duty non-road, self-propelled vehicles or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. As noted under the definition, this equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. The commission has determined that expanding the program to include other cargo handling equipment at seaports and rail yards helps achieve the goals of the DTIP and the TERP by further reducing the concentrated emissions associated with the movement of cargo at those facilities.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that this rule action is

not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The rules add or revise eligibility requirements for a voluntary grant program. Because the proposed rules place no involuntary requirements on the regulated community, the rules will not 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 the state or a sector of the state. In addition, the amendments do not place additional financial burdens on the regulated community.

In addition, a RIA is not required because the rules do not meet any of the four applicability criteria for requiring a RIA of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only 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 exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the RIA.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The rules make revisions to voluntary programs and only affect motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the rules are neither a statutory nor a constitutional taking because the rules do not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found the rulemaking is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises voluntary incentive grant programs and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission held public hearings on April 12, 2016, in Austin and on April 14, 2016, in Houston. The comment period closed on April 18, 2016. The commission received comments from North Central Texas Council of Governments (NCTCOG), Port of Houston Authority (POHA), Regional Transportation Council of the Dallas-Fort Worth Metropolitan Planning Organization (RTC), and Texas Farm Patch LLC (TFP). NCTCOG, RTC, and POHA commented in support of the rulemaking. NCTCOG recommended additional changes to the rules. NCTCOG, RTC, and TFP also provided recommendations that were outside of the scope of this rulemaking.

Response to Comments

Comment

NCTCOG and POHA commented in support of the rule changes. NCTCOG agreed that the revisions are key to reducing emissions from all vehicles employed in drayage activities and best accomplishing the goals of the program. POHA expressed appreciation that the commission recognizes emissions in the port sector and that there is a program like this, because there are plenty of diesel engines in the port area.

Response

The commission appreciates the support expressed for the rulemaking. No changes to the proposed text were made as a result of these comments.

Comment

POHA commented in support of the change to §114.680(1) to remove the definition of "Day cab" and the change to §114.682(a)(1) to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. POHA explained that it supports the change because the majority of drayage truck owners are independent owner-operators and that the truck owners want to be as flexible as possible in what they want to do with their trucks. POHA further commented that removing the day cab requirement will give the truck owners some comfort in knowing that after they meet their grant requirements they could use those trucks for long-haul purposes and any other purpose where a sleeper cab would help them. POHA stated that, at the same time, the change will help ensure that the DTIP results in more emissions reductions.

Response

The commission appreciates the POHA's support for the changes. The commission agrees that the removal of the day cab requirement will encourage more independent owner-operators to participate in the DTIP. The commission also hopes that after completion of the grant commitment period participants will continue to use the grant-funded vehicles in the areas where the use of the lower-emitting vehicles can help keep the air clean. No changes to the proposed text were made as a result of these comments.

Comment

POHA also commented in support of adding a new definition of "Cargo handling equipment" to §114.680(1) and to adding "other cargo handling equipment" to the list of drayage trucks

eligible for purchase under §114.682(a)(3) and to the list of drayage trucks eligible for replacement under §114.682(b)(3). POHA commented that adding cargo handling equipment to the DTIP will give POHA and its tenants and any other port-related facilities an additional opportunity to reduce emissions.

Response

The commission appreciates the support expressed for the addition of the term cargo handling equipment and agrees that this change will provide port facilities an additional opportunity to reduce emissions. No changes were made to the proposed text in response to the comments.

Comment

NCTCOG recommended that §114.680(4) containing the definition of "Non-road yard truck" be deleted. NCTCOG recommended that non-road yard trucks be specifically integrated into the new definition of "Cargo handling equipment" added to §114.680(1). NCTCOG commented that integrating non-road yard trucks into the definition of cargo handling equipment would define all non-road equipment together and could be more simply referenced. NCTCOG also recommended that §114.682(a)(2), listing a non-road yard truck as eligible for purchase under the DTIP, and §114.682(a)(3), listing other cargo handling equipment as eligible for purchase under the DTIP, be combined because non-road yard trucks are a type of cargo handling equipment and therefore do not need to be listed as a distinct vehicle type.

Response

The commission agrees that non-road yard trucks are a type of cargo handling equipment. However, the commission does not agree with the proposed changes. The commission anticipates continuing to consider non-road yard trucks separate from other cargo handling equipment when establishing standardized usage rates and grant amounts, and in allowing for possible replacement of an on-road vehicle with a non-road yard truck. Retaining the separate definition of a non-road yard truck in §114.680(4) and separate listing of non-road yard trucks as eligible for purchase in §114.682(a)(2) will help the commission with implementation of the program. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG recommended additional expansion of the definition of "Seaport" under §114.680(6), or addition of another definition, to accommodate eligibility of inland ports and airports to ensure that all major freight hubs would be eligible for funding. NCTCOG commented that the drayage trucks and cargo handling equipment targeted by the DTIP are critical to operations at all of these types of facilities and ensuring eligibility for all locations would best ensure that funded projects address emissions from the highest-polluting, highest-activity vehicles and equipment, regardless of whether they operate at facilities specifically accessible by air, rail, or ocean. NCTCOG provided a suggested definition of "Logistic center/intermodal facility" be added to the rules. *"Logistic center/intermodal facility- Any publically or privately owned property associated with the primary movement of cargo or materials to or from a multi-model facility, including structures and property devoted to receiving, handling, consolidating, and loading or delivery through the use of drayage truck operations."*

Response

The commission agrees that reducing emissions from vehicles and equipment operating at a wide range of freight hubs will help improve air quality in the nonattainment areas and other affected counties. However, the rule language implements the specific provisions of THSC, §386.183(a)(2)(B), requiring that drayage trucks funded under the program must be operated in and within a maximum distance of a seaport or rail yard in a nonattainment area of this state. Also, the other TERP incentive programs, including the Diesel Emissions Reduction Incentive (DERI) Program established under THSC, Chapter 386, Subchapter C, are available to provide funding for replacement of heavy-duty on-road vehicles and non-road equipment in the nonattainment areas and other affected areas, including vehicles and equipment operating at inland ports and airports. No changes to the proposed text were made in response to these comments.

Comment

NCTCOG recommended streamlining §114.682 by deleting §114.682(c) requiring that replacement drayage trucks have an engine model year 2010 or later and that the drayage truck being replaced have an engine of model year 2006 or earlier. NCTCOG further recommended that those requirements then be added to §114.682(a)(1) and (b)(1), respectively.

Response

The commission does not agree with the changes proposed by NCTCOG. Section 114.682(c) pertains to the model year of the drayage truck engine, while §114.682(a) and (b) pertain to the model year of the drayage truck. The eligibility requirements for the model year of the drayage truck engine are listed separate from the requirements for the model year of the drayage truck in order to make sure that the different requirements are clearly understood. Combining the provisions could make the provisions less clear. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG commented that for consistency of requirements between on-road vehicles and non-road equipment, the commission should add emissions tier certification requirements to §114.682(a)(2), which lists non-road yard trucks as eligible for purchase under the program. NCTCOG commented that this change would create consistency with the DTIP guidelines, *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524),* which specify that eligible non-road yard trucks must be certified under an EPA certificate of conformity to meet the final Tier 4 non-road engine emission standards.

Response

The commission does not agree with the change recommended by NCTCOG. Under §114.682(c), the drayage truck purchased must have an engine of model year 2010 or later. This provision in the rules implements a statutory requirement established in THSC, §386.182(b). The implementation deadline for meeting the final federal Tier 4 emission standards for a heavy-duty non-road engine in certain horsepower categories was extended through 2014. Therefore, a non-road yard truck with a non-road engine of model year 2010 or later still might not meet the latest federal emission standards or otherwise be certified to a nitrogen oxides emission rate that is substantially lower than the engine on a non-road yard truck being replaced. In recognition of this issue, the commission determined it was appropriate to

include supplemental criteria in the DTIP guidelines to also require that the engine on a non-road yard truck purchased under the program meet the final federal Tier 4 emission standards, to help ensure that the project would result in a significant reduction in emissions and that the engine would meet the latest federal emission standards. It is not necessary to add the language proposed by NCTCOG to the rules in order for the supplemental criteria already included in the guidelines to apply. No changes to the proposed text were made as a result of this comment.

Comment

POHA commented in support of the addition of other cargo handling equipment as eligible for purchase under §114.682(a)(3) and eligible for replacement under §114.682(b)(3). POHA commented that the changes will give the POHA, its tenants, and any other port-related facilities the opportunity to reduce emissions.

Response

The commission appreciates the support expressed for the addition of other cargo handling equipment as eligible under the DTIP. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG recommended that eligible technologies for new drayage trucks or cargo handling equipment should include, but not be limited to, alternative fuel vehicles, battery-electric trucks, fuel-cell trucks, and battery-electric trucks utilizing fuel cells or internal combustion engines acting as range extenders.

Response

The commission agrees that providing for a full range of fuel options can help encourage potential applicants to apply to the DTIP. The DTIP is fuel-neutral and any fuel type or power source is already eligible if the drayage truck and engine otherwise meet the eligibility criteria. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG recommended that the commission consider a revision that would give preference to projects involving use of zero or near-zero emission vehicles. NCTCOG commented that the EPA has recently initiated such preferential consideration in the Clean Diesel Funding Assistance Program Announcement, in which the cleanest technologies qualify for slightly higher funding levels. NCTCOG expressed its opinion that such a change would support commercialization of near-zero emission technologies, encourage program applicants to consider the cleanest available technology options, and contribute to additional incremental emission reductions.

Response

The commission agrees that increased use of zero or near-zero emission vehicles could further contribute to achieving emission reductions. However, in implementing the DTIP and other TERP incentive programs, the commission has remained fuel-neutral unless the legislature has specifically directed that certain fuels and types of engines be targeted. Under this approach, the commission has encouraged applicants to select the type of technology that the applicant determines will work best for its particular needs, as long as the project meets the eligibility criteria. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG and RTC commented in support of the TERP and encouraged the commission to request full funding of the program as budgets are prepared for the next biennium.

Response

The commission appreciates the comments in support of funding the TERP programs; however, these comments are outside of the scope of this rulemaking. Decisions on appropriation levels are made by the Texas Legislature. Also, how the commission structures the biennial appropriations request is guided by direction from the Legislature Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB regarding the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to these comments.

Comment

TFP requested that the commission include Atascosa County as an eligible county for the program. TFP commented that it is a grower, packer, shipper operation that sells fresh Texas produce to HEB, Walmart, Kroger, Target, and some other smaller retailers. TFP explained that it is currently upgrading irrigation pumps and well motors from diesel to electric and old tractors to newer, more energy efficient ones. TFP commented that this program may help in its quest to achieve the upgrades and make Texas a better place to live and work.

Response

The commission appreciates TFP's efforts to upgrade its equipment; however, this recommendation is outside of the scope of this rulemaking. The counties eligible for operation of grant-funded vehicles and equipment are included in the DTIP guidelines and are not listed in the rules. In addition, the equipment identified by TFP does not meet the definition of a drayage truck and is not eligible under the DTIP. TFP might be confusing the DTIP with the TERP DERI Program established under THSC, Chapter 386, Subchapter C, which includes funding for replacement or upgrade of irrigation pumps and tractors. The counties eligible for operation of grant-funded vehicles under the DERI Program include nonattainment areas and affected counties listed in THSC, §386.051(2). Atascosa County is not included in that list of eligible counties. Under THSC, §386.051(2)(Z), the commission may designate additional affected counties by rule. However, any consideration of adding counties to the list would be separate from this rulemaking. No changes to the proposed text were made as a result of this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the

control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The amendments implement the Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2016.

TRD-201603978
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 25, 2016
Proposal publication date: March 18, 2016
For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.364

The Comptroller of Public Accounts adopts amendments to §3.364, concerning professional employer services, with changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2309). The amendments implement Senate Bill 1286, 83rd Legislature, 2013 (SB 1286). The title of this section is amended to "Professional Employer Services" to reflect the changes to the Labor Code made by SB 1286. Definitions are amended and new terminology is introduced to reflect the conforming changes to Tax Code, §151.057 made by SB 1286.

No comments were received regarding adoption of the amendment. Subsection (a)(5)(A) was revised to delete the word "even," which was inadvertently left in the proposed amendment.

Subsection (a) is amended to incorporate new terminology and definitions. Existing paragraphs (1) and (2) are deleted and new paragraphs (1) - (4) are added.

New paragraph (1) defines the term "client" to mean any person who enters into a professional employer services agreement with a professional employer organization. This definition is based upon Labor Code, §91.001(3).

New paragraph (2) defines the term "coemployer" to mean a professional employer organization or a client that is a party to a coemployment relationship. This definition restates Labor Code, §91.001(3-a).

New paragraph (3) defines the term "coemployment relationship" to mean a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with a professional employer services agreement. This definition is based upon Labor Code, §91.001(3-b).

New paragraph (4) defines "covered employee." This definition implements Labor Code, §91.001(7-a) and §91.0012 and incorporates guidance previously provided in the definition of the term "assigned employee," which is deleted. Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (5) (formerly paragraph (3)) defines the term "independent contractor." This paragraph is amended to replace the phrase in subparagraph (A) from "is paid by the job even when consideration is based on a time-measure basis" to "is paid by the job, not by the hour or some other time measured basis." This amendment is made to reflect the definition set out in Labor Code, §91.001(10)(A).

Paragraphs (4) and (5), defining shared employment relationship and staff leasing company, respectively, are deleted.

Paragraph (6) is amended to define the term "professional employer organization." The term "staff leasing services" and its definition are deleted. A professional employer organization is described in Tax Code, §151.057 as a business that offers professional employer services and is licensed under Labor Code, Chapter 91, or is exempt from the licensing requirements of Labor Code, Chapter 91. Currently, the Labor Code does not exempt any professional employer organizations from the licensing requirements of Chapter 91. Consequently, this portion of the definition is not included in the rule.

New paragraph (7) defines the term "professional employer services" to mean services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. The term does not include temporary help; an independent contractor; the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or a temporary common worker employer as defined by Labor Code, Chapter 92. This definition is based upon Labor Code, §91.001(14).

New paragraph (8) defines the term "temporary help" to mean an arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including: an employee absence; a temporary skill shortage; a seasonal workload; or a special assignment or project. The definition is based on the definition given in Labor Code, §91.001(16).

Subsection (b), which sets out the responsibilities of persons providing staff leasing services, is amended to implement the terminology of Labor Code, Chapter 91 and Tax Code, §151.057. No substantive change is intended as a result of these revisions.

Subsection (c), which relates to independent contractors, is amended to replace the terms "staff leasing services" and "staff leasing company" with the terms "professional employer services" and "professional employer organization." All other changes in subsection (c) reflect the changes in terminology made to Tax Code, §151.057 by SB 1286 and are not substantive in nature.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.057 (Services by Employees).

§3.364. Professional Employer Services.

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

(1) Client--Any person who enters into a professional employer services agreement with a professional employer organization.

(2) Coemployer--A professional employer organization or a client that is a party to a coemployment relationship.

(3) Coemployment relationship--A contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with a professional employer services agreement and the provisions of Labor Code, Chapter 91.

(4) Covered employee--An individual having a coemployment relationship with a professional employer organization and a client. The term does not include an independent contractor, a temporary common worker as defined by Labor Code, Chapter 92, or an employee providing temporary help.

(5) Independent contractor--A person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time measured basis;

(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid;

(C) is free to work for other customers, or to send helpers to work for other customers, while under contract to the hiring customer; and

(D) is in control of the details of the work and the right to terminate the employment of its employees.

(6) Professional employer organization--A business entity that offers professional employer services and is licensed under Labor Code, Chapter 91.

(7) Professional employer services--Services provided to a client by a professional employer organization through a coemployment relationship when a majority of the employees providing services to the client, or to a division or work unit of the client, are covered employees. The term does not include:

(A) temporary help;

(B) the provision of services by an independent contractor;

(C) the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or

(D) services provided by a temporary common worker employer as defined by Labor Code, Chapter 92.

(8) Temporary help--An arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

(b) Tax responsibilities of professional employer organizations.

(1) Sales tax is not due on professional employer services if all of the following conditions are met:

(A) at least 75% of the covered employees providing services under the professional employer services agreement were previously employees of the client for a period of at least three months immediately prior to commencement of the professional employer services agreement;

(B) none of the covered employees were employed previously:

(i) by the company providing professional employer services under the agreement unless the previous employment was through a coemployment relationship; or

(ii) by a person that previously provided or currently provides taxable services to the client; and

(C) a coemployment relationship exists between the client and the professional employer organization as to the covered employees.

(2) The following are exceptions to paragraph (1) of this subsection.

(A) A professional employer services agreement must comply only with paragraph (1)(B) and (C) of this subsection when the client has been in operation for less than a year; provided that a client that has been in existence less than a year solely due to a change in legal entity, merger, or corporate reorganization must meet all three conditions. In the latter situation, the combined experience of all entities involved in such legal change, merger, or corporate reorganization will be considered when applying the tests set forth in paragraph (1) of this subsection.

(B) When a professional employer organization enters into an agreement with a client that previously was in a coemployment relationship with another professional employer organization immediately prior to the effective date of such new agreement, the employees that were subject to the coemployment relationship will be considered employees of the client in meeting the requirement in paragraph (1)(A) of this subsection.

(C) A professional employer services agreement that has met the qualifications in paragraph (1) of this subsection will not have to re-qualify if a covered employee is fired or resigns and is replaced. However, an agreement must re-qualify under paragraph (1) if, within six months after it is entered into, all of the covered employees or an identifiable segment of the covered employees are replaced by:

(i) employees previously employed by the professional employer organization unless the previous employment was through a coemployment relationship with another client; or

(ii) employees of an entity that previously provided or currently provides taxable services to the client.

(D) If the scope of an existing professional employer services agreement is expanded to increase the volume of services of the type already provided by the professional employer organization by adding employees to perform the same work functions of employees already under the agreement (for example, another shift is added), the

amended agreement must meet the qualifications in paragraph (1)(B)(i) and (C) of this subsection.

(E) If the scope of an existing professional employer services agreement is expanded to include services not previously provided by the professional employer organization by adding employees to perform functions that are not currently performed by employees under the agreement (for example, employees are added to perform debt collection services for a client who previously had not performed those services in house), the amended agreement must meet the qualifications in paragraph (1)(B) and (C) of this subsection.

(3) The client and the professional employer organization must sign a written certification that the professional employer services agreement or amendments to the agreement meet the requirements and conditions set out in this section, and both parties must retain a copy of the certification in their files.

(4) If an agreement does not meet the conditions for exemption set out in subsection (b) of this section, taxable services as defined in Tax Code, §151.0101, performed under the agreement are subject to sales tax, unless purchased for resale as provided in §3.285 of this title (relating to Sales for Resale; Resale Certificates).

(5) When both nontaxable professional employer services and taxable services are being performed under the same agreement, the parties to the agreement should separately identify the taxable from nontaxable services in the agreement and the charges applicable to each. Failure to separate the charges will result in the entire agreement being presumed to be for taxable services. Documentation that clearly defines the work being performed should be retained by both parties to show that had the nontaxable professional employer services and taxable services been performed independently of each other, the cost of each would be reasonably near the allocation of charges. Examples of acceptable documentation include written agreements, which detail the scope of work, bid sheets, tally sheets, payroll records, and job descriptions. If there is not a written agreement signed by both parties clearly showing agreement as to the taxable and nontaxable work being performed, the customer and the service provider may prepare a written certification verifying the allocation of nontaxable professional employer services and taxable services. All services performed will be presumed to be taxable if the parties fail to provide the written certification. The comptroller may recalculate the charges if the allocation appears unreasonable and either party may be held responsible for the additional tax due.

(c) Independent contractor. Professional employer services do not include services performed by an independent contractor regardless of the status of the contractor as a licensed professional employer organization.

(d) Temporary help service. For information on the taxability of services performed by a temporary help service, see §3.356 of this title (relating to Real Property Service).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201603986
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: August 28, 2016
Proposal publication date: March 25, 2016
For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4009

The Comptroller of Public Accounts adopts amendments of §9.4009, concerning appraisal of recreation, park, and scenic land, with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4621). We are also adopting amendments to the title of Subchapter I from Validation Procedures to Valuation Procedures. These amendments are to correct the title and to reflect updates and revisions to the guidelines for the appraisal of recreational, park, and scenic land.

The amendment adopts guidelines for the appraisal of recreational, park, and scenic land. The guidelines specify the methods to apply and procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. The amendment provides that appraisal districts are required to follow the procedures and methods set out in the guidelines.

No comments were received regarding adoption of the amendment. However, several minor changes were made to the guidelines to correct punctuation, typographical, and other non-substantive errors.

These amendments are adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.83 (Appraisal of Restricted Land) which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising recreational, park, or scenic lands, respectively, for ad valorem tax purposes.

These amendments implement Tax Code, §23.83 (Appraisal of Restricted Land).

§9.4009. Appraisal of Recreational, Park, and Scenic Land.

Adoption of the "Guidelines for the Appraisal of Recreational, Park, and Scenic Land." These guidelines specify the methods to apply and the procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. Appraisal districts are required to follow the procedures and methods set out in these guidelines. The Comptroller of Public Accounts adopts by reference the Guidelines for the Appraisal of Recreational, Park, and Scenic Land. The guidelines are accessible on our website. Copies of the guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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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34 TAC §9.4010

The Comptroller of Public Accounts adopts amendments to §9.4010, concerning appraisal of public access airport property, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4622). We are also adopting amendments to the title of Subchapter I from Validation Procedures to Valuation Procedures. These amendments are to correct the title and to reflect updates and revisions to the guidelines for the appraisal of public access airport property.

The amendment adopts guidelines for the valuation of public access airport property. The guidelines specify the methods to apply and procedures to use in appraising property that qualifies for special appraisal as public access airport property. The amendment provides that appraisal districts are required to follow the procedures and methods set out in the guidelines.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.93(e) (Appraisal of Restricted Land) which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising public access airport property, respectively, for ad valorem tax purposes.

The amendments implement Tax Code, §23.93 (Appraisal of Restricted Land).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lita Gonzalez
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§705.1001, 705.2105, 705.2107, 705.3102, 705.4103, 705.4105, 705.4107, 705.6101, 705.7103, and 705.7105; new §705.2103; and the repeal of §705.2103 without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3641). The text of the rules will not be republished.

The justification of the amendments, new rules, and repeal is to implement Senate Bills 760 and 1880 (84th Legislature), the APS Scope and Jurisdiction Bills, which expanded the APS Provider (formally Facility) program's jurisdiction to investigate abuse, neglect, and exploitation. These bills ensured continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bills (1) expanded the authority of Adult Protective Services (APS) to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care service delivery model, (2) clarified and addressed the gaps and inconsistencies that resulted from evolving service delivery changes and changes in contracting arrangements, and (3) updated statutory language and requirements related to provider and agency responsibilities.

The adopted rules will implement APS's expanded jurisdiction and modify existing DFPS rules, as applicable, to the expanded jurisdiction. These rules will take effect on September 1, 2016. The updates in Chapters 705 will implement statutory changes as required by the APS Scope and Jurisdiction Bills.

A summary of the changes are as follows:

The amendment to §705.1001 updates and adds definitions for emergency protective services, home and community support services agencies (HCSSA) agency, paid caretaker, protective services, and purchased client services, and removes definitions of terms not used in this subchapter.

Section 705.2103 is repealed and new §705.2103 updates who is eligible for purchased client services and when purchased client services are available.

The amendment to §705.2105 and §705.2107 updates terms and establishes who is eligible for purchased client services and when purchased client services are available.

The amendment to §705.3102 clarifies when APS can apply for a protective order.

The amendment to §705.4103 clarifies the circumstances in which a designated perpetrator has the right to appeal a validated finding.

The amendment to §705.4105 clarifies to whom APS may release the findings of an investigation when the findings of the investigation are valid.

The amendment to §705.4107 updates language.

The amendment to §705.6101 clarifies when APS uses assessments in an in-home case and when a case worker must consult with a supervisor.

The amendment to §705.7103 deletes outdated language.

The amendment to §705.7105 updates terms to align with APS Scope and Jurisdiction bills. In particular the APS Provider program's expanded authority to investigate providers; make minor edits.

The sections will function by expanding the authority of DFPS to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers

No comments were received regarding adoption of the sections.

SUBCHAPTER A. DEFINITIONS

40 TAC §705.1001

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

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2016.

TRD-201603849
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2016
Proposal publication date: May 20, 2016
For further information, please call: (512) 438-3803

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SUBCHAPTER D. ELIGIBILITY

40 TAC §705.2103

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

The repeal implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §§705.2103, 705.2105, 705.2107

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

The new section and amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3102

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

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §§705.4103, 705.4105, 705.4107

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

The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

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

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §705.7103, §705.7105

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

The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3803

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CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.1, 711.5, 711.7, 711.11, 711.13, 711.17, 711.19, 711.21, 711.23, 711.201, 711.403, 711.419, 711.423, 711.603, 711.609, 711.611, 711.613, 711.801, and 711.802; the repeal of 711.3, 711.9, 711.15, 711.25, 711.401, 711.405, 711.407, 711.409, 711.411, 711.605, 711.607, 711.1001 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011 - 711.1013, 711.1015, 711.1201, 711.1203, 711.1205, 711.1207, and

711.1209; and new 711.3, 711.401, 711.405, 711.605, 711.804, 711.806, 711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, and 711.915 in Chapter 711, concerning Investigations in Department of Aging and Disability Services (DADS) and Department of State Health Services (DSHS) Facilities and Related Programs. New §711.3 and the amendment to §711.603 are adopted with changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3876). Amendments to §§711.1, 711.5, 711.7, 711.11, 711.13, 711.17, 711.19, 711.21, 711.23, 711.201, 711.403, 711.419, 711.423, 711.609, 711.611, 711.613, 711.801, and 711.802; the repeal of 711.3, 711.9, 711.15, 711.25, 711.401, 711.405, 711.407, 711.409, 711.411, 711.605, 711.607, 711.1001 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011 - 711.1013, 711.1015, 711.1201, 711.1203, 711.1205, 711.1207, and 711.1209; and new 711.401, 711.405, 711.605, 711.804, 711.806, 711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, and 711.915 are adopted without changes to the proposed text and will not be republished.

The justification of the amendments, new rules, and repeals is to implement Senate Bills (SB) 760 and 1880, 84th Legislature (Adult Protection Services (APS) Scope and Jurisdiction Bills), which expanded the APS Provider (formally APS Facility) program's jurisdiction to investigate abuse, neglect, and exploitation. These bills ensure continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bills (1) expanded the authority of APS to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care service delivery model, (2) clarified and addressed the gaps and inconsistencies that resulted from evolving service delivery changes and changes in contracting arrangements, and (3) updated statutory language and requirements related to provider and agency responsibilities.

These amendments, new rules, and repeals implement APS's expanded jurisdiction and modify existing rules to reflect such expansion, as applicable. These rules will take effect on September 1, 2016. The updates in Chapter 711 will implement statutory changes as required by the APS Scope and Jurisdiction Bills.

A summary of the changes are as follows:

DFPS is changing the chapter title to Investigations of Individuals Receiving Services from Certain Providers: (1) conforms with the name used in the APS Scope and Jurisdiction Bills; and (2) reflects APS's expanded authority to investigate individuals receiving services from certain providers.

Amendments to §711.1: (1) updates the purpose to align the section with APS Scope and Jurisdiction Bills; and (2) describes APS's expanded investigatory authority

Section 711.3 is being repealed and new §711.3 updates terms and abbreviations to align with APS Scope and Jurisdiction bills and other clarifications made in this rule proposal including: direct provider, facility, home and community-based services, individual receiving services, limited service provider, non-serious physical injury, provider, serious physical injury, and service provider.

Amendment to §711.5: (1) updates and clarifies what APS investigates; (2) deletes provision on sexual exploitation as it is subsumed within the definition of sexual abuse; and (3) deletes the term "person served" and uses statutory term "individual receiving services" instead to define whom can be an alleged victim.

Amendments to §711.7: (1) updates and clarifies what APS does not investigate; (2) deletes confusing examples; (3) expands exclusion of investigating business or operational issues related to managed care or consumer directed services; and (4) expands exclusion of investigating clinical issues to all licensed professionals rather than just specific ones.

The repeal of §711.9 deletes guidance that will be written into policy as it was confusing and rarely applicable.

Amendment to §711.11: (1) updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills; and (2) expands rule citations for restraints for new providers resulting from APS expanded authority.

Amendments to §711.13: (1) updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills; and (2) updates the definition of sexual exploitation as part of sexual abuse definition in paragraph (a)(8).

The repeal of §711.15 moves the content of the rule into §711.13(a)(8) as part of the sexual abuse definition.

Amendment to §711.17 updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills.

Amendments to §711.19 updates language to more appropriately align with APS Scope and Jurisdiction Bills, and clarifies confusing examples.

Amendments to §711.21: (1) updates and clarifies who is an alleged perpetrator of exploitation to align with APS Scope and Jurisdiction Bills; and (2) expands definition of exploitation to include attempted exploitation and theft in a home or community setting other than HCS and TxHml waiver programs.

Amendments to §711.23: (1) updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills; (2) clarifies what is not considered abuse, neglect, or exploitation; and (3) expands rule citations for new providers resulting from APS expanded authority.

Section 711.25 is repealed because it expires September 1, 2016.

Amendments to §711.201: (1) clarifies reporting requirements; and (2) maintains one hour notification for facilities, community centers, local authorities, and HCS/TxHmL waiver programs.

Section 711.401 is repealed and new §711.401: (1) updates the notification chart of whom APS notifies following an intake of an allegation of abuse, neglect, or exploitation; and (2) updates the requirements for APS notification to providers, law enforcement, and the Office of Inspector General (OIG).

Amendment to §711.403 clarifies steps taken when a general complaint is received.

Section 711.405 is repealed and new §711.405 clarifies what action is taken if the alleged perpetrator is a licensed professional.

The repeal of §§711.407, 711.409 and 711.411 consolidates all affected rules into §711.405.

Amendment to §711.419 clarifies who is notified of investigation extensions.

Amendment to §711.423 updates terms related to unknown perpetrator and system issues.

Amendment to §711.603 clarifies what is included in the investigation report.

Section 711.605 is repealed and new §711.605 clarifies and updates who receives the investigation report.

The repeal of §711.607 moves the content of the rule §711.605.

Amendments to §711.609 and §711.611 updates and clarifies how the reporter and alleged victim, guardian, or parent are notified of the finding and how to appeal.

Amendment to §711.613 clarifies when the report can be released by the service provider.

Amendments to §711.801 and §711.802 clarifies: (1) what steps an investigator takes if an individual receiving services from an HCS waiver program provider requires emergency protective services; and (2) what steps an investigator takes if an individual receiving services from an ICF-IID provider requires emergency protective services.

New §711.804 and §711.806 identifies what steps an investigator takes if an individual, adult or child, living in an HCS waiver provider home but not receiving HCS waiver services requires emergency protective services.

New Subchapter J, Appealing the Investigation Finding, provides rules for appealing the investigation finding.

New §711.901 defines and describes an appeal of the investigation finding.

New §711.903 clarifies how an appeal of the investigation finding affects an act of reportable conduct.

New §711.905 clarifies who may request an appeal of the investigation finding.

New §711.907 describes how a qualified party requests an appeal of the investigation finding.

New §711.909 describes the timeline for an appeal of the investigation finding.

New §711.911 describes how and when an appeal of the investigation finding is conducted.

New §711.913 describes the process for the administrator of a state-operated facility to contest a decision of the APS Assistant Commissioner.

New §711.915 describes when a finding may be changed without an appeal of the investigation finding.

The repeal of Subchapter K consists of §§711.1001, 711.1002, 711.1003, 711.1005, 711.1007, 711.1009, 711.1011, 711.1012, 711.1013, 711.1015: the substance of this subchapter has been maintained but has been updated, consolidated, and clarified for APS's expanded authority in new Subchapter J.

The repeal of Subchapter M consists of §§711.1201, 711.1203, 711.1205, 711.1207, 711.1209: the substance of this subchapter has been maintained but has been updated, consolidated, and clarified for APS's expanded authority in new Subchapter J.

The sections will function by implementing DFPS's expanded authority to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers.

During the public comment period, DFPS received comments from the Coalition for Nurses in Advanced Practice. A summary of the comments and DFPS's response follows:

Comments concerning §711.3: The commenter suggests editorial changes including deleting the apostrophe in physician assistant and ensuring the terms are in alphabetical order.

Response: DFPS agrees with the commenter's suggestion and is adopting the section with the suggested editorial changes.

In addition, DFPS is adding "Human Resources Code" to a citation in §711.3(18), and adopting the section.

Comment concerning §711.603(8): The commenter suggested additions to the rule pertaining to what APS includes in the investigative report; in addition to including the physicians exam, the commenter proposed adding "other health care professional's" as well.

Response: DFPS agrees with the commenter's suggestion and is adopting the section with the suggested changes. Other health care professionals in addition to physicians document exam and treatment of abuse/neglect injuries and APS includes this documentation in its investigative report. This change reflects practice as well as corresponds with other rules proposed.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.1, 711.3, 711.5, 711.7, 711.11, 711.13, 711.17, 711.19, 711.21, 711.23

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

The amendments and new section implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§711.3. How are the terms in this chapter defined?

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

(1) Adult--An adult is a person:

(A) 18 years of age or older; or

(B) under 18 years of age who:

(i) is or has been married; or

(ii) has had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(2) APS--Adult Protective Services, a division of DFPS.

(3) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of a service provider.

(4) Allegation--A report by an individual that an individual receiving services has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.

(5) Alleged perpetrator-- A direct provider alleged to have committed an act of abuse, neglect, or exploitation.

(6) Child--A person under 18 years of age who:

(A) is not and has not been married; or

(B) has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(7) Clinical practice--Relates to the demonstration of professional competence of a licensed professional as described by the appropriate licensing professional board.

(8) Community center--A community mental health center; community center for individuals with intellectual or developmental disabilities; or community mental health center and community center for individuals with intellectual or developmental disabilities, established under the Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(9) Consumer Directed Services (CDS) employer--A consumer directed services client or their legally authorized representative.

(10) DADS--Department of Aging and Disability Services.

(11) DFPS--Department of Family and Protective Services.

(12) DSHS--Department of State Health Services.

(13) Designated Perpetrator--A direct provider who has committed an act of abuse, neglect, or exploitation.

(14) Direct Provider--A person, employee, agent, contractor, or subcontractor of a service provider responsible for providing services to an individual receiving services.

(15) Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.

(16) Facility--

(A) DADS and DSHS central offices, state supported living centers, state hospitals, the Rio Grande State Center, the Waco Center for Youth, the El Paso Psychiatric Center, and community services operated by DADS or DSHS;

(B) A person contracting with a health and human services agency to provide inpatient mental health services; and

(C) Intermediate care facilities for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code.

(17) HHSC--Health and Human Services Commission.

(18) Home and community-based services--Have the meaning given to them in Human Resources Code §48.251(a)(5) as services provided in the home or community in accordance with 42 U.S.C. §1315, 42 U.S.C. §1315a, 42 U.S.C. §1396a, or 42 U.S.C. §1396n.

(19) Home and community-based services (HCS) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by §534.001(11)(B), Government Code.

(20) Home and community support services agency (HCSSA)--An agency licensed under Chapter 142, Health and Safety Code.

(21) ICF-IID--A licensed intermediate care facility for individuals with an intellectual disability or related conditions as described in Chapter 252, Health and Safety Code.

(22) Incitement--To spur to action or instigate into activity; the term implies responsibility for initiating another's actions.

(23) Individual receiving services--

(A) An adult or child who receives services from a provider as that term is defined in §48.251(a)(9), Human Resources Code.

(B) An adult or child who lives in a residence that is owned, operated, or controlled by an HCS waiver program provider regardless of whether the individual is receiving HCS waiver program services; or

(C) A child receiving services from a HCSSA.

(24) Investigator--An employee of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(25) Limited Service Provider--An entity that contracts with a service provider to provide services.

(26) Local authority-- Either:

(A) a local mental health authority designated by the HHSC executive commissioner in accordance with §533.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code; or

(B) a local intellectual and developmental disability authority designated by the HHSC executive commissioner in accordance with §533A.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code.

(27) Non-serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice registered nurse (APRN), or physician.

(B) For all other service providers any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include:

(i) superficial laceration;

(ii) contusion two and one-half inches in diameter or smaller; or

(iii) abrasion.

(28) Perpetrator-- A direct provider who has committed or alleged to have committed an act of abuse, neglect, or exploitation.

(29) Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(30) Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(31) Provider--A provider is:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A)-(E) of this paragraph; and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by §531.051, Government Code.

(32) Reporter--The person, who may be anonymous, making an allegation.

(33) Serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or APRN. Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or APRN. For the purposes of this subchapter, medical intervention does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication;

(B) For all other service providers, any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include:

(i) fracture;

(ii) dislocation of any joint;

(iii) internal injury;

(iv) contusion larger than two and one-half inches in diameter;

(v) concussion;

(vi) second or third degree burn; or

(vii) any laceration requiring sutures or wound closure.

(34) Service Provider--A provider, HCSSA, or HCS waiver program provider responsible for employing, contracting with, or supervising the direct provider.

(35) Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(36) Texas Home Living (TxHmL) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by §534.001(11)(D), Government Code.

(37) Victim--An individual receiving services who is alleged to have been abused, neglected, or exploited.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3803

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40 TAC §§711.3, 711.9, 711.15, 711.25

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

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER C. DUTY TO REPORT

40 TAC §711.201

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

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.401, 711.405, 711.407, 711.409, 711.411

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

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §§711.401, 711.403, 711.405, 711.419, 711.423

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

The amendments and new sections implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §§711.603, 711.605, 711.609, 711.611, 711.613

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

The amendments and new section implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§711.603. What is included in the investigative report?

The investigative report includes the following:

(1) a statement of the allegation(s);

(2) a summary of the investigation;

(3) an analysis of the evidence, including:

(A) factual information related to what occurred;

(B) how the evidence was weighed; and

(C) what testimony was considered credible;

(4) a finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;

(5) concerns and recommendations, if any, resulting from the investigation;

(6) the name of the perpetrator or alleged perpetrator, designated in accordance with §711.423 of this title (relating to Is the investigator required to designate a perpetrator or alleged perpetrator?);

(7) a recommended classification for each allegation assigned in accordance with §711.425 of this title (relating to How are allegations classified?);

(8) the physician's or other health care professional's exam and treatment of abuse/neglect related injuries documented on the DADS or DSHS Client Injury/Incident Report for state supported living centers or state hospitals;

(9) photographs relevant to the investigation, including photographs showing the existence of injuries or the non-existence of injuries, when appropriate;

(10) all witness statements and supporting documents; and

(11) a signed and dated Client Abuse and Neglect Report (AN-1-A) form, as appropriate, reflecting the information contained in paragraphs (4), (6), and (7) 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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40 TAC §711.605, §711.607

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

The repeals implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. PROVISION OF SERVICES

40 TAC §§711.801, 711.802, 711.804, 711.806

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

The amendments and new sections implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. APPEALING THE INVESTIGATION FINDING

40 TAC §§711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, 711.915

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

The new sections implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §§711.1001 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011 - 711.1013, 711.1015

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

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3803

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SUBCHAPTER M. REQUESTING AN APPEAL IF YOU ARE THE REPORTER, ALLEGED VICTIM, LEGAL GUARDIAN, OR WITH DISABILITY RIGHTS TEXAS

40 TAC §§711.1201, 711.1203, 711.1205, 711.1207, 711.1209

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

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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Trevor Woodruff
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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§744.401, 744.403, 744.605, 744.901, 744.1303, 744.1305, 744.1307, 744.1309, 744.1311, 744.2301, 744.2401, 744.2507, 744.2523, 744.3551, 744.3553, 744.3559, and 744.3561; new §744.2667 and §744.2669; and repeal of §744.3555, in Chapter 744, concerning Minimum Standards for School-Age and Before or After-School Programs. The amendments to §§744.401, 744.403, 744.605, 744.1303, 744.1305, 744.1309, 744.1311, 744.2301, 744.2523, 744.3551, 744.3553, and 744.3559; and new §744.2669 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3651). The amendments to §§744.901, 744.1307, 744.2401, 744.2507, and 744.3561; new §744.2667; and the repeal of §744.3555 are adopted without changes to the proposed text and will not be republished.

The justification of the amendments, new rules, and repeal is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact School-Age and Before and After-School Programs (BAPs and SAPs). The new health and safety training requirements mandated by the Act include the following topics for orientation and annual training: (1) more robust emergency preparedness plans; (2) administering medication; (3) food allergies; (4) building and physical premises safety; (5) handling, storing, and disposing of hazardous materials; and (6) precautions in transporting children if the program transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for BAPs and SAPs. The health and safety requirements correlate to some of the training topics, including requiring operations to (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes follows:

The amendments to §744.401: (1) adds a list of each child's food allergies that require an emergency plan; (2) updates the name of the *Parent Notification Poster,* and (3) makes other wording changes for consistency.

The amendments to §744.403: clarifies that for a list of each child's food allergies that require an emergency plan: (1) the program must post the list during all hours of operation where you prepare food and in each room where the child may spend time; (2) the posting must be in a place where employees may easily view the list, and if a parent requests it, the program must maintain the privacy of the child (for example, a clipboard hung on the wall with a cover sheet over the list); and (3) the program must ensure all caregivers and employees who prepare and serve food are aware of each child's food allergies. The amendment also deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.

The amendment to §744.605 adds a requirement for programs to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §744.901 updates a cite and makes the language consistent.

The amendments to §744.1303: (1) adds six topics that must be covered in the orientation of employees hired after September 1, 2016; (2) clarifies the wording to be consistent with the current wording of the operational policies rule; (3) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (4) requires programs to share the emergency preparedness plan with all employees.

The amendment to §744.1305 updates the existing language for a current training topic.

The amendment to §744.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §744.1309: (1) adds six topics that must be covered in the annual training of caregivers and site directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendments to §744.1311: (1) adds six topics that must be covered in the annual training of operation directors and program directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendment to §744.2301: adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; and deletes and outdated term.

The amendments to §744.2401: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §744.2105.

The amendment to §744.2507 requires a program to use, store, and dispose of hazardous materials as recommended by the manufacturer to ensure a healthy environment for children.

The amendment to §744.2523 clarifies in more detail what the universal precautions as outlined by the Centers for Disease Control (CDC) entail, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

New §744.2667 defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction.

New §744.2669 requires: (1) a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional; and (2) the plan to be signed by the child's health care professional and a parent.

The amendment to §744.3551 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendments to §744.3553 adds to the requirements for an emergency preparedness plan to also include: (1) the staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the operation where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

The repeal of §744.3555 is because all of the information is already included in §744.1303(4) and §744.507.

The amendment to §744.3559: (1) requires four practice sheltering drills for severe weather each year; (2) requires four practice lock-down drills for endangering persons each year; and (3) adds the "sheltering" and "lock-down" language for clarification.

The amendment to §744.3561 clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) there will be clarification regarding health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

The proposed rules were published in the *Texas Register* on May 20, 2016. DFPS submitted rule changes for Chapter 744, Minimum Standards for School-Age and Before- and After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747 Minimum Standards for Child Care Homes. DFPS received approximately 31 comments regarding 41 rule changes. Many of the rule changes are intertwined with the same or similar topics across the chapters. For example, while the comments touched upon 41 different rules, the rules only related to 12 different top-

ics. We received comments from Better Beginnings Children's Center, The Ginger Bread House, Adventure Discovery Centers, First Church Preschool at First Christian Church, Flamingo Island Preschool, Adventure Discovery Centers, Camp Fire First Texas, Dallas AEYC, UTA, Eastfield College, Caring Corner, Kids Only, Copperfield Church Weekday Preschool, and Adventure Discovery Centers. Most of the comments were from centers and related to Chapter 746, though the responses were fairly varied in relation to the topics. There was also a workgroup that met on April 5 and May 16, 2016, to discuss the recommended changes to the minimum standards. While both workgroup meetings were prior to the publication of the rules in the *Texas Register,* the rule process was too far along to modify the rules before publication. However, the comments from the workgroup have been treated as comments made during the public comment period. The workgroup commented on several rules. Most of the comments from home providers were related to the cost of background checks. Responses to comments are noted below.

Comments concerning §744.401: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a program post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing. One commenter applauded the new emphasis on food allergies. There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise parents could state a child has an undiagnosed allergy.

Response: DFPS agrees with the commenters and rewrote the rule to clarify that: (1) the list only includes those food allergies that require an emergency plan; and (2) deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §744.403.

Comments concerning §744.403 and §744.605: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a program post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing.

Response concerning §744.403: DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that: (1) the list must be posted where the program prepares food and in each room where the child may spend time; (2) the posting must be in a place easily viewed by employees, and if a parent requests it, the program must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over the list); and (4) the program must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

Response concerning §744.605: DFPS agrees with the commenters and deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §744.403.

Comment concerning §744.1303: The workgroup that met on 4/5/16 recommended moving six newly proposed pre-service training topics in §744.1305 to this orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training.

Response: DFPS agrees with the commenter and has moved the six topics from §744.1305 to this rule. Even though there was no comment on the issue, DFPS is also: (1) deleting the word "internal" from "procedures for reporting child abuse or neglect" at §744.1303(a)(3)(C) to eliminate any confusion that a program may create internal policies to limit or delegate reporting; (2) specifying September 1, 2016; and making minor clarifications to §744.1303(b)(3) and (4) to be consistent with similar rules in Chapter 746 and 747.

Comment concerning §744.1305: The workgroup that met on 4/5/16 recommended moving these six newly proposed pre-service training topics to §744.1303, the orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training.

Response: DFPS agrees with the commenter and has moved the six topics from this rule to §744.1303.

No comments concerning §744.1309, however, DFPS is recommending a change. This rule increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training. Based on the comments that were made in a similar rule in Chapter 746 (§746.1309), DFPS is clarifying that no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own.

No comments concerning §744.1311, however, DFPS is recommending a change. This rule increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training. Based on the comments that were made in a similar rule in Chapter 746 (§746.1309), DFPS is clarifying that no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own.

No comments concerning §744.2301, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comment concerning §744.2523: The workgroup commented that they wanted further clarification on what "sealed" meant.

Response: DFPS agrees with the commenter and has clarified the term "sealed".

Comment concerning §744.2669: One commenter applauded the new emphasis on food allergies. There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise parents could state a child has an undiagnosed allergy.

Response: DFPS agrees with the commenter and has clarified that the food allergy must have been diagnosed by a healthcare professional. DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §744.401 and §744.2301.

Comment concerning §744.3551: A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term.

Response: DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down".

No comments concerning §744.3553, however, based on the comment to §744.3551, DFPS has changed the term "sheltering" to "sheltering/lock-down".

Comment concerning §744.3559: The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons, and adding drills for dangerous persons.

Response: DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lockdown" for dangerous persons; and are requiring four drills for each, every year.

Comments not applicable: There were eight commenters that provided comments on rules that were not proposed nor are they out for public comment: (1) six commenters stated they were in favor of lowering child/caregiver ratios; (2) one commenter stated discrimination language needed to be beefed up over 5 different chapters, and provided quite a few comments on Chapter 749; and (3) one commenter had no comments that were forwarded.

Response: Since these comments were related to rules that were not out for public comment, DFPS cannot take any action.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §744.401, §744.403

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.401. What items must I post at my operation at all times?

You must post the following items:

(1) Your license;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice *Keeping Children Safe;*

(4) Your emergency evacuation and relocation diagram as specified in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(5) The daily menu, including all snacks and meals served by the operation;

(6) The Licensing *Parent Notification Poster;*

(7) Telephone numbers specified in §744.405 of this title (relating to What telephone numbers must I post and where must I post them?);

(8) A list of each child's food allergies that require an emergency plan, as specified in §744.2669 of this title (relating to When must I have a food allergy emergency plan for a child?); and

(9) Any other Licensing notices with specific instructions to post the notice.

§744.403. When and where must these items be posted?

(a) Unless otherwise specified, the items specified in §744.401 of this title (relating to What items must I post at my operation at all times?) must be available by posting or placing in a binder, in a prominent and publicly accessible place where employees, parents, and others may easily view them at all times.

(b) For a list of each child's food allergies that require an emergency plan:

(1) You must post the list during all hours of operation where you prepare food and in each room where the child may spend time;

(2) The posting must be in a place where employees may easily view the list, and if a parent requests it, you must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); and

(3) You must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

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 C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §744.605

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.605. What admission information must I obtain for each child?
You must obtain at least the following information before admitting a child to the operation:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the operation;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special problems or special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) A completed food allergy emergency plan for the child, if applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. PERSONNEL RECORDS

40 TAC §744.901

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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 D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§744.1303, 744.1305, 744.1307, 744.1309, 744.1311

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.1303. What must orientation for employees at my operation include?

(a) Your orientation for employees must include at least the following:

(1) An overview of the minimum standards found in this chapter;

(2) An overview of operational policies, including discipline and guidance practices and procedures for the release of children;

(3) An overview regarding the prevention, recognition, and reporting of child abuse and neglect including:

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care center staff members, children, and parents;

(4) An overview of the procedures to follow in handling emergencies, which includes sharing the emergency preparedness plan with all employees. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The location and use of fire extinguishers and first-aid equipment.

(b) For employees you hire on or after September 1, 2016, your orientation must also cover the following areas:

(1) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(2) Preventing and responding to emergencies due to food or an allergic reaction;

(3) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(4) Handling, storing, and disposing of hazardous materials, including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(5) Precautions in transporting children, if your operation transports a child whose chronological or developmental age is younger than nine years old.

§744.1305. What must be covered in the eight clock hours of pre-service training for caregivers?

Before a caregiver can be counted in the child/caregiver ratio, the caregiver must complete eight clock hours of pre-service training that covers the following areas:

(1) Developmental stages of children;

(2) Age-appropriate activities for children;

(3) Positive guidance and discipline of children;

(4) Fostering children's self-esteem;

(5) Supervision and safety practices in the care of children;

(6) Positive interaction with children; and

(7) Preventing and controlling the spread of communicable diseases, including immunizations.

§744.1309. How many clock hours of annual training must be obtained by caregivers and site directors?

(a) Each caregiver and site director must obtain at least 15 clock hours of training each year relevant to the age of the children for whom the person provides care.

(b) The 15 clock hours of annual training are exclusive of requirements for orientation, pre-service training, CPR and first aid training, transportation safety training, and high school child-care work-study classes.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition or physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned;

(9) Planning developmentally appropriate learning activities; and

(10) Minimum standards and how they apply to the caregiver.

(f) No more than 80% of the annual training hours may be obtained through self-instructional training. No more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

§744.1311. How many clock hours of training must an operation director or a program director obtain each year?

(a) An operation director and/or a program director must obtain at least 20 clock hours of training each year relevant to the age of the children for whom the operation provides care.

(b) The 20 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, CPR and first aid training, and transportation safety training.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum;

(4) Teacher-child interaction; and

(5) Serving children with special care needs.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) An operation director or program director with:

(1) Five or fewer years of experience as a designated director of an operation or as a program director must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or

(2) More than five years of experience as a designated director of an operation or as a program director must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(f) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(e) of this title (relating to How many clock hours of annual training must be obtained by caregivers and site directors?).

(g) An operation director or program director may obtain clock hours or CEUs from the same sources as caregivers.

(h) Training hours may not be earned for presenting training to others.

(i) No more than 80% of the annual training hours may be obtained through self-instructional training. No more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
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For further information, please call: (512) 438-5559

SUBCHAPTER I. FIELD TRIPS

40 TAC §744.2301

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2301. May I take children away from my operation for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the operation. Anytime you take a child on a field trip, you must comply with each of the following requirements:

(1) You must have signed permission from the parent to take a child on a field trip, including permission to transport the child, if applicable;

(2) One or more caregivers must carry emergency medical consent forms and emergency contact information for each child on the field trip;

(3) Caregivers must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children;

(4) Caregivers must have a first-aid kit immediately available on field trips;

(5) Caregivers must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) Each child must wear a shirt, nametag, or other identification listing the name of the operation and the operation's telephone number;

(7) Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, operation tee-shirt, brightly-colored clothes, or other easily spotted identification;

(8) Each caregiver supervising a field trip must have transportation available, a communication device such as a cellular phone or two-way radio available, or an alternate plan for transportation at the field-trip location in case of emergency; and

(9) Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

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 J. NUTRITION AND FOOD SERVICE

40 TAC §744.2401

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. HEALTH PRACTICES DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §744.2507, §744.2523

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2523. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

(1) Using disposable, nonporous gloves;

(2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;

(3) Discarding all other gloves immediately after one use; and

(4) Washing hands after using and disposing of the gloves.

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 L. SAFETY PRACTICES DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §744.2667, §744.2669

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

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2669. When must I have a food allergy emergency plan for a child?

You must have a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional. The child's heath care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

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 P. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§744.3551, 744.3553, 744.3559, 744.3561

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.3551. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation, relocation, and sheltering/lock-down. The plan addresses the types of responses to emergencies most likely to occur in your area including:

(1) An evacuation of the children and caregivers to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering and lock-down of children and caregivers within the operation to temporarily protect them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§744.3553. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering/lock-down of children including:

(A) The first responsibility of staff in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including but not limited to specific procedures for evacuating and relocating children with limited mobility or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) An emergency evacuation and relocation diagram as outlined in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(D) The staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the operation where children should gather;

(E) Name and address of the alternate shelter away from the operation you will use as needed; and

(F) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter;

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents, and us; and

(3) How your staff will evacuate and relocate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The child tracking system information for children in care;

(4) How your staff will continue to care for children until each child has been released; and

(5) How you will reunify the children with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

§744.3559. Must I practice my emergency preparedness plan?

The following components of your operation's emergency preparedness plan must be practiced as specified below:

(1) You must practice a fire drill every month. The children must be able to safely exit the building within three minutes;

(2) You must practice a sheltering drill for severe weather at least four times in a calendar year;

(3) You must practice a lock-down drill for a volatile or endangering person on the premises or in the area at least four times in a calendar year; and

(4) You must document these drills, including the date of the drill, time of the drill, and length of time for the evacuation, sheltering, or lock-down to take place.

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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40 TAC §744.3555

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

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.505 and §745.615; and new §745.616 in Chapter 745, concerning Licensing, without changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3660) and will not be republished.

The justification of the amendments and new section is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill (S.B) 1496, 84th Regular Legislative Session.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to background checks.

In regards to background checks, Senate Bill (S.B.) 1496, 84th Regular Legislative Session, amended HRC §42.0523 and §42.056 in order to comply with the Act's requirements. A summary of the background check changes in response to the Act and S.B. 1496 include: (1) requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person; and (2) requiring Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children to obtain fingerprint-based criminal history checks (these homes were previously only required to have name-based criminal history checks). There is also a transitional rule which clarifies which persons are required to have a fingerprint-based criminal history check and when the checks are due.

The summary of the changes follows:

The amendment to §745.505 requires Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person.

The amendment to §745.615 requires Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children, to request fingerprint-based criminal history checks.

New §745.616 clarifies which persons in these homes are required to have a fingerprint-based criminal history check and when the request for checks are due.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) DFPS will be in compliance with HRC §42.056 (S.B. 1496); (3) there will be clarification regarding background checks; and (4) there will be a reduced risk to children.

During the public comment period, DFPS received one comment that was in favor of fingerprint-based background checks for all types of care; and two comments that were not clear. There were six commenters that were against the fingerprint-based background checks because of the financial burden (primarily a one-time cost of approximately $41.25 per person in the home that needs the check). Suggestions were made for the state to pay these costs, exclude those living in Texas for more than five years, and exclude those in business for over 10 years.

Response concerning §745.615: DFPS recommends that this rule be adopted with no changes, because this requirement is needed to comply with the Act and is mandated by Senate Bill 1496, 84th Regular Legislative Session, which amended Human Resources Code §42.0523 and §42.056.

SUBCHAPTER E. FEES

40 TAC §745.505

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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. BACKGROUND CHECKS
DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.615, §745.616

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

The amendment and new section implement HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§745.8581, 745.8583, 745.8585, 745.8600, 745.8633, 745.8635, 745.8637, 745.8639, 745.8641, 745.8643, 745.8649, 745.8650, 745.8651, 745.8652, and 745.8654; amendments to §§745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8657, 745.8659, and 745.8713; and the repeal of §§745.8633, 745.8635, and 745.8651 in Chapter 745, concerning Licensing. New §§745.8581, 745.8585, 745.8635, 745.8639, and 745.8641 are adopted with changes to the proposed text as published in the in May 27, 2016, issue of the *Texas Register* (41 TexReg 3896). New §§745.8583, 745.8600, 745.8633, 745.8637, 745.8643, 745.8649, 745.8650, 745.8651, 745.8652, and 745.8654; amendments to §§745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8657, 745.8659, and 745.8713; and the repeal of §§745.8633, 745.8635, and 745.8651 are adopted without changes to the proposed text and will not be republished.

The justification of the new sections, amendments, and repeals is to implement recommendations the Sunset Advisory Commission made in the *Department of Family and Protective Services Staff Report with Commission Decisions* published in August 2014, and required by Senate Bill (S.B.) 206, Sections 81 and 82, that was passed by the 84th Texas Legislature in 2015. These sections respectively created Human Resources Code (HRC) §42.0704 and amended §42.078(a-2).

HRC §42.0704 requires DFPS to adopt rules that outline a general enforcement policy that describes the department's approach to enforcement, including:

(1) A summary of the department's general expectations in enforcing Human Resources Code, Chapter 42; and (2) A methodology for determining appropriate action to take when a permit holder violates Licensing laws or rules that allows the department to consider the circumstances of the particular case, the nature and seriousness of the violation, history of previous violations, and other aggravating and mitigating factors.

HRC §42.0704 also requires the department to develop a plan for strengthening its enforcement efforts and for making objective regulatory decisions. Prior to the effective date of the rules adopted in this rule packet, Licensing will require all Licensing staff to receive training to promote staff's understanding of the policy and their ability to apply it appropriately and clearly explain it to providers. After the initial training, the concepts will be incorporated into Licensing's Basic Skills Development training, which all new Licensing staff receives, moving forward. Licensing's Performance Management Unit (PMU) performs quality assurance activities to ensure Licensing staff are adhering to policy and consistently enforcing licensing laws and regulations and will evaluate the effectiveness of the enforcement policy through a quality assurance review scheduled to be completed in early fiscal year 2018 (one year after implementation of the new enforcement policy). In addition PMU risk analysts conduct neutral assessments of an operation's compliance history when Licensing staff identifies the operation as having a compliance history that is at increased risk for children. As part of this process, PMU provides recommendations for enforcement actions and, six months later, reviews the operation's record to determine what enforcement action was taken and whether risk was reduced. This work enables Licensing to assess the effectiveness of the enforcement policy on an ongoing basis.

The new version of HRC §42.078(a-2) expands the department's authority to impose administrative penalties before taking correc-

tive action to all high risk violations, not just violations related to background checks.

A summary of the changes to create an enforcement framework include: (1) changing the title of Subchapter L from "Remedial Actions" to "Enforcement Actions; (2) defining "technical assistance" and outlining when and why technical assistance is provided; (3) clarifying that enforcement actions are not progressive in nature, meaning they are not necessarily recommended or imposed from least to most restrictive; (4) clarifying that CCL may end an enforcement action at any time to impose a more serious enforcement action; (5) removing the ability to extend an enforcement action; (6) identifying a voluntary plan of action as a voluntary enforcement action; (7) defining voluntary plan of action as a collaborative effort between CCL and the provider; (8) identifying factors CCL considers when deciding to recommend a voluntary plan of action; (9) limiting the number of times a plan of action may be recommended if an operation has already been on a plan of action for similar issues within the previous year; (10) providing a more clearly defined delineation between evaluation and probation by restricting the circumstances under which CCL may consider imposing evaluation; (11) decreasing the length of time an operation may remain on evaluation to six months; (12) identifying factors CCL considers when deciding to impose evaluation; (13) identifying factors CCL considers when deciding to impose probation; (14) identifying factors CCL considers when deciding to impose each adverse action; and (15) adding language allowing CCL to impose administrative penalties prior to taking corrective action for violations of high risk standards.

A summary of the changes are as follows:

New Division 6, in Subchapter K, to house rules related to technical assistance.

New §745.8581 defines technical assistance and clarifies that technical assistance is not a deficiency or an enforcement action and is not used in lieu of citing a deficiency.

New §745.8583 identifies when and how Licensing may provide technical assistance.

New §745.8585 clarifies that a permit holder may not request an administrative review of Licensing providing technical assistance.

New §745.8600 outlines the general purpose of enforcement actions.

Amendment to §745.8601 clarifies that Licensing may provide technical assistance in response to a deficiency in addition to recommending or imposing another enforcement action.

Amendment to §745.8603: (1) replaces the term "remedial action" with "enforcement action"; (2) adds voluntary actions to the chart in subsection (a) listing the types of enforcement actions Licensing may take; (3) rewords and clarifies that listed family homes are not subject to voluntary or corrective action; (4) adds subsection (b) to clarify that Licensing recommends or imposes enforcement actions based on risk and that CCL does not have to impose a less restrictive action if it is determined that a more restrictive action is warranted; and (5) adds subsection (c) to clarify that Licensing may take multiple actions at the same time.

Amendment to §745.8605 replaces the term "remedial action" with "enforcement action" and deletes outdated date references in regards to operations that are ineligible to receive for a permit for a period of 5 years.

Amendment to §745.8607 replaces the term "remedial action" with "enforcement action". It also clarifies in section (5) that CCL also considers the permit holder's ability to maintain compliance with standards, rules, and laws, when deciding which type of enforcement action to recommend or impose.

Amendment to §745.8609: (1) replaces the term "remedial action" with "enforcement action" (2) adds voluntary actions to section (1) of the chart; and (3) clarifies in section (2) that Licensing notifies a permit holder of the intent to impose adverse action in writing.

Amendment to §745.8611: (1) replaces the term "remedial action" with "enforcement action" and removes language referring to extensions; (2) adds new section (1) "Voluntary Action" to the chart in subsection (a) and includes a maximum timeframe of six months for a voluntary plan of action; (3) makes the following changes to new sections (2) and (3) in the chart in subsection (a): (A) Removes the minimum length of time evaluation and probation may be imposed; (B) Removes language referring to extensions for evaluation and probation; and (C) Reduces the amount of time evaluation may be imposed from a maximum of one year to six months; (4) renumbers existing section (3) to new section (4) and clarifies that the suspension period will be up to 120 days as necessary to resolve the danger or threat of danger; (5) renumbers existing section (4) to new section (5) in the chart in subsection (a); and (6) adds subsection (b) stating that Licensing may end voluntary or corrective action early if compliance is met and maintained, or if compliance is not met and Licensing determines a more restrictive enforcement action is necessary.

Amendment to §745.8613: (1) replaces the term "remedial action" with "enforcement action"; (2) adds new section (1) to the chart in subsection (a) to include voluntary plan of action and clarifies that a permit holder does not have the right to challenge a plan of action, since it is a voluntary action; and (3) renumbers the existing numbers in the chart in subsection (a).

Division 2, in Subchapter L, is being renamed to "Voluntary and Corrective Actions."

Amendment to §745.8631: (1) adds a new section (1) to include a voluntary plan of action and describes a voluntary plan as an action that Licensing recommends and is a collaborative effort between Licensing and the operation to improve compliance; (2) renumbers existing sections (1) and (2) to new sections (2) and (3); and (3) makes changes regarding evaluation and probation, including: removing language outlining the actions Licensing may take if compliance is not met, or if deficiencies worsen since this information is included in the new §745.8641 of this title (relating to What requirements must I meet during the evaluation or probation period?); and clarifying that Licensing will conduct inspections at least monthly during the evaluation and probation period.

Section §745.8633 is repealed and the content is incorporated into new §745.8641.

New §745.8633 outlines when Licensing may recommend a voluntary plan of action, including: (1) outlining the criteria Licensing considers to determine whether to recommend a plan of action in subsection (a); (2) stating that Licensing may take into consideration the compliance history for each operation the permit holder oversees when determining whether a plan of action is appropriate in subsection (b); and (3) outlining when Licensing may consider imposing a more restrictive enforcement action in lieu of a voluntary plan of action in subsection (c).

Section §745.8635 is repealed and text is being incorporated with changes in §745.8643.

New §745.8635 outlines when Licensing may impose evaluation, including: (1) listing the circumstances under which Licensing may impose evaluation in subsection (a); and (2) stating that Licensing may impose probation or adverse action if Licensing determines the operation is not eligible for evaluation in subsection (b).

New §745.8637 outlines when Licensing may impose probation, including: (1) listing the circumstances under which Licensing may impose probation in subsection (a);and (2) stating that Licensing may impose adverse action if Licensing determines the operation is not eligible for probation in subsection (b).

New §745.8639 lists the requirements a permit holder must meet during a voluntary plan of action.

New §745.8641 contains the same language as repealed §745.8633. The language remains mostly the same as the repealed rule. However, language has been amended in paragraph (3) to clarify what must be posted during evaluation and probation.

New §745.8643 clarifies that CCL may increase inspections or recommend a more serious enforcement action if an operation does not comply with conditions of evaluation or probation. This language is similar to content in repealed rule §745.8635.

New §745.8649 contains the exact language as repealed §745.8651, which describes types of adverse actions.

New §745.8650 outlines the circumstances under which Licensing may deny a permit.

Section §745.8651 is repealed and text moved to new §745.8649.

New §745.8651 outlines the circumstances under which Licensing may impose an adverse amendment on a permit.

New §745.8652 outlines the circumstances under which Licensing may suspend an operation's permit.

New §745.8654 outlines the circumstances under which Licensing may revoke a permit.

Amendment to §745.8657 updates the department's name and a program offered through a different state agency.

Amendment to §745.8659 removes the requirement for the department publish adverse actions in a local newspaper and publish denials when the operation was previously operating. Licensing posts information regarding suspensions and revocations on the department's public website per the requirements in Human Resources Code §42.025 and §42.077.

Amendment to §745.8713: (1) adds that Licensing may impose an administrative penalty for a violation of a high risk standard; and (2) deletes old paragraph (2) since new subparagraph (2)(A) and (2)(B) sufficiently address the issue of timely submitting information required to conduct a background and criminal history check.

The sections will function by enforcing: (1) compliance with HRC §42.0704 and §42.078(a-2); (2) implementation of the Sunset Recommendations; (3) transparency between providers, the public, and CCL staff who will have a common understanding of the decision making process as it relates to enforcement actions; (4) improved consistency in decision-making; and (5) increased use of voluntary plans of action will reduce the number of corrective action imposed or adverse actions taken.

During the public comment period, DFPS received one comment from the Texas Press Association regarding §745.8659. The Texas Press Association opposes the removal of the requirement of DFPS to publish notice in a local newspaper when there is an adverse action against a facility. The Association believes that much of the populace does not have access to the internet and requiring consumers to search the internet as well as the DFPS website for operations with an adverse action unfairly burdens the public.

Response: DFPS has had the option to publish notice on the department's Internet website since the passage of Senate Bill 68 by the 81st Legislature. Since September 1, 2009, when the amended statute took effect, the Department has primarily published notice on the agency website. The notice remains on the agency website list for five years and is easily accessible from the *Search Texas Child Care* feature which provides the public, including families looking for child care, information about all child care operations and homes regulated by DFPS and is the most used feature on the agency website. Both Internet service and public access to computers, through libraries and other locations such as the YMCA, is increasing. While few or no families would be able to search prior issues of newspapers for the compliance history of an operation, even those families who do not own a computer of their own are likely to be able to search DFPS' public website. The department recommends adoption of this rule with no changes.

Although no comments were received regarding the other rules, DFPS is making the following revisions:

§745.8581: The department recommends deleting language that suggests deficiencies are limited to deficiencies related to Minimum Standards. An operation may be deficient in Minimum Standards, as well as laws, rules, specific permit terms, or conditions of evaluation, probation, or suspension, as articulated in a more general rule (745.8601) and otherwise adopting this section with no changes. Aligning the language throughout all the rules will aid in public understanding.

§745.8585: The department recommends clarifying language related to deficiencies. See §745.8581.

§745.8635: The department recommends: (1) changing the wording in paragraph (a)(2) for clarification; (2) modifying the language in (a)(3) to make it clear operations may still be placed on evaluation if they have attempted to address the same issues through a voluntary plan of action, assuming evaluation is otherwise appropriate; and (3) correcting a technical error in (a)(4) and making the language consistent with the parallel provision in §745.8637.

§745.8639: The department recommends clarifying language related to deficiencies. See §745.8581.

§745.8641: The department recommends clarifying language related to deficiencies. See §745.8581.

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 6. TECHNICAL ASSISTANCE

40 TAC §§745.8581, 745.8583, 745.8585

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement the HRC §42.042 and §42.0704.

§745.8581. What is technical assistance?

Technical assistance is information we provide to help you improve or maintain compliance with minimum standards, rules, and laws. Technical assistance itself is not a deficiency or enforcement action, and we do not use it in lieu of citing a deficiency.

§745.8585. May I request an administrative review for technical assistance offered?

No. We provide technical assistance in order to help you with your compliance with minimum standards and other laws. Technical assistance does not include a decision or action you may challenge through an administrative review. If we offer you technical assistance in addition to citing you for a deficiency, you would have the right to request an administrative review related to the deficiency, but not the technical assistance.

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 L. ENFORCEMENT ACTIONS
DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

40 TAC §§745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613

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

The amendments and new section implement the HRC §42.042 and §42.0704.

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DIVISION 2. VOLUNTARY AND CORRECTIVE ACTIONS

40 TAC §§745.8631, 745.8633, 745.8635, 745.8637, 745.8639, 745.8641, 745.8643

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

The amendments and new sections implement the HRC §42.042 and §42.0704.

§745.8635. When may Licensing place my operation on evaluation?

(a) We may place your operation on evaluation for an issue identified in §745.8605of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if:

(1) you are eligible to participate in a plan of action but refuse to do so;

(2) your operation is unable to resolve its deficiencies and reduce risk through your implementation of or failure to implement the plan;

(3) you have not completed evaluation for similar deficiencies within the previous 12 months; or

(4) a more restrictive enforcement action is not necessary to reduce risk.

(b) If we determine that you are not eligible for evaluation, we will consider imposing probation or an adverse action.

§745.8639. What requirements must I meet during a voluntary plan of action?

You must:

(1) correct your operation's deficiencies and reduce risk; and

(2) maintain compliance with all other Licensing statutes, rules, and minimum standards.

§745.8641. What requirements must I meet during the evaluation or probation period?

You must:

(1) comply with all of the conditions imposed by the corrective action plan;

(2) correct the deficiencies;

(3) unless you are an independent or agency foster family home, post the evaluation letter or the probation notice in a prominent place(s) near all public entrances; and

(4) maintain compliance with all other Licensing statutes, rules, and minimum standards.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. CORRECTIVE ACTIONS

40 TAC §745.8633, §745.8635

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

The repeals implement the HRC §42.042 and §42.0704.

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DIVISION 3. ADVERSE ACTIONS

40 TAC §§745.8649 - 745.8652, 745.8654, 745.8657, 745.8659

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

The amendments and new sections implement the HRC §42.042 and §42.0704.

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40 TAC §745.8651

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

The repeal implements the HRC §42.042 and §42.0704.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 5. MONETARY ACTIONS

40 TAC §745.8713

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.042 and §42.078(a-2).

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 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.401, 746.403, 746.605, 746.901, 746.1303, 746.1305, 746.1307, 746.1309, 746.1311, 746.3001, 746.3301, 746.3407, 746.3425, 746.3505, 746.5201, 746.5202, 746.5205, and 746.5207; new §746.3817 and §746.3819; and the repeal of §746.5203, in Chapter 746, concerning Minimum Standards for Child-Care Centers. The amendments to §§746.401, 746.403, 746.605, 746.1303, 746.1305, 746.1309, 746.1311, 746.3001, 746.3425, 746.5201, 746.5202, and 746.5205, and new §746.3819 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3663). The amendments to §§746.901, 746.1307, 746.3301, 746.3407, 746.3505, and 746.5207; new §746.3817; and the repeal of §746.5203 are adopted without changes to the proposed text and will not be republished.

The justification of the amendments, new rules and repeal is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact Licensed Child Care Centers. The new health and safety training requirements mandated by the Act include the following topics for orientation and annual training: (1) more robust emergency preparedness plans; (2) administering medication; (3) food allergies; (4) building and physical premises safety; (5) handling, storing, and disposing of hazardous materials; and (6) precautions in transporting children if the center transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for Licensed Child-Care Centers. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, including requiring operations to (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes are:

The amendments to §746.401: (1) adds a list of each child's food allergies that require an emergency plan; (2) updates the name of the *Parent Notification Poster,* and (3) makes other wording changes for consistency.

The amendment to §746.403 clarifies that for a list of each child's food allergies that require an emergency plan: (1) the center must post the list during all hours of operation where your prepare food and in each room where the child may spend time; (2) the posting must be in a place where employees may easily view the list, and if a parent requests it, the center must maintain the privacy of the child (for example, a clipboard hung on the wall with a cover sheet over the list); and (3) the center must ensure all caregivers and employees who prepare and serve food are aware of each child's food allergies. The amendment also deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.

The amendment to §746.605 adds a requirement for centers to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §746.901 updates a cite and makes the language consistent.

The amendments to §746.1303: (1) adds six topics that must be covered in the orientation of employees hired after September 1, 2016; (2) clarifies the wording to be consistent with the current wording of the operational policies rule; (3) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (4) requires centers to share the emergency preparedness plan with all employees.

The amendment to §746.1305 updates the existing language for a current training topic.

The amendment to §746.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §746.1309: (1) adds six topics that must be covered in the annual training of caregivers; (2) deletes a redundant paragraph about transportation safety training; and

(3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendments to §746.1311: (1) adds six topics that must be covered in the annual training for child-care center directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendment to §746.3001 adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; and deletes and outdated term.

The amendments to §746.3301: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §746.2805.

The amendment to §746.3407 requires a child-care center to use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §746.3425 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

The amendment to §746.3505 clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child.

New §746.3817 defines a food allergy emergency plan, including a list of foods a child is allergic to, possible symptoms, and what steps to take if there is an allergic reaction.

New §746.3819 requires: (1) a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional; and (2) the plan to be signed by the child's health care professional and a parent.

The amendment to §746.5201 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendments to §746.5202 adds to the requirements for an emergency preparedness plan to also include: (1) the staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the center where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

The repeal of §746.5203 is because all of the information is already included in §746.1303(4) and §746.507.

The amendment to §746.5205: (1) requires four practice sheltering drills for severe weather each year; (2) requires four practice lock-down drills for endangering persons each year; and (3) adds the "sheltering" and "lock-down" language for clarification.

The amendment to §746.5207 clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) there will be clarification regarding the health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

The proposed rules were published in the *Texas Register* on May 20, 2016. DFPS submitted rule changes for Chapter 744, Minimum Standards for School-Age and Before- and After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747 Minimum Standards for Child Care Homes. DFPS received approximately 31 comments regarding 41 rule changes. Many of the rule changes are intertwined with the same or similar topics across the chapters. For example, while the comments touched upon 41 different rules, the rules only related to 12 different topics. We received comments from Better Beginnings Children's Center, The Ginger Bread House, Adventure Discovery Centers, First Church Preschool at First Christian Church, Flamingo Island Preschool, Adventure Discovery Centers, Camp Fire First Texas, Dallas AEYC, UTA, Eastfield College, Caring Corner, Kids Only, Copperfield Church Weekday Preschool, and Adventure Discovery Centers. Most of the comments were from centers and related to Chapter 746, though the responses were fairly varied in relation to the topics. There was also a workgroup that met on April 5 and May 16, 2016, to discuss the recommended changes to the minimum standards. While both workgroup meetings were prior to the publication of the rules in the *Texas Register,* the rule process was too far along to modify the rules before publication. However, the comments from the workgroup have been treated as comments made during the public comment period. The workgroup commented on several rules. Most of the comments from home providers were related to the cost of background checks. Responses to comments are noted below.

Comments concerning §746.401: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a center post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing; One commenter applauded the new emphasis on food allergies. There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise parents could state a child has an undiagnosed allergy.

Response: The DFPS agrees with the commenters and rewrote the rule to clarify that: (1) the list only includes those food allergies that require an emergency plan; and (2) deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §746.403.

Comments concerning §746.403 and §746.605: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a center post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing.

Response concerning §746.403: DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that: (1) the list must be posted where the center prepares food and in each

room where the child may spend time; (2) the posting must be in a place easily viewed by employees, and if a parent requests it, the center must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over the list); and (3) the center must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

Response concerning §746.605: DFPS agrees with the commenters and deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §746.403.

Comments concerning §746.1303: The workgroup that met on 4/5/16 recommended moving the newly proposed six pre-service training topics in §746.1305 to this orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training.

Response: DFPS agrees with the commenter and has moved the six topics from §746.1305 to this orientation rule. Even though there was no comment on the issue, DFPS is also deleting the word "internal" from "procedures for reporting child abuse or neglect" at §746.1303(a)(3)(C) to eliminate any confusion that centers may create internal policies to limit or delegate reporting.

Comments concerning §746.1305: The workgroup that met on 4/5/16 recommended moving these newly proposed six pre-service training topics to §746.1303, the orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training.

Response: DFPS agrees with the commenter and has moved the six topics from this rule to §746.1303.

Comments concerning §746.1307: There was one commenter that did not believe anyone should be exempt from training.

Response: DFPS recommends that this rule be adopted with no changes. There are limited exemptions from pre-service training (two years prior experience or 24 hours of documented training). With the clarification, the exemptions are more appropriate. In addition, a Center may require more training and does not have to allow exemptions of their employees. In other words, a Center could require higher standards than these minimum standards.

Comments concerning §746.1309: Regarding allowing a 50% to 80% increase for self-instructional training, there were: (1) eight commenters (one of those commenters had an additional six co-signees) that were not in favor of this change because in their opinion the training registry may suffer; in person training promotes better understanding, is more effective, provides better guidance and practice; the small number of training hours and minimal education mandates a high quality and effective training; and self-instructional training (including individuals reading materials) is generally a lower quality of training; (2) one commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and (3) one commenter was in favor of the change.

Response concerning §746.1309 regarding allowing a 50% to 80% increase for self-instructional training: During the survey and the forums of the comprehensive review, there were eleven requests for a higher percentage of self-instructional hours due to high turnover, time, and costs. There were two requests to mandate that 50% of the training be conducted by individuals on the Texas Trainer Registry. Note: Many of the trainers on the registry offer self-instructional, web-based training.

DFPS understands that some training may not be of the highest quality, but that is true for both instructor-led and self-instructional training. The Agri-Life training on the other hand, has been widely praised as very good training, even though it is self-instructional. Most, if not all, professions are allowing web-based training and not mandating in-person training. Also, the 50% to 80% change was made to the child-care home minimum standards in 2012 with no noticeable increase in complaints regarding quality of training. The problems appear to be: (1) how to make sure training of any kind is quality training; and (2) caregivers simply reading materials or watching videos on their own have limited, value especially for newer caregivers.

DFPS is recommending an increase of 50% to 80% for the amount of annual training hours that may be obtained through self-instructional training, but making the following changes: (1) no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own; and (2) during the comprehensive review of Chapter 746 there will be further clarification that the directors must ensure that caregivers receive appropriate and quality training.

More comments concerning §746.1309: There was one comment that stated 24 hours of annual training was too low.

Response: The 24 hours of annual training is mandated by statute and cannot be changed.

More comments concerning §746.1309: There were two similar comments that wanted clarification on whether (1) this rule is requiring more or less training, but the commenter did say that the training seemed reasonable; and (2) the 24 hours of annual training was in addition to the 24 hours of pre-service training that is required.

Response: The change to this rule does not require additional hours of training, but does require additional curriculum topics to be covered within the current number of annual training hours. Also, §746.1313 already clarifies that in addition to the pre-service training, the 24 hours of annual training must be obtained within the first 12 months from the date of employment. Even though there were no comments on the issue, DFPS is also deleting the word "internal" from "procedures for reporting child abuse or neglect" at §746.1309(d)(3) to eliminate any confusion that a center may create internal policies to limit or delegate reporting.

Comments concerning §746.1311: Regarding allowing a 50% to 80% increase for self-instructional training, there were: (1) eight commenters (one of those commenters had an additional six co-signees) that were not in favor of this change because in their opinion the training registry may suffer; in person training promotes better understanding, is more effective, provides better guidance and practice; the small number of training hours and minimal education mandates a high quality and effective training; and self-instructional training (including individuals reading materials) is generally a lower quality of training; (2) one commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and (3) one commenter was in favor of the change.

Response: Based on the comments and responses that were made to §746.1309, DFPS is recommending an increase of 50% to 80% for the amount of annual training hours that may be obtained through self-instructional training, and no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their

own. Though there was no comment, DFPS is deleting the word "internal" before "procedures for reporting child abuse or neglect" at §746.1311(d)(3) to eliminate any confusion that a center may create internal policies to limit or delegate reporting.

No comments concerning §746.3001, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comments concerning §746.3425: The workgroup commented that they wanted further clarification on what "sealed" meant.

Response: DFPS agrees with the commenter and has clarified the term "sealed".

Comments concerning §746.3819: One commenter applauded the new emphasis on food allergies. There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise parents could state a child has an undiagnosed allergy.

Response: DFPS agrees with the commenters and has clarified that the food allergy must have been diagnosed by a health-care professional. DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §746.401 and §746.3001.

Comments concerning §746.5201: A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term.

Response: DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down".

Comments concerning §746.5202: One commenter supported the change to emergency preparedness plan and looking at active shooter scenarios. One commenter asked if car seats were required for relocation, because the costs and storage would be difficult, and they don't have buses. The commenter wanted the rule to be more specific.

Response: Based on the comment to §746.5201 DFPS has changed the term "sheltering" to "sheltering/lock-down". However, DFPS does not believe it would be beneficial to make this rule more specific. Because centers have varying capacity and are located in both urban and rural counties, it is important that centers have flexibility in establishing the emergency preparedness plans. For relocation, the important thing is to have a plan that is worked out in advance for how to relocate the children safely in an emergency. A center doesn't have to have a bus, just a plan on how the relocation will happen.

Comments concerning §746.5205: The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons, and adding drills for dangerous persons.

Response: DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and are requiring four drills for each, every year.

Comments not applicable: There were eight commenters that provided comments on rules that were not proposed nor are they out for public comment: (1) six commenters stated they were in favor of lowering child/caregiver ratios; (2) one commenter stated discrimination language needed to be beefed up over 5 different chapters, and provided quite a few comments on Chapter 749; and (3) one commenter had no comments that were forwarded.

Response: Since these comments were related to rules that were not out for public comment, DFPS cannot take any action.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §746.401, §746.403

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.401. What items must I post at my child-care center at all times?

You must post the following items:

(1) The child-care center's license;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice Keeping Children Safe;

(4) Your emergency evacuation and relocation diagram as specified in §746.5207 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(5) The activity plan for each group of children in the child-care center;

(6) The daily menu, including all snacks and meals served by the child-care center;

(7) The Licensing Parent Notification Poster;

(8) Telephone numbers specified in §746.405 of this title (relating to What telephone numbers must I post and where must I post them?);

(9) A list entitled "Current Employees." The list must be at least 8 1/2 inches by 11 inches in size, printed legibly, and must include each employee's first and last name;

(10) A list of each child's food allergies that require an emergency plan, as specified in §746.3819 of this title (relating to When must I have a food allergy emergency plan for a child?); and

(11) Any other Licensing notices with specific instructions to post the notice.

§746.403. When and where must these items be posted?

(a) Unless otherwise specified, the items specified in §746.401 of this title (relating to What items must I post at my child-care center at all times?) must be posted at all times, in a prominent and publicly accessible place where employees, parents, and others may easily view them.

(b) For a list of each child's food allergies that require an emergency plan:

(1) You must post the list during all hours of operation where you prepare food and in each room where the child may spend time;

(2) The posting must be in a place where employees may easily view the list, and if a parent requests it, you must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); and

(3) You must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

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 C. RECORD KEEPING
DIVISION 1. RECORDS OF CHILDREN

40 TAC §746.605

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to care:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the child-care center;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) A completed food allergy emergency plan for the child, if applicable.

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DIVISION 4. PERSONNEL RECORDS

40 TAC §746.901

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The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§746.1303, 746.1305, 746.1307, 746.1309, 746.1311

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.1303. What must orientation for employees at my child-care center include?

(a) Your orientation for employees must include at least the following:

(1) An overview of the minimum standards found in this chapter;

(2) An overview of your operational policies, including discipline and guidance practices and procedures for the release of children;

(3) An overview of your policy on the prevention, recognition, and reporting of child abuse and neglect, including:

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care center staff members, children, and parents;

(4) An overview of the procedures to follow in handling emergencies, which includes sharing the emergency preparedness plan with all employees. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The location and use of fire extinguishers and first-aid equipment.

(b) For employees you hire on or after September 1, 2016, your orientation must also cover the following areas:

(1) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(2) Preventing and responding to emergencies due to food or an allergic reaction;

(3) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(4) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(5) Precautions in transporting children if your center transports a child whose chronological or developmental age is younger than nine years old.

§746.1305. What must be covered in pre-service training for caregivers?

(a) Pre-service training for caregivers must cover the following areas:

(1) Developmental stages of children;

(2) Age-appropriate activities for children;

(3) Positive guidance and discipline of children;

(4) Fostering children's self-esteem;

(5) Supervision and safety practices in the care of children;

(6) Positive interaction with children; and

(7) Preventing and controlling the spread of communicable diseases, including immunizations.

(b) If a caregiver provides care for children younger than 24 months of age, one hour of that caregiver's pre-service training must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

§746.1309. How many clock hours of annual training must be obtained by caregivers?

(a) Each caregiver must obtain at least 24 clock hours of training each year relevant to the age of the children for whom the caregiver provides care.

(b) The 24 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, CPR and first aid training, transportation safety training, and high school child-care work-study classes.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child abuse and neglect, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(e) If a caregiver provides care for children younger than 24 months of age, one clock hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(f) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and controlling and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(g) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition and activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);

(9) Planning developmentally appropriate learning activities;

(10) Observation and assessment;

(11) Attachment and responsive care giving; and

(12) Minimum standards and how they apply to the caregiver.

(h) No more than 80% of the annual training hours may be obtained through self-instructional training. No more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

§746.1311. How many clock hours of training must my child-care center director obtain each year?

(a) The child-care center director must obtain at least 30 clock hours of training each year relevant to the age of the children for whom the child-care center provides care.

(b) The 30 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, CPR and first aid training, and transportation safety training.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum;

(4) Teacher-child interaction; and

(5) Serving children with special care needs.

(d) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child abuse and neglect, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(e) If the center provides care for children younger than 24 months of age, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(f) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(g) A director with:

(1) Five or fewer years of experience as a designated director of a child-care center must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or

(2) More than five years of experience as a designated director of a child-care center must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(h) The remainder of the 30 clock hours of annual training must be selected from the training topics specified in §746.1309(g) of this title (relating to How many clock hours of annual training must be obtained by caregivers?).

(i) The director may obtain clock hours or CEUs from the same sources as caregivers.

(j) Training hours may not be earned for presenting training to others.

(k) No more than 80% of the annual training hours may be obtained through self-instructional training. No more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

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SUBCHAPTER N. FIELD TRIPS

40 TAC §746.3001

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3001. May I take children away from my child-care center for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the child-care center. Anytime you take a child on a field trip, you must comply with each of the following requirements:

(1) You must have signed permission from the parent to take a child on a field trip, including permission to transport the child, if applicable;

(2) One or more caregivers must carry emergency medical consent forms and emergency contact information for each child on the field trip;

(3) Caregivers must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children;

(4) Caregivers must have a first-aid kit immediately available on field trips;

(5) Caregivers must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) Each child must wear a shirt, nametag, or other identification listing the name of the child-care center and the child-care center's telephone number;

(7) Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, child-care center tee-shirt, brightly-colored clothes, or other easily spotted identification;

(8) Each caregiver supervising a field trip must have transportation available, a communication device such as a cellular phone or two-way radio available, or an alternate plan for transportation at the field-trip location in case of emergency; and

(9) Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

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 Q. NUTRITION AND FOOD SERVICE

40 TAC §746.3301

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3407, §746.3425

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3425. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

(1) Using disposable, nonporous gloves;

(2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;

(3) Discarding all other gloves immediately after one use; and

(4) Washing hands after using and disposing of the gloves.

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DIVISION 2. DIAPER CHANGING

40 TAC §746.3505

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The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 2. MEDICATIONS AND MEDICAL ASSISTANCE

40 TAC §746.3817, §746.3819

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

governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3819. When must I have a food allergy emergency plan for a child?

You must have a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional. The child's heath care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

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 W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§746.5201, 746.5202, 746.5205, 746.5207

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.5201. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation, relocation, and sheltering/lock-down. The plan addresses the types of responses to emergencies most likely to occur in your area, including:

(1) An evacuation of the children and caregivers to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering and lock-down of children and caregivers within the center to temporarily protect them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§746.5202. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering/lock-down of children including:

(A) The first responsibility of staff in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including specific procedures for evacuating and relocating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) The staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the center where children should gather;

(D) An emergency evacuation and relocation diagram as outlined in §746.5207 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(E) Name and address of the alternate shelter away from the center you will use as needed; and

(F) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter.

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents and us; and

(3) How your staff will evacuate and relocate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The child tracking system information for children in care;

(4) How your staff will continue to care for the children until each child has been released; and

(5) How you will reunify the children with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

§746.5205. Must I practice my emergency preparedness plan?

Yes, the following components of your center's emergency preparedness plan must be practiced as specified below:

(1) You must practice a fire drill every month. The children must be able to safely exit the building within three minutes;

(2) You must practice a sheltering drill for severe weather at least four times in a calendar year;

(3) You must practice a lock-down drill for a volatile or endangering person on the premises or in the area at least four times in a calendar year; and

(4) You must document these drills, including the date of the drill, time of the drill, and length of the time for the evacuation, sheltering, or lock-down to take place.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
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Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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40 TAC §746.5203

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

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.401, 747.605, 747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1401, 747.1403, 747.2901, 747.3101, 747.3203, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; new §§747.1301, 747.1303, 747.1305, 747.1307, 747.3617, and 747.3619; and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 in Chapter 747, concerning Minimum Standards for Child-Care Homes. The amendments to §§747.401, 747.605, 747.1401, 747.2901, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; and new §747.1301 and §747.3619 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3672). The amendments to §§747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1403, 747.3101, and 747.3203; and new §§747.1303, 747.1305, 747.1307, and 747.3617; and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 are adopted without changes to the proposed text and will not be republished.

The purpose of the amendments, new sections and repeals is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact Licensed Child-Care Homes (LCCHs) and Registered Child-Car Homes (RCCHs). The new health and safety training requirements mandated by the Act include the following topics for orientation and annual training: (1) more robust emergency preparedness plans; (2) administering medication; (3) food allergies; (4) building and physical premises safety; and (5) handling, storing, and disposing of hazardous materials.

There are also some topics required by the Act that are already required in annual training, but are not currently required in the orientation for LCCHs and RCCHs. The new and additional health and safety training requirements for LCCHs and RCCHs are: (1) recognizing and preventing shaken baby syndrome; (2) safe sleep practices; (3) understanding early childhood brain development; and (4) precautions in transporting children if the home transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for LCCHs and RCCHs. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, including requiring homes to: (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the home, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes are:

The amendment to §747.401 for food allergies that require an emergency plan requires a home to either: (1) post the list of each child's food allergies in a prominent place during all hours of operation, and if a parent requests it, the home must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); or (2) ensure all caregivers and employees who prepare and serve food are aware of each child's food allergies.

The amendment to §747.605 adds a requirement for homes to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §747.901 updates a cite and makes the language consistent.

The amendment to §747.1007 requires an additional qualification for a primary caregiver of a RCCH to include proof of training on ten new topics.

The amendment to §747.1107 requires an additional qualification for a primary caregiver of a LCCH to include proof of training on ten new topics.

The repeal of §747.1109 deletes an outdated grandfather rule.

The amendment to §747.1119 corrects a cite.

The repeal of §747.1301 moves the content of this rule to new §747.1303.

New §747.1301: (1) includes the content of previous §747.1305; (2) clarifies the wording to be consistent with the current wording of the operational policies rule; (3) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (4) adds nine new orientation topics for caregivers.

The repeal of §747.1303 moves the content of this rule to new §747.1307.

New §747.1303 includes the content of previous §747.1301.

The repeal of §747.1305 moves the content of this rule to new §747.1301.

New §747.1305: (1) includes the content of previous §747.1307; (2) adds six topics that must be covered in the annual training of caregivers; and (3) deletes a redundant paragraph about transportation safety training.

The repeal of §747.1307 moves the content of this rule to new §747.1305, with one minor modification.

New §747.1307: (1) includes most of the content of previous §747.1303 with one minor modification; (2) deletes the pre-application course content from previous §747.1303 because it is already required at §747.1007; and (3) adds a reference to the transportation safety training requirement.

The amendment to §747.1309: (1) adds six topics that must be covered in the annual training of primary caregivers; and (2) deletes a redundant paragraph about transportation safety training.

The amendment to §747.1401 updates some cites; replaces "physician" with "health-care professional"; and clarifies the language in the rule.

The amendment to §747.1403 deletes a reference to a rule and spells out all but one of the requirements of the deleted reference to include: (1) an overview of the home's policies; (2) an overview of child abuse and neglect, including reporting; (3) the procedures to follow in an emergency; and (4) the location and use of fire extinguishers and first-aid equipment. The deleted requirement for an overview of the minimum standards is no longer needed, because this new rule only applies to household members.

The repeal of §747.2713 is necessary because the information is already included in §747.503, §747.1301(2), and §747.1403(1).

The amendment to §747.2901: (1) adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; (2) makes the language consistent; and (3) deletes an outdated term.

The amendment to §747.3101: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §747.2705.

The amendment to §747.3203 clarifies that a child-care home must use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §747.3221 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

The amendment to §747.3307 clarifies that a child's soiled clothing must be placed in a tied, sealed, or otherwise closed plastic bag and be sent home with the child.

New §747.3617 defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction.

New §747.3619 requires: (1) a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional; and (2) the plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.

The amendment to §747.5001 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendment to §747.5003 adds to the requirements for the emergency prepared plan to also include: (1) staff's responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the home where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

The amendment to §747.5005: (1) requires four practice sheltering drills for severe weather each year; (2) requires four practice lock-down drills for endangering persons each year; and (3) adds the "sheltering" language for clarification.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) there will be clarification regarding health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

The proposed rules were published in the *Texas Register* on May 20, 2016. DFPS submitted rule changes for Chapter 744, Minimum Standards for School-Age and Before- and After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747, Minimum Standards for Child Care Homes. DFPS received approximately 31 comments regarding 41 rule changes. Many of the rule changes are intertwined with the same or similar topics across the chapters. For example, while the comments touched upon 41 different rules, the rules only related to 12 different topics. We received comments from Better Beginnings Children's Center, The Ginger Bread House, Adventure Discovery Centers, First Church Preschool at First Christian Church, Flamingo Island Preschool, Adventure Discovery Centers, Camp Fire First Texas, Dallas AEYC, UTA, Eastfield College, Caring Corner, Kids Only, Copperfield Church Weekday Preschool, and Adventure Discovery Centers. Most of the comments were from centers and related to Chapter 746, though the responses were fairly varied in relation to the topics. There was also a workgroup that met on April 5 and May 16, 2016, to discuss the recommended changes to the minimum standards. While both workgroup meetings were prior to the publication of the rules in the *Texas Register,* the rule process was too far along to modify the rules before publication. However, the comments from the workgroup have been treated as comments made during the public comment period. The workgroup commented on several rules. Most of the comments from home providers were related to the cost of background checks. Responses to comments are noted below.

Comments concerning §747.401: One commenter thanked DFPS for addressing food allergies and said she has seen excellent methods of posting food allergies.

Response: Based on the comments to a similar rule in Chapter 746 (§746.403) and the fact that Licensed and Registered Homes have substantially less employees and are smaller in size, DFPS is clarifying that: (1) the list only includes those food allergies that require an emergency plan; (2) deletes the parent's permission requirement; and (3) requires the home to either post the list in a prominent place during all hours of operation, but if a parent requests it, you must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over it), or ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

No comments concerning §747.605, however, based on the comments to a similar rule in Chapter 746 (§746.403) DFPS deletes the parent's permission requirement, but §747.401 allows a parent to request that the home protect the privacy of their child.

Comments concerning §747.1007 and §747.1107: The commenter stated that caregivers need more than a high school diploma.

Response: DFPS recommends that this rule be adopted with no changes. DFPS was not recommending changes to the high school diploma requirements, but adding federal mandated training requirements. DFPS is recommending no changes because: (1) this change adds mandated training requirements; (2) current rules allow for a student in a child-care-related career program to develop on the job skills in the center with teacher oversight and instruction. To require higher than a high school diploma would eliminate this program, which is able to provide enhanced training and develop long term staff; (3) there are required hours of annual training for all caregivers to further staff development; and (4) increased education will require a significant increase in costs for providers, and ultimately the parents. Note: The commenter may have also been commenting on Chapters 744 and/or 746, however, the rules related to diploma requirements in those chapters were not proposed nor are they open for public comment.

No comments concerning §747.1301, however, DFPS is deleting the word "internal" from "procedures for reporting child abuse or neglect" at §747.1301(3)(C) to eliminate any confusion that a home may create internal policies to limit or delegate reporting.

Comments concerning §747.1401: One commenter stated "physician" should be changed to "health-care professional" to be more inclusive of advanced practice nurses.

Response: DFPS agrees with the commenter and has made this change.

No comments concerning §747.2901, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comments concerning §747.3221: The workgroup commented that they wanted further clarification on what "sealed" meant.

Response: DFPS agrees with the commenter and has clarified the term "sealed".

Comments concerning §747.3307: The workgroup commented that they wanted further clarification on what "sealed" meant. Another commenter wanted to be able to wash soiled clothes to be more home/parent friendly.

Response: DFPS agrees with the commenter and has clarified the term "sealed". DFPS does not agree with washing soiled clothes because of the high possibility of infection and cross contamination.

No comments concerning §747.3619, however, based on the comments related to a similar rule in Chapter 746 (§746.3819), DFPS clarified that a child's food allergy must be diagnosed by a health-care professional. DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §747.401 and §747.2901.

Comments concerning §747.5001: A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term.

Response: DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down".

No comments concerning §747.5003, however, based on the comment to §747.5001, DFPS has changed the term "sheltering" to "sheltering/lock-down".

Comments concerning §747.5005: The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons and adding drills for dangerous persons.

Response: DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and is requiring four drills for each, every year.

Comments not applicable: There were eight commenters that provided comments on rules that were not proposed nor are they out for public comment: (1) six commenters stated they were in favor of lowering child/caregiver ratios; (2) one commenter

stated discrimination language needed to be beefed up over 5 different chapters, and provided quite a few comments on Chapter 749; and (3) one commenter had no comments that were forwarded.

Response: Since these comments were related to rules that were not out for public comment, DFPS cannot take any action.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 3. REQUIRED POSTINGS

40 TAC §747.401

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.401. What items must I post at my child-care home during hours of operation?

(a) You must post the following in a prominent and publicly accessible place where parents and others may easily view them during all hours of operation:

(1) The child-care home's license or registration certificate;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice *Keeping Children Safe;*

(4) Telephone numbers specified in this division;

(5) A list of your employees, as defined in §745.21 of this title (relating to What do the following word and terms mean when used in this chapter?). The list must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name; and

(6) Any other Licensing notices requiring posting.

(b) For food allergies that require an emergency plan, you must either:

(1) Post the list of each child's food allergies in a prominent place during all hours of operation, and if a parent requests it, you must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); or

(2) Ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

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 C. RECORD KEEPING
DIVISION 1. RECORDS OF CHILDREN

40 TAC §747.605

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to care:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the child-care home;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;

(14) The name and telephone number of the school a school-age child attends;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) A completed food allergy emergency plan for the child, if applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.901

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER D. PERSONNEL

DIVISION 1. PRIMARY CAREGIVER OF A REGISTERED CHILD-CARE HOME

40 TAC §747.1007

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. PRIMARY CAREGIVER OF A LICENSED CHILD-CARE HOME

40 TAC §747.1107, §747.1119

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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40 TAC §747.1109

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

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§747.1301, 747.1303, 747.1305, 747.1307

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

The repeals implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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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40 TAC §§747.1301, 747.1303, 747.1305, 747.1307, 747.1309

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

The new sections and amendment implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1301. What must orientation for caregivers at my child-care home include?

Orientation for caregivers at your child-care home must include at least the following:

(1) An overview of the minimum standards found in this chapter;

(2) An overview of your operational policies, including discipline and guidance practices and procedures for the release of children, and the provision of copies of these practices and procedures;

(3) An overview regarding the prevention, recognition, and reporting of child abuse and neglect, including:

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care staff, children, and parents;

(4) An overview of your home's Emergency Preparedness Plan;

(5) Locating and using fire extinguishers and first-aid equipment;

(6) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(7) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(8) Understanding early childhood brain development;

(9) Preventing and controlling the spread of communicable diseases, including immunizations;

(10) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(11) Preventing and responding to emergencies due to food or an allergic reaction;

(12) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(13) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(14) Precautions in transporting children if your child-care home transports a child whose chronological or developmental age is younger than nine years old.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2016.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2016
Proposal publication date: May 20, 2016
For further information, please call: (512) 438-5559

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DIVISION 5. HOUSEHOLD MEMBERS, VOLUNTEERS, AND PEOPLE WHO OFFER CONTRACTED SERVICES

40 TAC §747.1401, §747.1403

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1401. Must members of my household meet specific qualifications?

(a) For each household member that you are required to request a background check on, as specified in Subchapter F of Chapter 745 of this title (relating to Background Checks), the member must:

(1) Provide a copy of a health card or health-care professional's statement verifying they are free of active tuberculosis if required by the regional Texas Department of State Health Services or local health authority; and

(2) Complete orientation to your child-care home as specified in §747.1403 of this title (relating to What must orientation for household members at my child-care home include?).

(b) Any household member who is counted in the child/caregiver ratio on more than ten separate occasions in one training year, whether paid or unpaid, must meet the minimum qualifications for assistant caregivers and training requirements for caregivers as specified in this subchapter.

(c) Any household member who is left in charge of the child-care home in the absence of the primary caregiver, whether paid or unpaid, must meet the minimum qualifications for a substitute caregiver and training requirements for caregivers specified in this subchapter.

(d) A household member who is 14 years old or older, but is not regularly or frequently staying or working at the child-care home while children are in care, is not required to meet the qualifications or training requirements for caregivers specified in this subchapter, but must never be left alone with a child in care.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
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SUBCHAPTER L. DISCIPLINE

40 TAC §747.2713

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

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
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For further information, please call: (512) 438-5559

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SUBCHAPTER N. FIELD TRIPS

40 TAC §747.2901

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.2901. May I take children away from my child-care home for field trips?

(a) Yes. You must ensure the children's safety on field trips and excursions and during any transportation provided by the child-care home. Anytime you take a child
on a field trip you must comply with each of the following requirements:

(1) You must have signed permission from the parent to take a child away from your child-care home, including permission to transport the child, if applicable;

(2) You must carry emergency medical consent forms and emergency contact information for each child on the field trip;

(3) You must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children on the field trip;

(4) You must have a first-aid kit immediately available on all field trips;

(5) You must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) Each child must wear a shirt, name tag, or other identification listing the name and telephone number of the child-care home;

(7) Each caregiver must be easily identifiable by all children on the field trip, by wearing a hat, specialized tee-shirt, brightly colored clothes, or other easily spotted identification;

(8) Each caregiver supervising a field trip must have transportation available, a communication device such as a cellular phone or two-way radio available, or an alternate plan for transportation at the field trip location in case of emergency; and

(9) You must ensure that a caregiver trained in CPR and first aid with rescue breathing and choking is present on the field trip.

(b) A walk around the caregiver's neighborhood must comply only with paragraphs (2), (5) and (9) of subsection (a) 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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Trevor Woodruff
General Counsel
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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §747.3101

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
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For further information, please call: (512) 438-5559

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §747.3203, §747.3221

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3221. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes, caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

(1) Using disposable, nonporous gloves;

(2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;

(3) Discarding all other gloves immediately after one use; and

(4) Washing your hands with soap and running water after using and disposing of the gloves.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
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DIVISION 2. DIAPER CHANGING

40 TAC §747.3307

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

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3307. What must I do to prevent the spread of germs when diapering children?

(a) You must wash your hands after each diaper change. Refer to §747.3215 of this title (relating to How must children and caregivers wash their hands?).

(b) You must wash the infant's hands or see that the child's hands are washed after each diaper change. Refer to §747.3217 of this title (relating to How must I wash an infant's hands?).

(c) If you use disposable gloves, you must discard them after each diaper change and wash your hands as specified in §747.3215 of this title.

(d) You must cover containers used for soiled diapers or keep them in a sanitary manner, such as placing soiled diapers in sealed bags.

(e) You must sanitize the diapering surface after each use, as specified in §747.3205 of this title (relating to What does Licensing mean when it refers to "sanitizing"?), or use a clean, disposable covering on the diapering surface that must be changed after each use.

(f) You must place soiled clothing in a tied, sealed, or otherwise closed plastic bag to be sent home with the child.

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 S. SAFETY PRACTICES
DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §747.3617, §747.3619

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

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3619. When is this plan required?

A food allergy emergency plan is required for each child with a known food allergy that has been diagnosed by a health-care professional. The child's health care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§747.5001, 747.5003, 747.5005

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

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.5001. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and your home's readiness with respect to emergency evacuation, relocation, and sheltering/lock-down. The plan addresses the types of responses to emergencies most likely to occur in your area including:

(1) An evacuation of your home to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering and lock-down of children and caregivers within your home to temporarily protect them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§747.5003. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering/lock-down of children, including:

(A) Your first responsibility in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all household members, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including specific procedures for evacuating or relocating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) An emergency evacuation and relocation diagram as outlined in §747.5007 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(D) The caregivers' responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location in your home where children should gather;

(E) Name and address of the alternate shelter away from your home you will use as needed; and

(F) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter;

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, and health department), parents, and us;

(3) How you will evacuate and relocate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The attendance record information for children in care at the time of the emergency;

(4) How you will continue to care for the children until each child has been released; and

(5) How you will reunify the children with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

§747.5005. Must I practice my emergency preparedness plan?

Yes, the following components of your home's emergency preparedness plan must be practiced as follows:

(1) You must practice a fire drill every month. The children must be able to safely exit the child-care home within three minutes; and

(2) You must practice a sheltering drill for severe weather at least four times in a calendar year; and

(3) You must practice a lock-down drill for a volatile or endangering person on the premises or in the area at least four times in a calendar year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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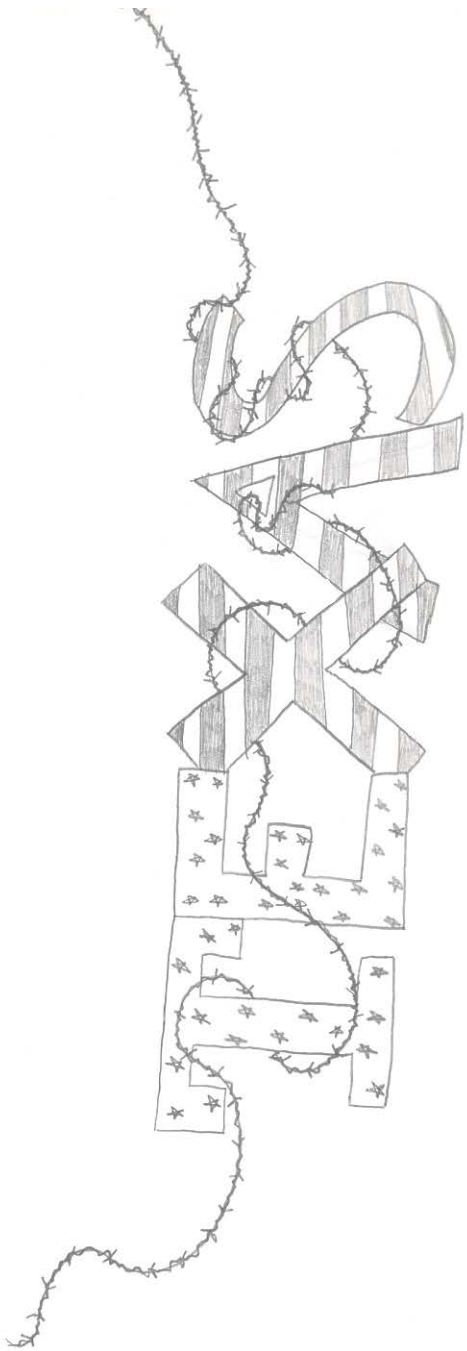

REVIEW OF AGENCY RULES

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

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 87, concerning Deferred Compensation, in accordance with Chapter 609 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, September 19, 2016, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201603930
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: August 3, 2016

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Trey Pardue

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §230.21(e)

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Art			
§233.10	Art: Early Childhood-Grade 12	178 Art EC-12 Texas Examinations of Educator Standards (TExES)	160 PPR EC-12 TExES
Bilingual Education			
§233.6	Bilingual Generalist: Early Childhood-Grade 6	192 Bilingual Generalist EC-6 TExES and 190 Bilingual Target Language Proficiency Test (BTLPT) – Spanish TExES	160 PPR EC-12 TExES
§233.6	Bilingual Generalist: Grades 4-8	119 Bilingual Generalist 4-8 TExES and 190 BTLPT – Spanish TExES	160 PPR EC-12 TExES
§233.6	Bilingual Education Supplemental: Spanish	164 Bilingual Education Supplemental TExES and 190 BTLPT – Spanish TExES	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: American Sign Language	164 Bilingual Education Supplemental TExES and 184 American Sign Language (ASL) EC-12 TExES and 073 Texas Assessment of Sign Communications-American Sign Language (TASC-ASL)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Arabic	164 Bilingual Education Supplemental TExES and American Council for the Teaching of Foreign Languages (ACTFL) 614 Oral Proficiency Interview (OPI) – Arabic and 615 Writing Proficiency Test (WPT) – Arabic	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Bilingual Education (continued)			
§233.6	Bilingual Education Supplemental: Chinese	164 Bilingual Education Supplemental TExES and ACTFL 618 OPI – Chinese (Mandarin) and 619 WPT – Chinese (Mandarin)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Japanese	164 Bilingual Education Supplemental TExES and ACTFL 616 OPI – Japanese and 617 WPT – Japanese	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Vietnamese	164 Bilingual Education Supplemental TExES and ACTFL 620 OPI – Vietnamese and 621 WPT – Vietnamese	Not Applicable: Not a Stand-alone Certificate
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8-12	141 Computer Science 8-12 TExES	160 PPR EC-12 TExES
§233.5	Technology Applications: Early Childhood-Grade 12	142 Technology Applications EC-12 TExES	160 PPR EC-12 TExES
§233.5	Technology Applications: Grades 8-12	139 Technology Applications 8-12 TExES	160 PPR EC-12 TExES
Counselor			
§239.20	School Counselor: Prekindergarten-Grade 12	152 School Counselor EC-12 TExES	Not Applicable: Not an Initial Certificate
Dance			
§233.10	Dance: Grades 8-12	179 Dance 8-12 TExES	160 PPR EC-12 TExES
Educational Diagnostician			
§239.84	Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
English Language Arts and Reading			
§233.3	English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES	160 PPR EC-12 TExES
§233.3	English Language Arts and Reading: Grades 7-12	231 English Language Arts and Reading 7-12 TExES	160 PPR EC-12 TExES
§233.3	English Language Arts and Reading/Social Studies: Grades 4-8	113 English Language Arts and Reading/ Social Studies 4-8 TExES	160 PPR EC-12 TExES
§239.93	Reading Specialist: Prekindergarten-Grade 12	151 Reading Specialist EC-12 TExES	Not Applicable: Not an Initial Certificate
English as a Second Language			
§233.7	English as a Second Language Generalist: Early Childhood-Grade 6	193 English as a Second Language Generalist EC-6 TExES	160 PPR EC-12 TExES
§233.7	English as a Second Language Generalist: Grades 4-8	120 English as a Second Language Generalist 4-8 TExES	160 PPR EC-12 TExES
§233.7	English as a Second Language Supplemental	154 English as a Second Language Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
Generalist			
§233.2	Generalist: Early Childhood-Grade 6	191 Generalist EC-6 TExES	160 PPR EC-12 TExES
§233.2	Generalist: Grades 4-8	111 Generalist 4-8 TExES	160 PPR EC-12 TExES
§233.2	Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES	160 PPR EC-12 TExES
§233.2	Core Subjects: Grades 4-8	211 Core Subjects 4-8 TExES	160 PPR EC-12 TExES
Gifted and Talented			
§233.9	Gifted and Talented Supplemental	162 Gifted and Talented TExES	Not Applicable: Not a Stand-alone Certificate
Health			
§233.11	Health: Early Childhood-Grade 12	157 Health Education EC-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Journalism			
§233.3	Journalism: Grades 8-12	156 Journalism 8-12 TExES	160 PPR EC-12 TExES
§233.3	Journalism: Grades 7-12	256 Journalism 7-12 TExES	160 PPR EC-12 TExES
Languages Other Than English			
§233.15	American Sign Language: Early Childhood-Grade 12	184 ASL EC-12 TExES and 073 TASC-ASL	160 PPR EC-12 TExES
§233.15	Arabic: Early Childhood-Grade 12	ACTFL 605 OPI – Arabic and 600 WPT – Arabic	160 PPR EC-12 TExES
§233.15	Chinese: Early Childhood-Grade 12	ACTFL 606 OPI – Chinese (Mandarin) and 601 WPT – Chinese (Mandarin)	160 PPR EC-12 TExES
§233.15	French: Early Childhood-Grade 12	610 Languages Other Than English (LOTE) French EC-12 TExES	160 PPR EC-12 TExES
§233.15	German: Early Childhood-Grade 12	611 LOTE German EC-12 TExES	160 PPR EC-12 TExES
§233.15	Hindi: Early Childhood-Grade 12	ACTFL 622 OPI – Hindu and 623 WPT – Hindu	160 PPR EC-12 TExES
§233.15	Italian: Early Childhood-Grade 12	ACTFL 624 OPI – Italian and 625 WPT – Italian	160 PPR EC-12 TExES
§233.15	Japanese: Early Childhood-Grade 12	ACTFL 607 OPI – Japanese and 602 WPT – Japanese	160 PPR EC-12 TExES
§233.15	Latin: Early Childhood-Grade 12	612 LOTE Latin EC-12 TExES	160 PPR EC-12 TExES
§233.15	Russian: Early Childhood-Grade 12	ACTFL 608 OPI – Russian and 603 WPT – Russian	160 PPR EC-12 TExES
§233.15	Spanish: Early Childhood-Grade 12	613 LOTE Spanish EC-12 TExES	160 PPR EC-12 TExES
§233.15	Turkish: Early Childhood-Grade 12	ACTFL 626 OPI – Turkish and 627 WPT – Turkish	160 PPR EC-12 TExES
§233.15	Vietnamese: Early Childhood-Grade 12	ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Librarian			
§239.60	School Librarian: Prekindergarten-Grade 12	150 School Librarian EC-12 TExES	Not Applicable: Not an Initial Certificate
Master Teacher			
§239.102	Master Mathematics Teacher Certificate: Early Childhood-Grade 4	087 Master Mathematics Teacher EC-4 Texas Examinations for Master Teachers (TExMaT)	Not Applicable: Not an Initial Certificate
§239.102	Master Mathematics Teacher Certificate: Grades 4-8	088 Master Mathematics Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate
§239.102	Master Mathematics Teacher Certificate: Grades 8-12	089 Master Mathematics Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.101	Master Reading Teacher Certificate: Prekindergarten-Grade 12	085 Master Reading Teacher EC-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.103	Master Technology Teacher Certificate	086 Master Technology Teacher EC-12 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher Certificate: Early Childhood-Grade 4	090 Master Science Teacher EC-4 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher Certificate: Grades 4-8	091 Master Science Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate
§239.104	Master Science Teacher Certificate: Grades 8-12	092 Master Science Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate
Mathematics and Science			
§233.4	Mathematics: Grades 4-8	115 Mathematics 4-8 TExES	160 PPR EC-12 TExES
§233.4	Science: Grades 4-8	116 Science 4-8 TExES	160 PPR EC-12 TExES
§233.4	Mathematics/Science: Grades 4-8	114 Mathematics/ Science 4-8 TExES	160 PPR EC-12 TExES
§233.4	Mathematics: Grades 7-12	235 Mathematics 7-12 TExES	160 PPR EC-12 TExES
§233.4	Science: Grades 7-12	236 Science 7-12 TExES	160 PPR EC-12 TExES
§233.4	Life Science: Grades 7-12	238 Life Science 7-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Mathematics and Science (continued)			
§233.4	Physical Science: Grades 6-12	237 Physical Science 6-12 TExES	160 PPR EC-12 TExES
§233.4	Physics/Mathematics: Grades 8-12	143 Physics/ Mathematics 8-12 TExES	160 PPR EC-12 TExES
§233.4	Physics/Mathematics: Grades 7-12	243 Physics/ Mathematics 7-12 TExES	160 PPR EC-12 TExES
§233.4	Mathematics/Physical Science/Engineering: Grades 8-12	174 Mathematics/ Physical Science/ Engineering 8-12 TExES	160 PPR EC-12 TExES
§233.4	Mathematics/Physical Science/Engineering: Grades 6-12	274 Mathematics/ Physical Science/ Engineering 6-12 TExES	160 PPR EC-12 TExES
§233.4	Chemistry: Grades 7-12	240 Chemistry 7-12 TExES	160 PPR EC-12 TExES
Music			
§233.10	Music: Early Childhood-Grade 12	177 Music EC-12 TExES	160 PPR EC-12 TExES
Physical Education			
§233.12	Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES	160 PPR EC-12 TExES
Principal and Superintendent			
§241.20	Principal Certificate	068 Principal TExES	Not Applicable: Not an Initial Certificate
§242.20	Superintendent Certificate	195 Superintendent TExES	Not Applicable: Not an Initial Certificate
Social Studies			
§233.3	Social Studies: Grades 4-8	118 Social Studies 4-8 TExES	160 PPR EC-12 TExES
§233.3	Social Studies: Grades 7-12	232 Social Studies 7-12 TExES	160 PPR EC-12 TExES
§233.3	History: Grades 7-12	233 History 7-12 TExES	160 PPR EC-12 TExES
Speech Communications			
§233.3	Speech: Grades 7-12	129 Speech 7-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Special Education			
§233.8	Special Education: Early Childhood-Grade 12	161 Special Education EC-12 TExES	160 PPR EC-12 TExES
§233.8	Special Education Supplemental	163 Special Education Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12	181 Deaf and Hard of Hearing EC-12 TExES and 072 TASC or 073 TASC-ASL (required for assignment but not for certification)	160 PPR EC-12 TExES
§233.8	Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12	182 Visually Impaired TExES and 183 Braille TExES	Not Applicable: Not a Stand-alone Certificate
Theatre			
§233.10	Theatre: Early Childhood-Grade 12	180 Theatre EC-12 TExES	160 PPR EC-12 TExES
Career and Technical Education			
§233.13	Technology Education: Grades 6-12	171 Technology Education 6-12 TExES	160 PPR EC-12 TExES
§233.13	Family and Consumer Sciences, Composite: Grades 6-12	American Association of Family and Consumer Sciences (AAFCS) 200 Family and Consumer Sciences – Composite Examination	160 PPR EC-12 TExES
§233.13	Human Development and Family Studies: Grades 8-12	AAFCS 202 Human Development and Family Studies Concentration Examination	160 PPR EC-12 TExES
§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8-12	AAFCS 201 Hospitality, Nutrition, and Food Science Concentration Examination	160 PPR EC-12 TExES
§233.13	Agricultural Science and Technology: Grades 6-12	172 Agricultural Science and Technology 6-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Test(s)	Pedagogy and Professional Responsibilities (PPR) Requirements
Career and Technical Education (continued)			
§233.13	Agriculture, Food, and Natural Resources: Grades 6-12	272 Agriculture, Food, and Natural Resources 6-12 TExES	160 PPR EC-12 TExES
§233.13	Business Education: Grades 6-12	176 Business Education 6-12 TExES	160 PPR EC-12 TExES
§233.13	Business and Finance: Grades 6-12	276 Business and Finance 6-12 TExES	160 PPR EC-12 TExES
§233.14	Marketing Education: Grades 8-12	175 Marketing Education 8-12 TExES	160 PPR EC-12 TExES
§233.14	Marketing: Grades 6-12	275 Marketing 6-12 TExES	160 PPR EC-12 TExES
§233.14	Health Science Technology Education: Grades 8-12	173 Health Science Technology Education 8-12 TExES	160 PPR EC-12 TExES
§233.14	Health Science: Grades 6-12	273 Health Science 6-12 TExES	160 PPR EC-12 TExES
§233.14	Trade and Industrial Education: Grades 8-12	Not Applicable	170 Pedagogy and Professional Responsibilities for Trade and Industrial Education 8-12 TExES
§233.14	Trade and Industrial Education: Grades 6-12	Not Applicable	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES

Figure: 22 TAC §577.15

(a) APPLICATION FOR INITIAL LICENSE

Type of License Application	Total Fee
Veterinary Regular License	$515
Veterinary Special License	$575
Veterinary Provisional License	$600
Veterinary Temporary License	$200
Equine Dental Provider License	$100
Veterinary Technician License	$50

(b) LICENSE RENEWALS.

(1) Current License Renewals

Type Of License	Board Fees
Veterinary Regular License	$166.85
Veterinary Special License	$181.85
Veterinary Inactive License	$105
Equine Dental Provider License	$65
Equine Dental Provider Inactive License	$55
Veterinary Technician Regular License	$35
Veterinary Technician Inactive License	$25

(2) Expired License Renewals – Less Than 90 Days Delinquent

Type Of License	Board Fees
Veterinary Regular License	$241.85
Veterinary Special License	$266.85
Veterinary Inactive License	$155
Equine Dental Provider License	$95
Equine Dental Provider Inactive License	$80
Veterinary Technician Regular License	$50
Veterinary Technician Inactive License	$35

(3) Expired License Renewals – Greater Than 90 Days and Less Than 1 Year Delinquent

Type Of License	Board Fees
Veterinary Regular License	$316.85

Veterinary Special License	$351.85
Veterinary Inactive License	$205
Equine Dental Provider License	$125
Equine Dental Provider Inactive License	$105
Veterinary Technician Regular License	$65
Veterinary Technician Inactive License	$45

(c) SPECIALIZED LICENSE CATEGORIES

Type Of License	Total Fee
Veterinary Reinstatement	$250
Veterinary Re-Activation	$150
Equine Dental Provider Re-Activation	$25
Veterinary Technician Re-Activation	$25

(d) OTHER FIXED FEES AND CHARGES

(1) Criminal History Evaluation Letter: $32
(2) Returned Check Fee: $25
(3) Duplication of License: $40
(4) Letter of Good Standing: $25
(5) Continuing Education Approval Review Process: $25
(6) Continuing Education Approval Review submitted less than 30 days prior to the continuing education event: $50
(7) Equine Dental Certification approval review process: $1,500

Figure: 28 TAC §152.4(c)

	Service Maximum	Total Hours
1.	a. initial interview and research	1.0
	b. setting up file; completing and filing forms	0.5
2.	Communications per month (with client, health care providers, other persons involved in the case)	3
3.	Direct dispute resolution negotiation with the other party (per month)	3.5
4.	Preparation and submission of an agreement or settlement	2
5.	Participation in benefit review conference	Actual time in BRC + 2.0
6.	Participation in contested case hearing	Actual time in CCH + 4.0
7.	Participation in administrative appeal process	5.0
8.	Travel (per month)	Actual costs that are reasonable and necessary

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications for the National Organic Certification Cost Share Program

Statement of Purpose:

Pursuant to Texas Agriculture Code, §§12.002 and 18.002, the Texas Department of Agriculture (TDA) hereby requests applications for the National Organic Certification Cost Share Program (NOCCSP) designed to assist Texas producers with the cost of organic certification.

Program Authority:

The National Organic Certification Cost Share program (NOCCSP) is authorized under §10606(d)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 note), as amended by §10004(c) of the Agriculture Act of 2014 (2014 Farm Bill; Pub. L. 113-79).

Eligibility:

Applicants must be a Texas-based business that produces organic crops. Operations must possess current USDA organic certification to be eligible to receive reimbursements. This means operations either must have successfully received their initial USDA organic certification from a USDA-accredited certifying agent, or must have incurred expenses related to the renewal of their USDA organic certification from a USDA-accredited certifying agent between October 1, 2014 and September 30, 2015. Operations with suspended or revoked certifications are ineligible for reimbursement. The applicable National Organic Program (NOP) regulations and resources for certification are available on the NOP website at www.ams.usda.gov/nop.

Organic producers (crops, wild crops, and/or livestock) and/or handlers are eligible to participate in the NOCCSP.

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. Information not received by the application deadline will not be considered.

Payments are limited to 75% (seventy-five percent) of an individual producer's certification costs, up to a maximum of $750 (seven hundred and fifty dollars) per certificate or category of certification, per year. Eligible operations may receive one reimbursement per year per certificate or category of certification (if one certificate includes multiple categories). Each certificate may be reimbursed separately. Likewise, each category of certification may be reimbursed separately.

Application Requirements and Deadline:

Applications will be accepted beginning August 2016, and must be submitted on the form provided by TDA. The application (GTBD-167) is available on TDA's website at *www.TexasAgriculture.gov,* or available upon request from TDA by calling (512) 463-6695.

The application packet must be **received by TDA before close of business (5:00 p.m. CT) on October 31, 2016.** It is the applicant's responsibility to submit all materials necessary early enough to ensure timely delivery. Applications may be submitted electronically, hand-delivered or mailed. Late or incomplete applications will not be accepted.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6695, or by email at *Grants@TexasAgriculture.gov.*

Texas Public Information Act. Once submitted, all proposals shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552 (PIA).

TRD-201603952
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: August 3, 2016

♦ ♦ ♦

Request for Applications--Texans Feeding Texans: Home-Delivered Meal Grant Program

Statement of Purpose.

In accordance with the Texas Agriculture Code, the Texas Department of Agriculture (TDA) is requesting applications for the Texans Feeding Texans: Home-Delivered Meal Grant Program (HDM). Applicants may include governmental agencies or qualifying non-profit organizations that deliver meals to homebound persons that are elderly and/or have a disability.

Eligibility.

To be eligible for HDM funds, an applying organization must meet the following criteria:

1. Must be a governmental agency or a nonprofit private organization that is exempt from taxation under §501(a), Internal Revenue Code of 1986, as an organization described by §501(c)(3) of that code, that is a direct provider of home-delivered meals to the elderly or persons with disabilities in this state;

2. If a nonprofit private organization, must have a volunteer board of directors;

3. Must implement and enforce nondiscrimination practices;

4. Must have an accounting system or fiscal agent approved by the county in which it provides meals;

5. Must have a system to prevent the duplication of services to the organization's clients;

6. Must agree to use funds received under this section only to supplement and extend existing services related directly to home-delivered meal services;

7. Must have received a grant from the county in which the organization provides meals;

8. Must submit the grant application using the form provided by TDA;

9. Must submit a completed county resolution form, as provided by TDA;

10. Must strictly comply with HDMGP rules adopted by TDA (4 TAC §§1.950 - 1.962); program guidelines and policies; and the HDMGP grant application and agreement; and

11. Must provide current health inspection before grants funds are awarded.

For purposes of this Grant Program, "Homebound" means a person who is unable to leave his or her residence without aid or assistance or whose ability to travel from the residence is substantially impaired; "Elderly" means an individual who is 60 years of age or older; and "Disability" means a physical, mental or developmental impairment, temporarily or permanently limiting an individual's capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating and housekeeping.

Funding Parameters.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants will be informed accordingly. Funding for this application period is to provide assistance to home-delivered meal providers by supplementing and/or extending their current program. Individual awards shall be calculated pursuant to the formula set out in §12.042 of the Agriculture Code and as more particularly described in 4 TAC §1.952.

Application Requirements.

Application and information can be downloaded from the Grants Office section under the Grants and Services tab at *www.TexasAgriculture.gov.*

Submission Information.

One complete application packet, including the signed application, completed county resolution form and all other required backup documents must be **postmarked** to the Department by Tuesday, November 1, 2016. It is the applicant's responsibility to ensure the timely delivery of all required materials. **LATE APPLICATIONS WILL NOT BE ACCEPTED.**

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6695, or by email at *Grants@TexasAgriculture.gov.*

TRD-201603953
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: August 3, 2016

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/15/16 - 08/21/16 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 08/15/16 - 08/21/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201604001
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 9, 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 September 19, 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 September 19, 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: 7-Eleven, Incorporated; DOCKET NUMBER: 2016-0350-PWS-E; IDENTIFIER: RN102392255; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109 (c)(2)(A)(i) and (f)(5) and (7) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis within the required timeline; 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification for the failure to conduct routine coliform monitoring and provide a copy of the notification to the executive director within 10 days of certifying that public notice was issued; PENALTY: $1,285; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: AARIC, LLC dba Prime Mart 30; DOCKET NUMBER: 2016-0655-PST-E; IDENTIFIER: RN102377264; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection

upon request by agency personnel; 30 TAC §115.242(d)(3)(C) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.246(a)(4) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: $5,439; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: AllDoc's, Incorporated; DOCKET NUMBER: 2016-0753-PST-E; IDENTIFIER: RN101750776; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: B.V.S. Construction, Incorporated; DOCKET NUMBER: 2016-0527-WR-E; IDENTIFIER: RN107290504; LOCATION: Cameron, Milam County; TYPE OF FACILITY: sand and gravel company; RULES VIOLATED: 30 TAC §297.11 and TWC, §§11.042(b), 11.081 and 11.121, by failing to obtain authorization prior to diverting, storing, impounding or using state water and failing to obtain a bed and banks permit to introduce groundwater into a state watercourse; PENALTY: $255; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500 Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: BRAUNTEX MATERIALS, INCORPORATED; DOCKET NUMBER: 2016-1180-WQ-E; IDENTIFIER: RN109202473; LOCATION: New Braunfels, Guadalupe County; TYPE OF FACILITY: paving materials supplier; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Hoglund, (512) 239-4564; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Brenda Lopez; DOCKET NUMBER: 2016-0693-PWS-E; IDENTIFIER: RN101440907; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on the running annual average; PENALTY: $217; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(7) COMPANY: Brent K. Ellison; DOCKET NUMBER: 2016-1178-WOC-E; IDENTIFIER: RN105876130; LOCATION: Rosebud, Falls County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Calhoun Port Authority; DOCKET NUMBER: 2016-0904-AIR-E; IDENTIFIER: RN100226638; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: electrical power generation; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O44, General Terms and Conditions, by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Carl W. Wampler; DOCKET NUMBER: 2016-1124-WOC-E; IDENTIFIER: RN109169110; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: CENTRAL BOWIE COUNTY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0656-PWS-E; IDENTIFIER: RN101389153; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; PENALTY: $146; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Chief's Store & Restaurant LLC dba Chief's Food Market & Restaurant; DOCKET NUMBER: 2016-0662-PST-E; IDENTIFIER: RN102052826; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,568; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: City of Freeport; DOCKET NUMBER: 2016-0498-PST-E; IDENTIFIER: RN102027752; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: fleet refueling facility; 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; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: EULESS PENNYSAVER INCORPORATED dba Smart Savers Store; DOCKET NUMBER: 2016-0898-PST-E; IDENTIFIER: RN101433167; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Francisco Mendoza dba Golden R Meat Market; DOCKET NUMBER: 2016-0091-PST-E; IDENTIFIER: RN101685147; LOCATION: Roma, Starr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(d)(9)(A)(iv) and (v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.605(a), by failing

to ensure that a certified Class A and Class B Operator is re-trained within three years of their last training date; PENALTY: $34,775; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Gilbert Interests, Incorporated; DOCKET NUMBER: 2016-0812-PST-E; IDENTIFIER: RN103065272; LOCATIONS: Round Rock, Travis County and Elgin, Travis County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposited a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: JLPORT LLC dba Wonder 2; DOCKET NUMBER: 2016-0968-PST-E; IDENTIFIER: RN102359585; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (b)(2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,504; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: John K. Sheffield; DOCKET NUMBER: 2016-1128-OSI-E; IDENTIFIER: RN105376818; LOCATION: Spurger, Tyler County; TYPE OF FACILITY: Landscaper; RULE VIOLATED: 30 TAC §285.61(4), by failing, by an installer, to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Jill Hoglund, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Lumberton Municipal Utility District; DOCKET NUMBER: 2016-0664-MWD-E; IDENTIFIER: RN101919454; LOCATION: Lumberton, Hardin 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 WQ0011709002, Effluent Limitations and Monitoring Requirement Number 1, by failing to comply with permit effluent limitations; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Magellan Terminals Holdings, L.P. and Magellan Processing, L.P.; DOCKET NUMBER: 2016-0634-IWD-E; IDENTIFIER: RN102536836; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: bulk petroleum storage terminal; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002070000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $13,300; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Mardini Holdings, Incorporated dba Food Mart; DOCKET NUMBER: 2016-0523-PST-E; IDENTIFIER: RN101436574; 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 for releases at a frequency of at least once every month; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves (also known as a shear or impact valve) are securely anchored at the base of the dispensers; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: MEGHANI HOLDINGS, LLC dba Times Market; DOCKET NUMBER: 2016-0776-PST-E; IDENTIFIER: RN102250313; LOCATION: San Antonio, Bexar 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 tank for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Nepalko, Incorporated dba Kountry Korner Store 1; DOCKET NUMBER: 2016-0895-PST-E; IDENTIFIER: RN102057056; LOCATION: Godley, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Nobles Road Construction, Incorporated; DOCKET NUMBER: 2016-0549-WQ-E; IDENTIFIER: RN109103234; LOCATION: Loraine, Mitchell County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(24) COMPANY: P & D Business LLC dba Hawk Cove Grocery; DOCKET NUMBER: 2016-0416-PST-E; IDENTIFIER: RN105354229; LOCATION: Quinlan, Hunt 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 §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the facility; and 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that the corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection to all underground metal components of the UST system; PENALTY: $8,188; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Pleasanton Stop, Incorporated; DOCKET NUMBER: 2016-0900-PST-E; IDENTIFIER: RN101725695; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for all underground and/or totally or partially submerged metal components of an underground storage tank system; and 30 TAC §334.49(e)(1), by failing to maintain corrosion protection records and make them immediately available for inspection upon request

by agency personnel; PENALTY: $4,188; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: Roel Rolando Macias, Jr. dba G & G Mini Mart; DOCKET NUMBER: 2016-0593-PST-E; IDENTIFIER: RN102280013; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(iii)(l), and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month and failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; 30 TAC §334.48(b), by failing to ensure that the UST system is operated, maintained, and managed in accordance with accepted industry practices; 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 according to the UST registration and self-certification form; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $11,975; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2016-0462-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1668, Special Terms and Conditions Number 22, and New Source Review Permit Number 3214, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,125; Supplemental Environmental Project offset amount of $2,850; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: SHEZA IZEL INCORPORATED dba EZ Mart 390; DOCKET NUMBER: 2016-0684-PST-E; IDENTIFIER: RN102355898; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a 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 USTs for releases at a frequency of at least once every month; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(29) COMPANY: SILVER TREE DEVELOPMENTS #3, LLC dba Guadalupe Express; DOCKET NUMBER: 2016-0594-PST-E; IDENTIFIER: RN101750925; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sale of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(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; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: STATE RUBBER AND ENVIRONMENTAL SOLUTIONS, LLC; DOCKET NUMBER: 2016-0775-MSW-E; IDENTIFIER: RN104154893; LOCATION: Denver City, Yoakum County; TYPE OF FACILITY: used tire recycling facility; RULE VIOLATED: 30 TAC §330.7(a), by failing to not cause, suffer, allow, or permit the unauthorized storage, processing, removal, or disposal of a solid waste at an unauthorized facility; PENALTY: $10,125; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(31) COMPANY: TARK-CEP LLC dba Millers Cove Grocery; DOCKET NUMBER: 2016-0581-PST-E; IDENTIFIER: RN105016620; LOCATION: Millers Cove, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(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; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(32) COMPANY: Walden Minimart Incorporated dba Waldens Mini Market; DOCKET NUMBER: 2016-0644-PST-E; IDENTIFIER: RN102246873; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $5,004; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(33) COMPANY: Walnut Creek Special Utility District; DOCKET NUMBER: 2016-0739-PWS-E; IDENTIFIER: RN101190056; LOCATION: Springtown, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: $2,760; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Walter B. Williams; DOCKET NUMBER: 2016-1125-WOC-E; IDENTIFIER: RN106181605; LOCATION: Paducah, Cottle County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(35) COMPANY: WTG Jameson, LP; DOCKET NUMBER: 2016-0620-AIR-E; IDENTIFIER: RN101246478; LOCATION: Silver, Coke County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Numbers 9941 and PSDTX687, Special Conditions Number 12.A, Federal Operating Permit (FOP) Number O865, Special Terms and Conditions Numbers 7 and 9, by failing

to comply with the maximum fuel consumption limit; and, 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), FOP Number O865, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $11,972; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(36) COMPANY: WTR Real Estate Holdings, L.C. dba Heartland House; DOCKET NUMBER: 2016-0692-PWS-E; IDENTIFIER: RN107135956; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter of fluoride based on a running annual average; PENALTY: $246; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

TRD-201603983
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 5, 2016

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Notice of Application

Notices issued August 1, 2016

TCEQ Internal Control No. D-03222016-034; Cibolo Creek Municipal Authority (the "Authority") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy impact fees of $2,558 per equivalent single-family connection for new connections to the wastewater treatment and collection systems within the North Side Basin service area and $1,411 per equivalent single-family connection for new connections to the wastewater treatment system within the South Side Basin service area of the Cibolo Creek Municipal Authority. The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the Authority's service areas. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the Authority's office during regular business hours.

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.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. 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) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201604006
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 9, 2016

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Notice of Public Hearing on Proposed New Rule in 30 TAC Chapter 11

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new §11.202 in 30 TAC Chapter 11, Contracts, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement changes made by Senate Bill 20, 84th Texas Legislature, 2015, to the Texas Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies. Accordingly, the commission is proposing this rulemaking to add a new section regarding contracts.

The commission will hold a public hearing on this proposal in Austin on September 13, 2016, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental

Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2015-030-011-LS. The comment period closes September 19, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact LaTresa Stroud, Procurements and Contracts Section, Financial Administration Division, (512) 239-5555.

TRD-201603977
David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
Filed: August 5, 2016

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 336, Radioactive Substance Rules, §§336.2, 336.315, 336.357, 336.1105, and 336.1113, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would modify definitions in §336.2 and §336.1105; modify the rules regarding general requirements for surveys and monitoring in §336.315; modify the rules regarding physical protection of category 1 and 2 quantities of radioactive materials in §336.357 to update a cross-reference, update contact information, and add a rule requiring protection of information against unauthorized disclosure; and modify §336.1113 to add a condition for when the licensee must notify the commission.

The commission will hold a public hearing on this proposal in Austin on September 6, 2016, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2016-035-336-WS. The comment period closes September 19, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Hans Weger, Radioactive Materials Unit, (512) 239-6465.

TRD-201603982
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 5, 2016

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Notice of Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40285

APPLICATION. Liquid Environmental Solutions of Texas, LLC, 7651 Esters Boulevard, Suite 200, Irving, Dallas County, Texas 75063, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration 40285, to construct and operate a municipal solid waste Type V liquid waste processing facility. The proposed Liquid Environmental Solutions, Austin facility will be located at 7005 Burleson Road, Austin, Texas 78744, in Travis County. The Applicant is requesting authorization to process municipal solid waste which includes storage, dewatering, pre-treatment, processing, transferring, and reclaiming and/or recycling of grease trap wastes and yellow greases. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice:

https://www.google.com/maps/place/7005+Burleson+Rd,+Austin,+TX+78744/@30.19%097886,-97.707934,15z/data=!4m2!3m1!1s0x8644b3fab44fc33d:0xa9df928f6e158013

For the exact location, refer to the application.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application. The executive director is not required to file a response to comments.

The Public Meeting is to be held:

Thursday, September 8, 2016 at 7:00 PM

Smith Elementary School

4209 Smith School Road

Austin, Texas 78744

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *www.tceq.texas.gov/about/comments.html.* If you need more information about the registration application or the registration process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about TCEQ can be found at our web site at *www.tceq.texas.gov.*

The registration application is available for viewing and copying at the Ruiz Branch, Austin Public Library, 1600 Grove Boulevard, Austin, Texas 78741 and may be viewed online at *https://www.gdsassociates.com/txprojects/.* Further information may also be obtained from Liquid Environmental Solutions of Texas, LLC at the address stated above or by calling Mr. Wade Wheatley, GDS Associates, Inc., at (512) 494-0369.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: August 5, 2016

TRD-201604011
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2016

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Notice of Public Meeting for Water Quality TPDES Permit for Municipal Wastewater Renewal Permit No. WQ0010952001

APPLICATION. City of Castroville, 1209 Fiorella Street, Castroville, Texas 78009, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010952001, which authorizes the discharge of treated domestic wastewater at a combined daily average flow not to exceed 700,000 gallons per day (GPD) via discharge at Outfall 002 and via surface irrigation of 26.6 acres of public access park land and 166.8 acres of non-public access pasture land via Outfall 001. Discharge of treated domestic wastewater is authorized upon completion of the 700,000 GPD facilities.

The facility is located at 800 Alsace Avenue, in the City of Castroville, Medina County, Texas 78009. The park land disposal site is located adjacent and to the east of the facility. The pasture land disposal site is located approximately 0.5 miles to the southwest of the facility. The treated effluent is discharged to an unnamed natural drainage swale; thence to Medina River below Medina Diversion Lake in Segment No. 1903 of the San Antonio River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed natural drainage swale. The designated uses for Segment No. 1903 are high aquatic life use, public water supply, aquifer protection, and primary contact recreation. All determinations are preliminary and subject to additional review and/or revisions. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application.

http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.343888&lng=-98.884166&zoom=13&type=r

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 15, 2016 at 7:00 PM

American Legion

Weiss-Wurzbach Post 460

1305 Fiorella Street

Castroville, Texas 78009

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *www.tceq.texas.gov/about/comments.html.* If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about TCEQ can be found at our web site at *www.tceq.texas.gov.*

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Castroville City Hall, 1209 Fiorella Street, Castroville, Texas. Further information may also be obtained from City of Castroville at the address stated above or by calling Mr. Lawrence Heinrich, Public Works Director, at (830) 931-4090.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Issued: August 4, 2016

TRD-201604012
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2016

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General Land Office

Notice of Violation - Derelict Structures in Arroyo Colorado, Cameron County

ATTENTION - OWNER AND/OR ANY PERSON RESPONSIBLE FOR THIS FACILITY OR STRUCTURE:

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §51.3021 of the Texas Natural Resources Code (TNRC), that you are in violation of §51.302 of the TNRC because you do not possess a proper easement, lease, permit, or other required instrument for the placard-noticed facility or structure that is part of the unauthorized facilities or structures described below.

UNAUTHORIZED FACILITIES OR STRUCTURES: Derelict structures on state land within the Arroyo Colorado, Cameron County, specifically the following:

1. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.232409, Long -97.584223, Arroyo Colorado, Cameron County.

2. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.237678, Long -97.584505, Arroyo Colorado, Cameron County.

3. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.260864, Long -97.582391, Arroyo Colorado, Cameron County.

4. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.278688, Long -97.584188, Arroyo Colorado, Cameron County.

5. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.322693, Long -97.501319, Arroyo Colorado, Cameron County.

6. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.323332, Long -97.502452, Arroyo Colorado, Cameron County.

7. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.325386, Long -97.504385, Arroyo Colorado, Cameron County.

8. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.327295, Long -97.504774, Arroyo Colorado, Cameron County.

9. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.335312, Long -97.495820, Arroyo Colorado, Cameron County.

10. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.336388, Long -97.491369, Arroyo Colorado, Cameron County.

11. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.336561, Long -97.485163, Arroyo Colorado, Cameron County.

12. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.336490, Long -97.484391, Arroyo Colorado, Cameron County.

13. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.336287, Long -97.482887, Arroyo Colorado, Cameron County.

14. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.335999, Long -97.481549, Arroyo Colorado, Cameron County.

15. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.331902, Long -97.474017, Arroyo Colorado, Cameron County.

16. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.330861, Long -97.472939, Arroyo Colorado, Cameron County.

17. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.329137, Long -97.443471, Arroyo Colorado, Cameron County.

18. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.332434, Long -97.441163, Arroyo Colorado, Cameron County.

19. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.333312, Long -97.440251, Arroyo Colorado, Cameron County.

20. Derelict pier, pilings, associated structures and debris.

LOCATION: Lat 26.333350, Long -97.440209, Arroyo Colorado, Cameron County.

You are required to remove the placard-noticed facility or structure described above. Violation of §51.302 of the TNRC and failure to remove the facility or structure within thirty (30) days after the date on which notice is served will subject you to: the imposition of penalties of not less than $50 or more than $1,000 a day for each day that each violation occurs; removal of the facility or structure by the Land Commissioner and liability for the costs of removal; attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal; or any combination of such remedies.

YOU ARE FURTHER NOTIFIED that you may submit, not later than thirty (30) days after the date on which notice is served, a written request for a hearing. The request for hearing should be sent to the Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, 9th Floor, Austin, Texas 78701-1496. FAILURE TO TIMELY REQUEST A HEARING WAIVES ALL RIGHTS TO JUDICIAL REVIEW OF THE LAND COMMISSIONER'S FINDINGS AND ORDERS, AND REQUIRES YOU TO IMMEDIATELY REMOVE THE FACILITY OR STRUCTURE AND PAY ANY PENALTY, REMOVAL COSTS, AND OTHER ASSESSED FEES AND EXPENSES.

TRD-201604017
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: August 10, 2016

♦ ♦ ♦

Notice of Violation - Derelict Structures in Brazoria County

ATTENTION - OWNER AND/OR ANY PERSON RESPONSIBLE FOR THIS FACILITY OR STRUCTURE:

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §51.3021 of the Texas Natural Resources Code ("TNRC"), that you are in violation of §51.302 of the TNRC because you do not possess a proper easement, lease, permit, or other required instrument for the placard-noticed facility or structure that is part of the unauthorized facilities or structures described below.

UNAUTHORIZED FACILITIES OR STRUCTURES: Derelict structures on state land within Bastrop Bayou, Bastrop Bay, Chocolate Bay, Cox Lake, Halls Bayou, Halls Lake, Lost Bay, Mud Island, Oyster Bay (Christmas Bay), and Titlum Tatlum Bayou, Brazoria County, specifically the following:

Bastrop Bayou

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.098831, Long -95.205803, Bastrop Bayou, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.098024, Long -95.206178, Bastrop Bayou, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.096479, Long -95.208216, Bastrop Bayou, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.09568, Long -95.209331, Bastrop Bayou, Brazoria County.

5. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.095156, Long -95.211382, Bastrop Bayou, Brazoria County.

6. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.093614, Long -95.216348, Bastrop Bayou, Brazoria County.

7. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.093112, Long -95.216854, Bastrop Bayou, Brazoria County.

8. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.092945, Long -95.21714, Bastrop Bayou, Brazoria County.

9. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.092656, Long -95.217248, Bastrop Bayou, Brazoria County.

10. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.08909221, Long -95.21653262, Bastrop Bayou, Brazoria County.

11. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.09199, Long -95.218593, Bastrop Bayou, Brazoria County.

12. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.091744, Long -95.218985, Bastrop Bayou, Brazoria County.

13. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.091393, Long -95.219169, Bastrop Bayou, Brazoria County.

14. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.090706, Long -95.220478, Bastrop Bayou, Brazoria County.

15. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.082797, Long -95.22498, Bastrop Bayou, Brazoria County.

16. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.082032, Long -95.223134, Bastrop Bayou, Brazoria County.

17. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.086759, Long -95.216212, Bastrop Bayou, Brazoria County.

18. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.08779113, Long -95.22364664, Bastrop Bayou, Brazoria County.

19. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.08869172, Long -95.22266782, Bastrop Bayou, Brazoria County.

20. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.09452862, Long -95.21438608, Bastrop Bayou, Brazoria County.

21. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.0990092, Long -95.2050555, Bastrop Bayou, Brazoria County.

22. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.1013204, Long -95.20024723, Bastrop Bayou, Brazoria County.

Bastrop Bay

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 8, Lat 29.086657, Long -95.188292, Bastrop Bay, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 13, Lat 29.08276598, Long -95.17118055, Bastrop Bay, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 13, Lat 29.081821, Long -95.170086, Bastrop Bay, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 13, Lat 29.094687, Long -95.162893, Bastrop Bay, Brazoria County.

5. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 14, Lat 29.09640253, Long -95.17398959, Bastrop Bay, Brazoria County.

6. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 9, Lat 29.10519995, Long -95.19075076, Bastrop Bay, Brazoria County.

7. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 9, Lat 29.09856825, Long -95.19622283, Bastrop Bay, Brazoria County.

8. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 14, Lat 29.09753214, Long -95.17289058, Bastrop Bay, Brazoria County.

9. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 13, Lat 29.0905253, Long -95.17864377, Bastrop Bay, Brazoria County.

Chocolate Bay

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.20493737, Long -95.19909523, Chocolate Bay, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.2096614, Long -95.19334191, Chocolate Bay, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.20902011, Long -95.18991832, Chocolate Bay, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.20623701, Long -95.18416603, Chocolate Bay, Brazoria County.

5. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 2, Lat 29.20584501, Long -95.18344592, Chocolate Bay, Brazoria County.

6. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.19633474, Long -95.16497212, Chocolate Bay, Brazoria County.

7. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.19655464, Long -95.16237071, Chocolate Bay, Brazoria County.

8. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.19718367, Long -95.16142385, Chocolate Bay, Brazoria County.

9. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.1962393, Long -95.15908843, Chocolate Bay, Brazoria County.

10. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.19587082, Long -95.15826758, Chocolate Bay, Brazoria County.

11. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.19985031, Long -95.15337654, Chocolate Bay, Brazoria County.

12. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3, Lat 29.199838, Long -95.15265219, Chocolate Bay, Brazoria County.

13. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 3/4, Lat 29.20158361, Long -95.15136018, Chocolate Bay, Brazoria County.

14. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 4, Lat 29.18785939, Long -95.14549983, Chocolate Bay, Brazoria County.

15. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 4, Lat 29.18919283, Long -95.14354969, Chocolate Bay, Brazoria County.

16. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 4, Lat 29.19127279, Long -95.139795, Chocolate Bay, Brazoria County.

Cox Lake

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.077101, Long -95.238935, Cox Lake, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.07690097, Long -95.23856885, Cox Lake, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.07657045, Long -95.23780539, Cox Lake, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075995, Long -95.235498, Cox Lake, Brazoria County.

5. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075426, Long -95.230692, Cox Lake, Brazoria County.

6. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075343, Long -95.230546, Cox Lake, Brazoria County.

7. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075379, Long -95.230273, Cox Lake, Brazoria County.

8. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075269, Long -95.229653, Cox Lake, Brazoria County.

9. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075301, Long -95.22938, Cox Lake, Brazoria County.

10. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.07547, Long -95.227425, Cox Lake, Brazoria County.

11. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.076329, Long -95.226005, Cox Lake, Brazoria County.

12. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.078242, Long -95.222215, Cox Lake, Brazoria County.

13. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.07550888, Long -95.22842781, Cox Lake, Brazoria County.

14. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.075572, Long -95.228024, Cox Lake, Brazoria County.

15. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.081151, Long -95.221781, Cox Lake, Brazoria County.

16. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.07629287, Long -95.23704258, Cox Lake, Brazoria County.

17. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.07545418, Long -95.22896105, Cox Lake, Brazoria County.

Oyster Bay (Christmas Bay)

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 11, Lat 29.065243, Long -95.158168, Oyster Bay, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 11, Lat 29.06125447, Long -95.15963129, Oyster Bay, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 11, Lat 29.058033, Long -95.161954, Oyster Bay, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 11, Lat 29.061778, Long -95.165679, Oyster Bay, Brazoria County.

5. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 11, Lat 29.062499, Long -95.165066, Oyster Bay, Brazoria County.

6. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 11, Lat 29.062541, Long -95.16591, Oyster Bay, Brazoria County.

7. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 12, Lat 29.06945642, Long -95.16678555, Oyster Bay, Brazoria County.

8. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 12, Lat 29.070211, Long -95.16565, Oyster Bay, Brazoria County.

9. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 12, Lat 29.071173, Long -95.165483, Oyster Bay, Brazoria County.

10. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 12 Lat 29.07149025, Long -95.16484715, Oyster Bay, Brazoria County.

11. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 12, Lat 29.072838, Long -95.159617, Oyster Bay, Brazoria County.

12. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 4, Lat 29.029304, Long -95.205119, Oyster Bay, Brazoria County.

13. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 4, Lat 29.02732881, Long -95.20415797, Oyster Bay, Brazoria County.

Halls Bayou

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19164288, Long -95.10093262, Halls Bayou, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19197106, Long -95.10123021, Halls Bayou, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19156608, Long -95.10151335, Halls Bayou, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19187912, Long -95.10151455, Halls Bayou, Brazoria County.

5. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19157437, Long -95.10172794, Halls Bayou, Brazoria County.

6. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19185727, Long -95.10173564, Halls Bayou, Brazoria County.

7. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19180864, Long -95.10196208, Halls Bayou, Brazoria County.

8. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19165347, Long -95.10255045, Halls Bayou, Brazoria County.

9. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19039893, Long -95.10283251, Halls Bayou, Brazoria County.

10. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.1902695, Long -95.10315437, Halls Bayou, Brazoria County.

11. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.1903291, Long -95.10377079, Halls Bayou, Brazoria County.

12. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19137132, Long -95.10445549, Halls Bayou, Brazoria County.

13. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19275461, Long -95.10496185, Halls Bayou, Brazoria County.

14. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.1932589, Long -95.10518883, Halls Bayou, Brazoria County.

15. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19096909, Long -95.08068292, Halls Bayou, Brazoria County.

16. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19865175, Long -95.09739723, Halls Bayou, Brazoria County.

17. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.2007252, Long -95.09291065, Halls Bayou, Brazoria County.

18. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.2010695, Long -95.09343158, Halls Bayou, Brazoria County.

19. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19963339, Long -95.09610654, Halls Bayou, Brazoria County.

20. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.20152355, Long -95.09491614, Halls Bayou, Brazoria County.

21. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.20150971, Long -95.09543447, Halls Bayou, Brazoria County.

22. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.20768924, Long -95.09346006, Halls Bayou, Brazoria County.

23. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.2122188, Long -95.08803267, Halls Bayou, Brazoria County.

24. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.21425386, Long -95.08773608, Halls Bayou, Brazoria County.

25. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.21422382, Long -95.08844751, Halls Bayou, Brazoria County.

26. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.21919909, Long -95.08736608, Halls Bayou, Brazoria County.

27. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.21812515, Long -95.08606108, Halls Bayou, Brazoria County.

28. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.22345139, Long -95.08364034, Halls Bayou, Brazoria County.

29. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.22596431, Long -95.08061562, Halls Bayou, Brazoria County.

30. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.196941, Long -95.099309, Halls Bayou, Brazoria County.

Halls Lake

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.1829986, Long -95.08595845, Halls Lake, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19177498, Long -95.0971477, Halls Lake, Brazoria County.

3. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.19280019, Long -95.09859612, Halls Lake, Brazoria County.

4. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.18368546, Long -95.10642204, Halls Lake, Brazoria County.

Lost Bay

1. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.20583111, Long -95.200389, Lost Bay, Brazoria County.

2. Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: State Tract 1, Lat 29.20506369, Long -95.19971557, Lost Bay, Brazoria County.

Mud Island

Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.09969864, Long -95.16068541, Mud Island, Brazoria County.

Titlum Tatlum Bayou

Derelict cabin structures, associated supports, pilings, and debris.

LOCATION: Lat 29.080503, Long -95.139824, Titlum Tatlum Bayou, Brazoria County.

You are required to remove the placard-noticed facility or structure described above. Violation of §51.302 of the TNRC and failure to remove the facility or structure within thirty (30) days after the date on which notice was served will subject you to: the imposition of penalties of not less than $50 or more than $1,000 a day for each day that each violation occurs; removal of the facility or structure by the Land Commissioner and liability for the costs of removal; attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal; or any combination of such remedies.

YOU ARE FURTHER NOTIFIED that you may submit, not later than thirty (30) days after the date on which notice was served, a written request for a hearing. The request for hearing should be sent to the Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, 9th Floor, Austin, Texas 78701-1496. Failure to timely request a hearing waives all rights to judicial review of the Land Commissioner's findings and orders, and requires you to immediately remove the facility or structure and pay any penalty, removal costs, and other assessed fees and expenses.

TRD-201604018

Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: August 10, 2016

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing on September 2, 2016, at 8 a.m. to receive public comment on proposed payment rates for the state-owned veterans nursing facilities. These nursing facilities are in the nursing facility program operated by Department of Aging and Disabilities. These payment rates are proposed to be effective September 1, 2016.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (1 TAC), §355.7103(a)(2), which require that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC.

The public hearing will be held in Room 5155 of the Brown Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through Security at the front of the building facing Lamar Blvd. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes the following interim per day payment rates for the state-owned veterans nursing facilities effective September 1, 2016: Amarillo, $143.00; Big Spring, $143.00; Bonham, $143.00; Floresville, $143.00; Temple, $143.00; McAllen, $143.00; El Paso, $143.00; and Tyler, $234.00. The proposed rates for each home are based upon the state veterans home semi-private basic daily rate in effect on the first day of the rate period in accordance with the rate setting methodologies listed below under Methodology and Justification. These rates will be reconciled retrospectively based on actual costs in accordance with 1 TAC §355.311(j).

Methodology and Justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311(d).

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on August 19, 2016. Interested parties may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RAD-LTSS@hhsc.state.tx.us. The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to LTSS@hhsc.state.tx.us. In addition, written comment may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751-2316.

TRD-201604010

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 10, 2016

♦ ♦ ♦

Notice of Public Hearing on Proposed Payment Rates

(Editor's Note: The following notice was published in the July 29, 2016, issue of the Texas Register (41 TexReg 5612). The word "Medicaid" was inadvertently included in the title. The correct title is "Notice of Public Hearing on Proposed Payment Rates". The notice is republished in its entirety.)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 26, 2016, at 3 p.m. to receive public comments on proposed blended rates for Single Source Continuum Contractors (SSCC) under Foster Care Redesign (FCRD) in the 24 Hour Residential Child Care (24 RCC) program. The 24 RCC program is operated by the Texas Department of Family and Protective Services (DFPS).

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (1 TAC) §355.7103(a)(2), which require that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the Brown Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the Region 3 blended rate for the SSCCs. The proposed rate accounts for actual and projected increases in the case-mix of the children served by the SSCC. The new blended rate for Region 3 is proposed to be adopted effective September 1, 2016.

HHSC also proposes a blended rate and an exceptional care rate for the SSCCs for the proposed expansion of FCRD into Region 2. The proposed rates will be included in the Request for Proposals (RFP) for the expansion of FCRD for use by entities interested in submitting a proposal. The rates for Region 2 are proposed to be adopted effective September 30, 2016.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC §355.7103(a), relating to Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on July 29, 2016. Interested parties may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RAD-LTSS@hhsc.state.tx.us. The briefing package will also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to LTSS@hhsc.state.tx.us. In addition, written

comment may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751-2316.

TRD-201603974
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 4, 2016

♦ ♦ ♦

Public Notice - Transition Plan Update, August 2016 Report

(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 Transition Plan Update is not included in the print version of the Texas Register. The figure is available in the on-line html version of the August 19, 2016, issue of the Texas Register.)

Pursuant to the direction of Senate Bill 200, 84th Legislature, Regular Session, 2015, the Health and Human Services System Transition Plan Update is presented in the August 2016 Report to the Transition Legislative Oversight Committee.

[graphic]

TRD-201604016
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 10, 2016

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Public Notice - Waiver Amendment to the Community Living Assistance and Support Services (CLASS) Waiver 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 Community Living Assistance and Support Services (CLASS) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2019. The proposed effective date for the amendment is January 3, 2017, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1) Appendix C-1/C-3 Residential Habilitation: The majority of activities included as part of the waiver Residential Habilitation (HAB) services are now available through the non-waiver resource state plan Community First Choice (CFC) Personal Assistance Services (PAS)/HAB service. Thus, the service definition for residential habilitation is being amended to reflect this change. Additionally, the definition of habilitation from the Texas Administrative Code that addresses the CLASS waiver is remaining in the waiver application for clarification of what habilitation means in general.

2) Appendix C-1/C-3 Case Management: The service definition for case management is being corrected to remove responsibility for initiating and overseeing the process of assessment and reassessment of the individual's level of care as this activity is the responsibility of the Direct Service Agency (DSA) which is outlined in Appendix B of the current waiver application.

3) Appendix B: Allows family members of the military to remain on the CLASS interest list while temporarily residing outside the state due to military assignments. Military family members will not be removed from the CLASS interest list for temporarily moving outside of the state of Texas due to the military member's assignment. If an applicant who is a military family member is offered enrollment while temporarily living outside of Texas, then the applicant shall retain their position on the interest list while the military member is on active duty or for up to one year after the military member's active duty ends.

4) Main 2: Update program description to provide correct Code of Federal Regulations and Texas Administrative Code citation titles for fair hearings.

The CLASS waiver, first authorized September 1, 1991, provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with intellectual disabilities. CLASS waiver services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution. Services and supports are intended to enhance an individual's quality of life, functional independence, health and welfare, and to supplement, rather than replace, existing informal or formal supports and resources.

An individual may obtain free copies of the proposed waiver amendment, including the CLASS settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this amendment or the CLASS 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, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the HHSC 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/CLASS/

TRD-201604009
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 9, 2016

♦ ♦ ♦

Public Notice - Waiver Amendment to the Home and Community-based Services Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment of the Home and Community-based Services

(HCS) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2018. The proposed effective date for the amendment is January 1, 2017, with changes to cost neutrality.

This amendment request proposes to make the following changes:

Add High Medical Needs Support registered nurse (RN), High Medical Needs Support licensed vocational nurse (LVN), and High Medical Needs Support services, including the consumer directed services option (Appendices C, E and J).

Update "Methods for Remediation/Fixing Individual Problems" and add administrative penalties as an additional method of remediation for program providers who do not comply with the HCS rules (Appendices C, D and G).

Update "Methods of State Oversight and Follow-up" and add administrative penalties as an additional method of remediation for program providers who do not comply with the HCS rules (Appendix G-3).

The Department of Aging and Disability Services (DADS) operates the HCS waiver, under HHSC's authority. The waiver provides services and supports to individuals with intellectual disabilities who live in their own homes, a family member's home, or community settings such as small three and four person homes. To be eligible for the waiver, individuals must meet financial eligibility criteria and meet the level of care required for admission into an intermediate care facility for individuals with intellectual disabilities.

An individual may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or to ask questions, obtain additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting 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, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the HHSC 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/HCS/.*

TRD-201604008
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 9, 2016

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of July, 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.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Dallas	BT East Dallas JV L.L.P. dba Baylor Scott & White Medical Center – White Rock	L06791	Dallas	00	07/07/16

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
Arlington	Texas Health Physicians Group dba Arlington Cancer Center	L06434	Arlington	04	07/01/16
Austin	Seton Family of Hospitals	L00268	Austin	147	07/01/16
Austin	Austin Radiological Association	L00545	Austin	187	07/05/16
Austin	Texas Oncology	L06206	Austin	16	07/15/16
Brownsville	Columbia Valley Healthcare System L.P. dba Valley Regional Medical Center	L02274	Brownsville	51	07/13/16
Cypress	North Cypress Med. Center Operating Co., L.L.C. dba North Cypress Medical Center	L06020	Cypress	31	07/05/16
Deer Park	The Lubrizol Corporation	L06744	Deer Park	03	07/07/16
Fort Worth	Texas Oncology P.A.	L05545	Fort Worth	56	07/06/16
Fort Worth	Texas Health Huguley Inc.	L06514	Fort Worth	02	07/14/16
Fort Worth	North Texas MCA L.L.C. dba Medical Center Alliance	L06687	Fort Worth	04	07/15/16
Fredericksburg	Hill Country Memorial Hospital dba Hill Country Memorial	L03516	Fredericksburg	34	07/11/16
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	213	07/06/16

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	214	07/11/16
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	111	07/11/16
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	74	07/11/16
Houston	Memorial Hermann Health System dba Memorial Hermann Hosp. The Woodlands	L03772	Houston	132	07/11/16
Houston	Texas Childrens Hospital	L04612	Houston	72	07/11/16
Houston	Willowbrook Cardiovascular Associates P.A.	L05093	Houston	16	07/14/16
Houston	The Methodist Hospital Research Institute dba Houston Methodist	L06331	Houston	14	07/13/16
Houston	Tx. Gulf Coast Veterinary Specialists P.L.L.C.	L06437	Houston	03	07/05/16
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L06670	Houston	04	07/07/16
Lubbock	Methodist Diagnostic Imaging dba Covenant Diagnostic Imaging	L03948	Lubbock	51	07/14/16
Midland	Isotech Laboratories Inc.	L04283	Midland	31	07/08/16
Mount Pleasant	Titus County Memorial Hospital dba Titus Regional Medical Center	L02921	Mount Pleasant	48	07/13/16
Queen City	International Paper Company	L01686	Queen City	47	07/12/16
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	158	07/11/16
San Antonio	UT Medicine San Antonio	L06737	San Antonio	01	07/11/16
Throughout TX	Phoenix Mechanical Integrity Services L.L.C.	L06787	Angleton	01	07/06/16
Throughout TX	Phoenix Mechanical Integrity Services L.L.C.	L06787	Angleton	02	07/11/16
Throughout TX	Integrity Testlabs L.L.C.	L06756	Clute	02	07/01/16
Throughout TX	NQS Inspection Ltd.	L06262	Corpus Christi	12	07/14/16
Throughout TX	Pavetex Engineering and Testing Inc.	L05533	Dripping Springs	25	07/08/16
Throughout TX	Sterigenics US L.L.C.	L03851	Fort Worth	45	07/12/16
Throughout TX	Professional Service Industries Inc.	L06332	Grapevine	09	07/14/16
Throughout TX	Onesubsea Processing Inc.	L05867	Houston	11	07/08/16
Throughout TX	Hi-Tech Testing Service Inc.	L05021	Longview	112	07/14/16
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	203	07/06/16
Waco	Texas Oncology P.A.	L05940	Waco	12	07/06/16
Wichita Falls	United Regional Health Care System Inc.	L00350	Wichita Falls	120	07/14/16

RENEWAL 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
Austin	Austin Heart P.L.L.C.	L04623	Austin	87	07/05/16
Dallas	Petnet Solutions Inc.	L05193	Dallas	47	07/01/16
Fort Worth	Baylor All Saints Medical Center dba Baylor Scott & White All Saints Medical Center – Fort Worth	L02212	Fort Worth	100	07/05/16
Throughout TX	Advanced Inspection Technologies L.L.C.	L06608	Houston	05	07/01/16
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	03	07/05/16

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
Dallas	Tenet Hospitals Limited A Texas Limited Partnership dba Doctors Hospital at White Rock Lake	L01366	Dallas	56	07/08/16
El Paso	Ma X Ray Consultants L.L.C.	L06660	El Paso	01	07/13/16

TRD-201603973
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 4, 2016

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Texas Department of Insurance

Company Licensing

Application for admission to the state of Texas by ISDA FRATERNAL ASSOCIATION, a foreign life, accident and/or health company. The home office is in Pittsburgh, Pennsylvania.

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-201604015
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: August 10, 2016

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North Central Texas Council of Governments

Bicycling Opinion Survey for North Central Texas Request for Proposals

The North Central Texas Council of Governments (NCTCOG) is requesting consultant assistance to conduct a regional Bicycle Opinion Survey. The survey will gather statistically sound random sampling to capture the views of the public-at-large about bicycle use across the 12-county region. The survey will be conducted in English and Spanish, and will measure bicycling behaviors and trip characteristics such as level of comfort of bicycling, interest in bicycling, frequency of bicycling, and types of bicycle facilities where such trips occur for balanced mix of bicyclists by gender, age, ethnicity, and income. Survey data will be analyzed, geocoded and cross-tabulated, and summarized in a comprehensive report. Results will be provided for the region, as well as the county subareas and for each participating local jurisdiction.

Proposals must be received no later than 5:00 p.m., on Friday, September 16, 2016, to Kevin Kokes, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at *www.nctcog.org/rfp* by the close of business on Friday, August 19, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201604014
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 10, 2016

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Texas Department of Public Safety

Correction of Error

The Texas Department of Public Safety (the department) proposed amendments to 37 TAC §4.12, concerning Exemptions and Exceptions, in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5709). In the last paragraph on page 5709, the phrase "§4.11 regarding Transportation of Hazardous Materials" should be "§4.12 regarding Exemptions and Exceptions". The corrected paragraph reads as follows:

"The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August, 15, 2016, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.12 regarding Exemptions and Exceptions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles."

TRD-201604005

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Public Utility Commission of Texas

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 July 22, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.101 and §37.154 (West 2016) (PURA).

Docket Style and Number: Application of Rayburn Country Electric Cooperative and Farmers Electric Cooperative to Transfer Certificate Rights to Facilities in Hopkins, Rains, Hunt, Rockwall and Kaufman Counties, Docket Number 46072.

The Application: On July 22, 2016, Rayburn Country Electric Cooperative and Farmers Electric Cooperative filed an application for approval of the transfer of certificate of convenience and necessity rights to existing transmission line segments and the rights to construct a transmission line in Kaufman County.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46072.

TRD-201603975
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2016

♦ ♦ ♦

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 5, 2016, to amend a certificated service area for a service area exception within Ector County, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend a Certificate of Convenience and Necessity for a Service Area Exception in Ector County. Docket Number 46267.

The Application: Sharyland Utilities, L.P. (Sharyland) filed an application for a service area boundary exception to allow Sharyland to provide service to a specific customer located within the certificated service area of Oncor Electric Delivery Company LLC (Oncor). Oncor has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 26, 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 telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46267.

TRD-201604007
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 9, 2016

♦ ♦ ♦

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On July 29, 2016, Quality Telephone, Inc. filed an application with the Public Utility Commission of Texas to relinquish its Service Provider Certificate of Operating Authority (SPCOA) Number 60384.

Style and Docket Number: Application of Quality Telephone, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 46217.

Application: Quality Telephone, Inc. seeks to relinquish its service provider certificate of operating authority because they do not provide service in Texas.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 26, 2016. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46217.

TRD-201603995
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2016

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South Texas Development Council

Request for Proposals

The office of the South Texas Development Council (STDC) located at 1002 Dicky Lane, Laredo, Texas 78043 is accepting Sealed Proposals for:

Regional Public Transportation Coordination Plan

Specifications may be picked up at the above address between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday or via email: marthahdz@stdc.cog.tx.us.

Sealed proposals will be accepted until 5:00 p.m. August 22, 2016 in the STDC office. Deadline for submitting questions is 5:00 p.m. August 17, 2016. Sealed proposals must be addressed to Mr. Juan E. Rodriguez, Transportation Coordinator, and delivered to the address above. The envelope must be clearly marked "RFP for Regional Public Transportation Coordination Plan". Proposals opening will be held August 23, 2016 at a location to be determined. Award will not be made at the opening, but after further consideration. Respondents should submit the proposals on the complete package. Partial responses will not be accepted. Proposals must mirror the published specifications. If you have any questions regarding the specifications, please contact Ms. Martha D. Hernandez, Regional Services Planner at (956) 722-3995 x36.

Any item that does not perform or meet tests as specified or claimed by the seller will be replaced at no cost by STDC. Transfer of assignment of contracts by seller is prohibited.

STDC reserves the right to refuse and reject any and all proposals and to waive any and all formalities or technicalities and to accept the proposal considered to be the best and most advantageous to STDC. Proposals submitted past the date and time mentioned above or faxed proposals will not be accepted. Proposals may not be altered or amended after the submission deadline. If no proposal is accepted, the entire solicitation process may be repeated.

TRD-201603985
Juan E. Rodriguez
Transportation Coordinator
South Texas Development Council
Filed: August 8, 2016

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Texas A&M University System Board of Regents

Public Notice

Announcement of Sole Finalist for the Position of President of West Texas A&M University August 5, 2016

Pursuant to §552.123, Texas Government Code, the following candidate is the sole finalist for the position of President of West Texas A&M University. Upon the expiration of twenty-one (21) days, final action is to be taken by the Board of Regents of The Texas A&M University System:

Dr. Walter V. Wendler

TRD-201603984
Vickie Burt Spillers
Executive Director, Board of Regents
Texas A&M University System Board of Regents
Filed: August 5, 2016

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Texas Windstorm Insurance Association

Request for Information

On or after August 5, 2016, the Texas Windstorm Insurance Association (TWIA) will issue a Request For Information (RFI) for a consulting services related to implementation of the TDI Claim Settlement Guidelines for residential slab claims.

Response Forms

The RFI with requirements and response forms will be published on the TWIA website on or about August 5, 2016 at: *http://www.twia.org*. Further information regarding the RFI will also be available on TWIA's website at this address, including any updates, amendments, and clarifications.

Rights and Obligations

TWIA is not responsible for any costs incurred in responding to this RFI, and TWIA reserves the right to accept or reject any or all applications in its sole discretion. TWIA is under no obligation to award a contract on the basis of the RFI. TWIA reserves the right to issue other RFIs or RFPs for the services outlined in this RFI, or for any other services in connection with Claim Settlement Guidelines, at the Association's discretion.

Contact Information

Any requests for additional information regarding this RFI should be directed to:

Email: *dwilliams@twia.org*.

TRD-201603972
Sonya Palmer
Staff Attorney
Texas Windstorm Insurance Association
Filed: August 3, 2016

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Workforce Solutions Brazos Valley Board

Notice of Release of Request for Proposal for Independent Financial Monitoring for Workforce Development Programs

On August 10, 2016 the Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Independent Financial Monitoring for workforce development programs. The proposal requirements are contained in the Request for Proposal which may be obtained at www.bvcog.org. The selected entity need not be a CPA but additional points will be awarded for bidders who are certified public accountants. The Board is seeking one contractor with experience conducting financial monitoring services for workforce development boards. The RFP may be viewed and printed from the Internet on www.bvjobs.org.

Bidders Conference

There will be no bidders' conference for this procurement. Questions regarding the procurement may be directed to Richard Rogers, Board Consultant at (512) 963-4895 or email *richard@swtexas.net* until August 31, 2016. A question and answer document pertaining to this procurement will be posted on the Board's web page no later than September 7, 2016.

Due Date

An original and four copies of a written proposal in response to the RFP are due to the Board's offices no later than 12:00 Noon on September 26, 2016. No proposals will be accepted after this deadline. Proposals may be sent to:

Richard Rogers, Board Consultant c/o

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

ATTN: Response to Financial Monitoring RFP

Or hand delivered to:

Richard Rogers, Board Consultant c/o

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

ATTN: Response to Financial Monitoring RFP

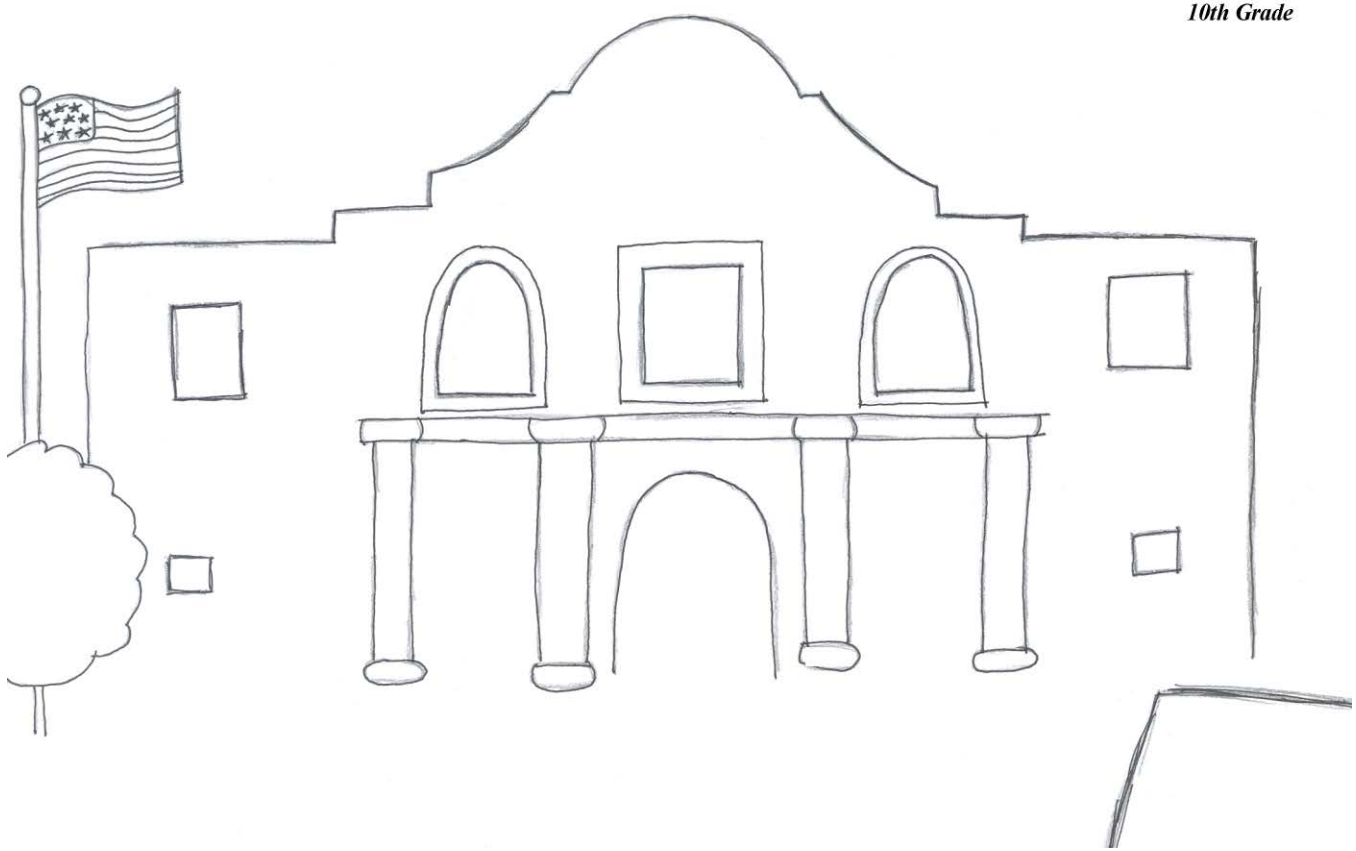
Equal opportunity employer/program. Auxiliary aids are available upon request to individuals with disabilities.

Texas Relay (800) 735-2989 TDD (800) 735-2988 Voice TTY (979) 595-2819

TRD-201604000
Patricia Buck
Board Program Manager
Workforce Solutions Brazos Valley Board
Filed: August 9, 2016

♦ ♦ ♦

Amber Uballe
10th Grade



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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