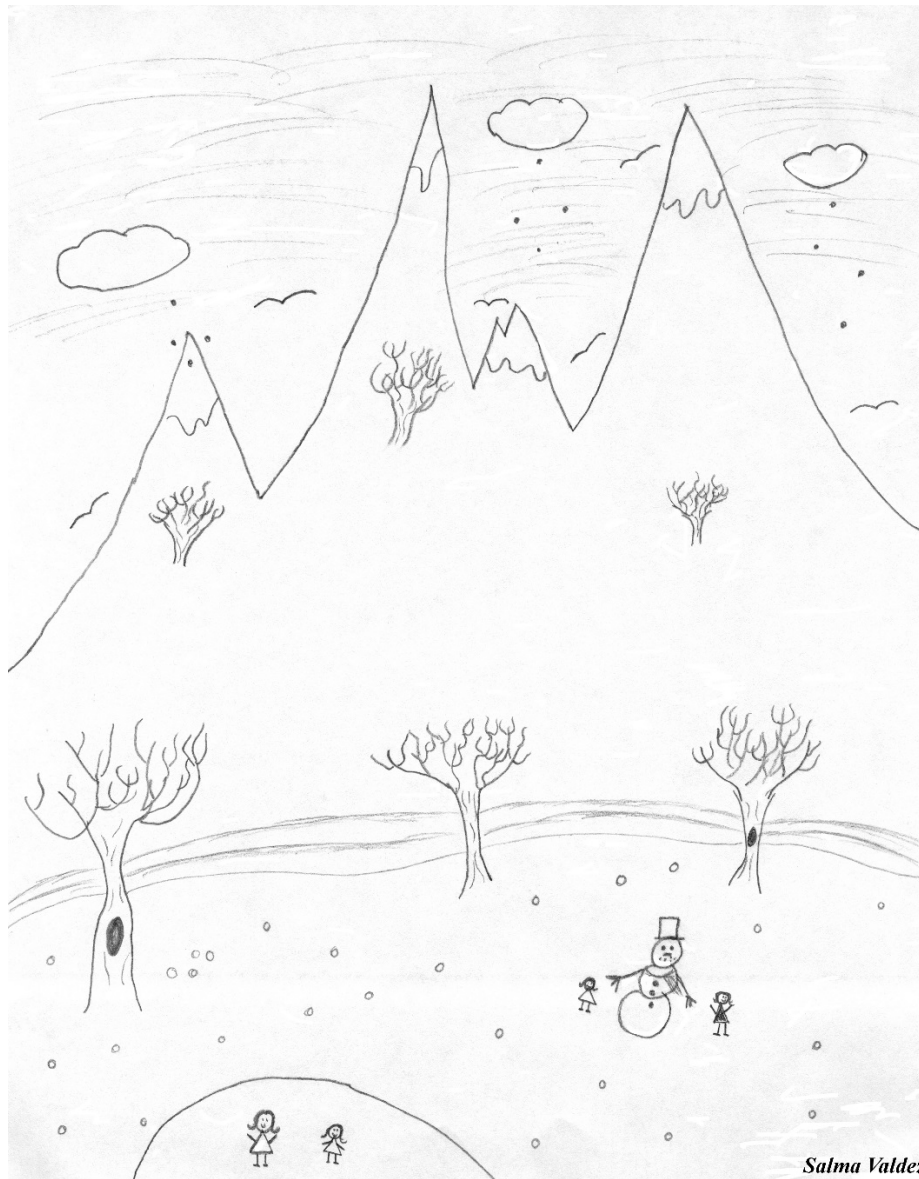

TEXAS REGISTER

Volume 41 Number 50

December 9, 2016

Pages 9667 - 9806



Salma Valdez

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

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

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THE GOVERNOR

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

Appointments

Appointments for November 17, 2016

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2021, Carliss A. "Alvin" Collins of Andrews (replacing Ronald Charles Wakefield of San Antonio whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2021, Warren D. "Doug" Jennings of Forth Worth (Mr. Jennings is being reappointed).

Appointments for November 22, 2016

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2019, Michael P. Henry, D.C. of Austin (replacing Cynthia L. Tays of Austin who resigned).

Appointments for November 28, 2016

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2017, Jeffrey J. Barnard, M.D. of Dallas (Dr. Barnard is being reappointed). Dr. Barnard is replacing Vincent J.M. Di Maio of San Antonio as Presiding Officer.

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2017, Mark G. Daniel of Fort Worth (replacing Robert J. "Bobby" Lerma of Brownsville whose term expired).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2017, Dennis P. "Pat" Johnson of Austin (replacing Nizam Peerwani of Fort Worth whose term expired).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2017, Sarah Kerrigan, Ph.D. of The Woodlands (replacing Vincent J.M. Di Maio of San Antonio whose term expired).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2017, Jarvis J. Parsons of College Station (replacing Richard B. Alpert of North Richland Hills whose term expired).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2018, Bruce Budowle, Ph.D. of North Richland Hills (replacing Arthur J. "Art" Eisenberg of North Richland Hills whose term expired).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2018, Sheree Robyn Hughes-Stamm, Ph.D. of Spring (Dr. Hughes-Stamm is being reappointed).

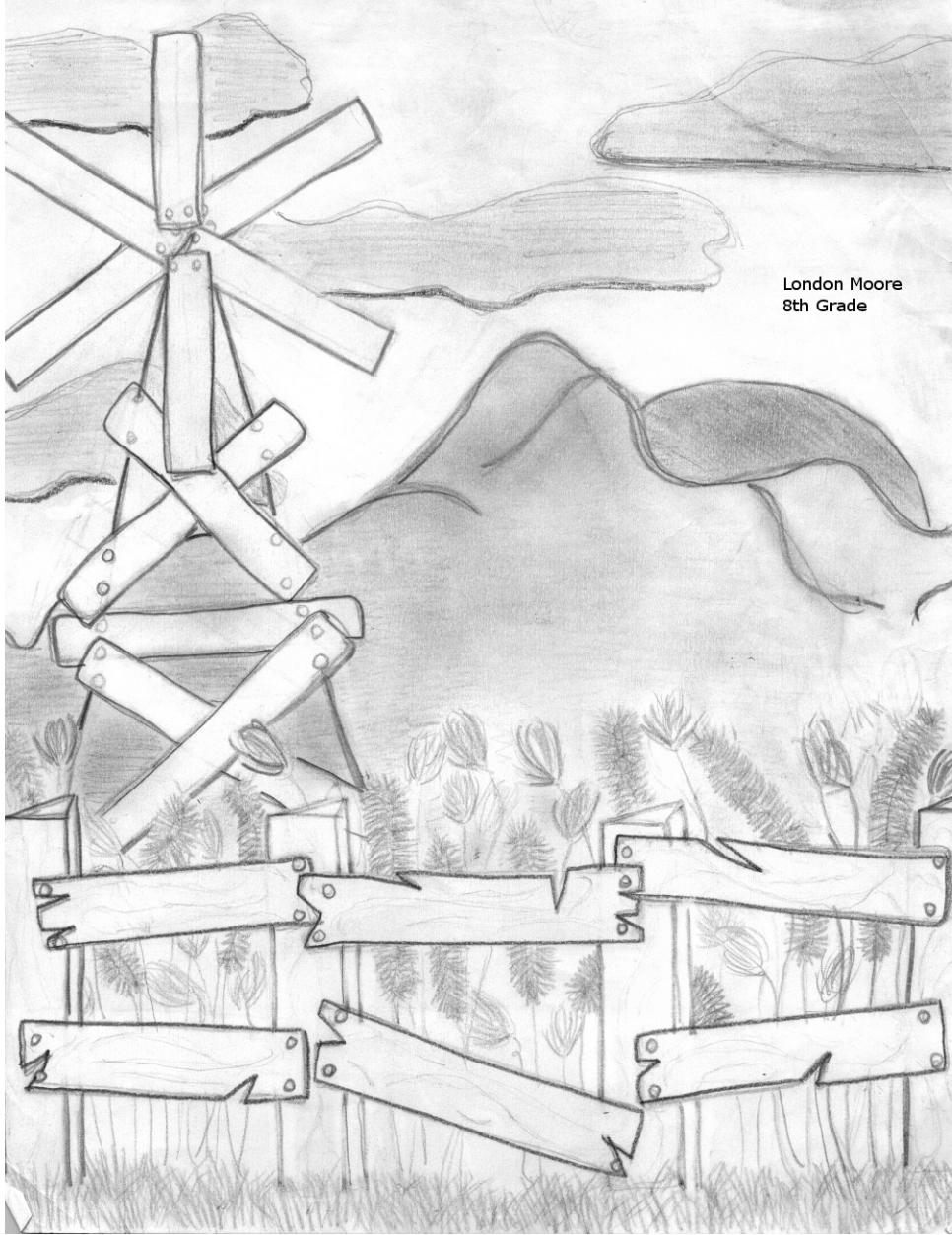
Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2018, Nancy R. Downing, Ph.D. of Bryan (replacing Harvey P. Kessler of Southlake whose term expired).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2018, Jasmine M. Drake, Ph.D. of Conroe (replacing Ashraf Mozayani of Houston whose term expired).

Greg Abbott, Governor

TRD-201606080





London Moore
8th Grade

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-0142-KP

Requestor:

The Honorable Scott A. Say

Lamb County & District Attorney

100 6th Drive, Room 111

Littlefield, Texas 79339

Re: Construction of the term "disabled" in section 82.002 of the Elections Code as applied to individuals civilly committed pursuant to chapter 841 of the Health and Safety Code (RQ-0142-KP).

Briefs requested by December 22, 2016

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

TRD-201606077

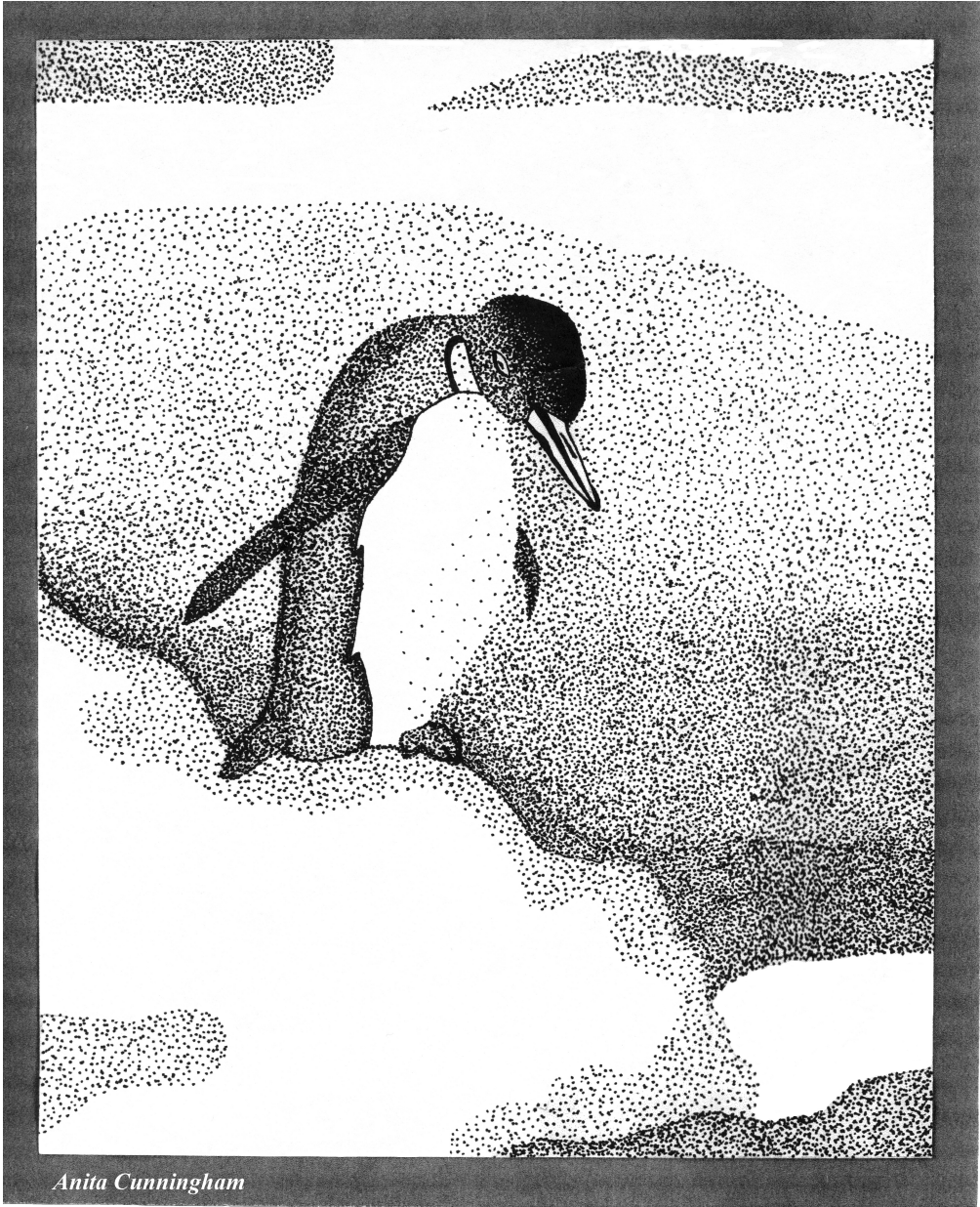
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: November 28, 2016





Anita Cunningham

EMERGENCY RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.409

The Texas Department of Agriculture (the Department or TDA) adopts on an emergency basis new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.409, concerning citrus quarantine. The new sections are adopted on an emergency basis to establish requirements and restrictions necessary to address dangers posed by two newly quarantined infestations of a destructive strain of citrus canker in Harris and Fort Bend counties.

The term "citrus canker" is historically referred to as a plant disease with a group of strains or pathotypes of the bacterium *Xanthomonas citri* subsp. *citri*. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and it can expose the interior of fruit to secondary infection by decay organisms. The disease does not travel through the tree to become systemic. The marketability of symptomatic fresh fruit is negatively impacted. Leaf lesions may appear within 14 days following inoculation and can attain 2-10 mm diameter on a susceptible host. In the field, symptoms may take several months to appear, and lower temperatures may increase the latency of the disease. Citrus canker bacterium can stay viable in old lesions on leaves, branches and other plant surfaces for several months, including in those dropped on the ground. *X. citri* subsp. *citri* can spread by wind, splashing water, movement of infected plant material or mechanical contamination.

On May 13, 2016, a virulent strain of citrus canker that attacks all known citrus varieties was detected in Harris County and later in Fort Bend County. Two adjacent sour orange trees were detected positive for citrus canker in a city park in Houston. Both trees were destroyed and on June 30, 2016 the Department quarantined an half-mile radius area around the positive detections. On August 10, 2016, a quarantined area was declared in Fort Bend County due to positive detections of citrus canker on various citrus varieties at a nursery in Richmond, Texas. This quarantine was further expanded due to additional positive finds of citrus canker in the residential areas of Fort Bend County. The current infestations are the first known incidences of citrus canker in Texas after its eradication in 1943. These discoveries necessitate an emergency response by the Department in order to properly destroy infected plants and combat the spread of this

highly destructive plant pathogen and prevent its spread in Texas and to other states.

While there is no commercial citrus under quarantine at this time, spread of citrus canker could be devastating to the industry. The emergency rules will help prevent potential devastation to the state's citrus industry. The movement, distribution or sale of citrus plants within or out of the quarantined areas will be regulated as a result of the emergency rules. Equipment or material coming in direct contact with infected plant material must be decontaminated prior to moving out of the quarantined area using any approved decontaminant. The citrus fruits sold, distributed or moved to packing houses for processing must be moved under the conditions of a compliance agreement.

The Department urges residents in, and visitors to the quarantined areas to be aware of the disease and help combat it by contacting the Department, Texas A&M University (TAMU) AgriLife Extension, TAMU Kingsville-Citrus Center, United States Department of Agriculture, or Texas Citrus Pest and Disease Management Corporation for more information. For practical purposes, borders of the quarantined area are set using the closest property lines, roads, canals or river and posted on the Department's website: www.texasagriculture.gov.

The rules are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

The code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 71.

§19.400. Quarantined Pest.

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

§19.401. Quarantined Areas.

Quarantined areas are described in this subchapter, and as defined on the Department's website at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

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

(2) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area on the Department's website.

§19.402. Regulated Articles.

(a) For purposes of this subchapter, a regulated article is a quarantined article defined under Texas Agriculture Code, §71.0092.

(b) The following are also regulated articles under this subchapter.

(1) Plants or plant parts, including fruit and seeds, or any of the following: all species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*.

(2) Grass, plant, and tree clippings.

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

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

§19.403. Production and Growing of Regulated Articles.

Propagation and growing of any regulated articles that are plants, rootstock or budwood for movement or use inside, into or from a quarantined area shall be in certified citrus nursery facilities under the requirements and restrictions in chapter 21, subchapter D, of this title relating to "Citrus Nursery Stock Certification Program." Additionally the facility shall comply with structural and sanitation requirements and restrictions applicable to interstate movement from citrus canker quarantined areas, as specified in the "Interstate Movement of Citrus and Other Rutaceous Plants for Planting from Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid," as published by the USDA-APHIS-PPQ, Plant Protection and Quarantine; a link to the current version of that document can be found at http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus/.

§19.404. Movement, Sale or Distribution of Regulated Articles.

(a) Regulated articles that are plants. Movement, sale or distribution through, within, into or from a quarantined area is prohibited, except as provided in §19.403 of this subchapter, relating to "production and growing of regulated articles;" unless:

(1) As authorized by the Department or USDA-APHIS-PPQ under a compliance agreement, limited permit or special permit; or

(2) Within a given property, except, within 10 feet of where a plant which is symptomatic or diagnosed with citrus canker has been found, and the area has been treated according a compliance agreement or permit issued by the Department or USDA.

(b) Regulated articles that are fruit.

(1) Regulated articles that are fruit that are moved from the property where they were produced, or are distributed or sold:

(A) Must be free of leaves, stems and debris; or

(B) Must be under a compliance agreement or permit issued by the Department or USDA.

(2) Fruit shall not be moved out of a quarantined area, except under a compliance agreement or special permit with the Department or the USDA.

(c) Landscapers and mowers. Landscapers and mowers servicing a quarantined area must come under compliance agreement with the Department or USDA, and decontaminate tools, appliances and

equipment by steam cleaning or by washing with an approved disinfectant prior to moving regulated articles out of the quarantined area.

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

§19.405. Ongoing Pest Management.

At all times, all citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker:

(1) the regulated article must be held at the location from sale or distribution, pending inspection, sampling and testing by the Department; the location must immediately notify the nearest regional Department office; and

(2) plants or plant parts that test positive for citrus canker shall be destroyed and disposed of under Department supervision.

§19.406. Citrus Fruit Harvest.

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

(b) Disinfecting of regulated fruit.

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

(2) Following treatment of regulated fruit in accordance with this paragraph, personnel must clean their hands according to requirements in D301.75-11 of the USDA Treatment Manual.

(3) Vehicles, equipment and other inanimate objects must be cleaned and treated according to the requirements in D301.75-11(d) of the USDA Treatment Manual.

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

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

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

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

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

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

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on November 28, 2016.

TRD-201606074

Jessica Escobar

Assistant General Counsel

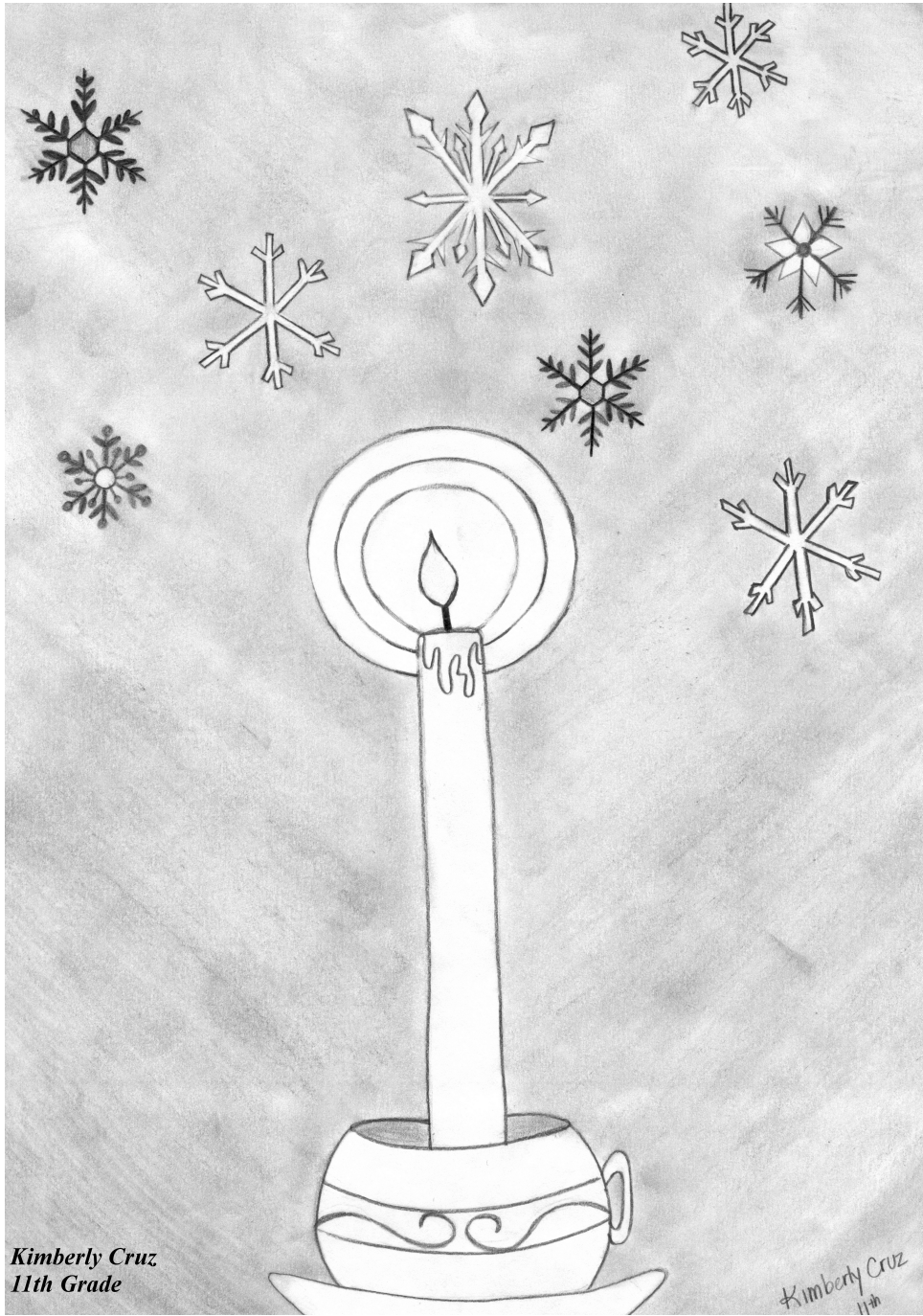
Texas Department of Agriculture

Effective date: November 28, 2016

Expiration date: March 27, 2017

For further information, please call: (512) 463-4075





Kimberly Cruz
11th Grade

Kimberly Cruz
11th

PROPOSED RULES

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 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission proposes an amendment to 16 TAC §301.1, relating to definitions. The proposed amendment creates a new definition for the term Program/Paper Trainer. The amendment also reorders the definitions to place the already defined terms Active License and Inactive License into their proper alphabetical order.

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

Mr. Trout has determined that for each year of the first five years that the rule is in effect the anticipated public benefit will be to provide a method to address the problem of program/paper trainers, who are listed in the racing program as the trainer when in fact the horse has been in the care, custody and training of someone else. The wagering public, which uses trainers' records for handicapping purposes, is defrauded when the program does not accurately reflect the name and history of the actual trainer.

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

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

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

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

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

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

§301.1. *Definitions.*

(a) (No change.)

(b) The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--The Texas Racing Act, Article 179e, Texas Civil Statutes.

(2) Active license--a racetrack license designated by the commission as active.

(3) [(2)] Age of a greyhound--determined as beginning on the day the greyhound is whelped.

(4) [(3)] Age of a horse--determined as beginning on the first day of January in the year in which the horse is foaled.

(5) [(4)] Application documents--documents submitted by an applicant for a license in support of the application.

(6) [(5)] Application period--a period designated by the Commission for the submission of application documents for a racetrack license.

(7) [(6)] Association grounds--all real property approved by the Commission for use by an association in the conduct of a race meeting.

(8) [(7)] Association veterinarian--a veterinarian employed by the association.

(9) [(8)] Authorized agent--a person appointed in writing by the owner or trainer of a horse or greyhound to represent the owner or trainer at a racetrack.

(10) [(9)] Backstretch--the straightaway on the side of a track that is opposite to the finish line.

(11) [(10)] Booking--a contract between an association and a kennel owner for the kennel owner to provide greyhounds to the association for a race meeting and for the association to provide kennel buildings to house the greyhounds.

(12) [(11)] Branding--the act of a totalisator system imprinting a mutuel ticket with information that identifies the ticket as canceled or cashed and automatically making the appropriate notation in the system's memories.

(13) [(12)] Canceled ticket--a mutuel ticket that represents a wager that has been canceled and withdrawn from the pari-mutuel pool.

(14) [(13)] Cashed ticket--a mutuel ticket that is paid for a winning wager.

(15) [(14)] Chief veterinarian--the chief veterinarian employed by the Commission.

(16) [(45)] Common pool--a pool in which the wagers received at a receiving location are combined with the wagers received at a sending racetrack.

(17) [(46)] Condition of a race--a characteristic element of the race, such as the distance, qualifications of animal to enter, purse or stakes, or other special features.

(18) [(47)] Coupled entry--two or more horses entered in a race that, because of common ties of ownership are joined to be a single betting interest in that race.

(19) [(48)] Cushion--the top level of a dirt racetrack.

(20) [(49)] Dead heat--a race in which two or more race animals finish at the same time.

(21) [(20)] Double entry--an entry of two or more greyhounds in the same race that have either common ownership or the same trainer and are separate wagering interests.

(22) [(21)] Encrypted--scrambled or otherwise manipulated audio-visual signals to mask the original video content of the signal to cause the signals to be indecipherable and unrecognizable to any person receiving the signal.

(23) [(22)] Entry--a horse, or horses in the case of a coupled entry, made eligible to run in a race.

(24) [(23)] Established weight--the racing weight for a greyhound established in accordance with the Rules.

(25) [(24)] Exempt institutional investor--an investor who is:

(A) an insurance company as defined by the Securities Act of 1933, §2(13), a bank as defined by that Act, §3(a)(2), a savings and loan association or other institution referenced in that Act, §3(a)(5)(A), or a foreign bank or savings and loan association or equivalent institution;

(B) an investment company as defined by the Investment Company Act of 1940, §3(a), an issuer that would have been deemed an investment company under that Act except for the exclusion in that Act, §3(c)(1), or a business development company as defined by that Act, §2(c)(48);

(C) a small business investment company licensed by the United States Small Business Administration under the Small Business Investment Act of 1958, §301(c);

(D) a plan established and maintained by a state, its political subdivisions, or an agency or instrumentality of a state or its political subdivisions for the benefit of its employees;

(E) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(F) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in subparagraph (D) or (E) of this definition, except trust funds that include as participants individual retirement accounts or H.R. 10 plans;

(G) a business development company as defined by the Investment Advisers Act of 1940, §202(a)(22), or an investment adviser registered under that Act;

(H) an organization described in the Internal Revenue Code, §501(c)(3);

(I) a dealer registered under the Securities Exchange Act of 1934, §15;

(J) a legal entity with a market value of at least \$50 million whose securities are traded on a nationally recognized or foreign securities exchange or interdealer quotation system, such as NASDAQ; and

(K) a legal entity, acting for its own account or the account of other exempt institutional investors, that in the aggregate owns and invests on a discretionary basis at least \$25 million in securities of issuers that are not affiliated with the entity, with the aggregate value of the securities being the cost of the securities, except if the entity reports its securities holdings in its financial statements based on their market value and no current information regarding the cost of the securities has been published, in which case the securities may be valued at market.

(26) [(25)] Exotic pool--a mutual pool that involves wagers on more than one entered horse or greyhound or on entries in more than one race.

(27) [(26)] False start--failure of the starting gate or box doors to open simultaneously.

(28) [(27)] Foul--an action by a horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

(29) [(28)] Greyhound race--a contest among greyhounds for purse, stakes, premium, or wager for money, run in the presence of the racetrack officials, including the following:

(A) Hurdle race--a race over a course in which jumps or hurdles are used.

(B) Match race--a race between two or more greyhounds, each the property of different owners, on terms agreed on by the owners and approved by the Commission.

(C) Overnight race--a race for which entries close 96 hours or less before the time set for the first race of the day on which the race is to be run.

(D) Purse race--a race for money or other prize to which the owners of the greyhounds engaged in the race do not contribute an entry.

(E) Race on the flat--a race over a course in which no jumps or other obstacles are placed.

(F) Stakes race--a race in which all money is to be deposited by the owners of the greyhounds engaged in the race, including a race of the day on which the stakes race is to be run.

(30) [(29)] Groom--an individual employed by an owner or trainer of a racehorse to tend to the physical appearance of the horse and to perform chores in and around the stable.

(31) [(30)] Growing medium--the substance immediately below the grass on a turf track.

(32) [(31)] Handle--the total amount of money wagered at a racetrack during a particular period.

(33) [(32)] Horse--an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(34) [(33)] Horse Race--a running contest between horses for entry fees, purse, prize, or other reward, including the following:

(A) Claiming race--a race in which a horse may be claimed in accordance with the Rules.

(B) Derby race--a race in which the first condition of eligibility is to be three years old.

(C) Futurity race--a race in which the first condition of eligibility is to be two years old.

(D) Guaranteed race--a race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) Handicap race--a race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) Match race--a race between only two horses that are owned by different owners.

(G) Maturity race--a race in which the first condition of eligibility is to be four years of age or older.

(H) Optional claiming race--a claiming race in which there is an option to have horses entered to be claimed for a stated price or not eligible to be claimed.

(I) Progeny race--a race restricted to the offspring of a specific stallion or stallions.

(J) Purse or overnight race--a race for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) Stakes race--a race to which nominators of the entries contribute to a purse.

(L) Starter race--an overnight race under allowance or handicap conditions, restricted to horses which have previously started for a designated claiming price or less, as stated in the conditions of the race.

(M) Walkover race--a stakes race in which only one horse starts or all the starters are owned by the same interest.

(N) Weight for age race--a race in which weights are assigned in keeping with the scale of weights in these rules.

(35) [(34)] In today horse--a horse that is in the body of a race program which is entered into a race on the next consecutive race day.

(36) Inactive license--a racetrack license designated by the commission as inactive.

(37) [(35)] Kennel area--an area on association grounds for the boarding or training of greyhounds.

(38) [(36)] Lead out--an individual who handles a greyhound from the lockout kennel to the starting box.

(39) [(37)] Locked in the gate--a horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate or box to open simultaneously with the other doors.

(40) [(38)] Lure--a mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

(41) [(39)] Maiden--a horse or greyhound that has never won a race at a recognized race meeting authorized by the Commission or by another racing jurisdiction.

(42) [(40)] Minus pool--a pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

(43) [(41)] Mutuel field--a group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

(44) [(42)] No race--a race that is canceled after being run due to a malfunction of the starting gate or box or any other applicable reason as determined by the Rules.

(45) [(43)] Nominator--the person in whose name a horse or greyhound is entered for a race.

(46) [(44)] Occupational licensee--an individual to whom the Commission has issued a license to participate in racing with pari-mutuel wagering.

(47) [(45)] Odds--a number indicating the amount of profit per dollar wagered to be paid to holders of winning pari-mutuel tickets.

(48) [(46)] Off time--the moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

(49) [(47)] Paddock--the area in which horses or greyhounds gather immediately before a race.

(50) Paper/Program Trainer--a licensed trainer who solely for the purposes of the official race program is identified as the trainer of a horse that is actually under the control of and trained by another person who may or may not hold a current trainer's license in any jurisdiction.

(51) [(48)] Patron--an individual present on association grounds during a race meeting who is eligible to wager on the racing.

(52) [(49)] Pecuniary interest--includes a beneficial ownership interest in an association, but does not include bona fide indebtedness or a debt instrument of an association.

(53) [(50)] Performance--the schedule of horse or greyhound races run consecutively as one program. A greyhound performance consists of fifteen or fewer races unless approved by the executive secretary.

(54) [(51)] Photofinish--the system of recording pictures or images of the finish of a race to assist in determining the order of finish.

(55) [(52)] Place--to finish second in a race.

(56) [(53)] Post position--the position assigned to a horse or greyhound in the starting gate or box.

(57) [(54)] Post time--the time set for the arrival at the starting gate or boxes by the horses or greyhounds in a race.

(58) [(55)] Purse--the cash portion of the prize for a race.

(59) [(56)] Race date--a date on which an association is authorized by the Commission to conduct races.

(60) [(57)] Race day--a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

(61) [(58)] Race meeting--the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

(62) [(59)] Racetrack facility--the buildings, structures and fixtures located on association grounds used by an association to conduct horse or greyhound racing.

(63) [(60)] Racetrack official--an individual appointed or approved by the Commission to officiate at a race meeting.

(64) [(61)] Racing judge--the executive racing official at a greyhound track.

(65) [(62)] Reasonable belief--a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

(66) [(63)] Recognized race meeting--a race meeting held under the sanction of a turf authority.

(67) [(64)] Refunded ticket--a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

(68) [(65)] Rule off--to bar an individual from the enclosure of an association and to deny all racing privileges to the individual.

(69) [(66)] Rules--the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(70) [(67)] Schooling race--a practice race conducted under actual racing conditions but for which wagering is not permitted.

(71) [(68)] Scratch--to withdraw an entered horse or greyhound from a race after the closing of entries.

(72) [(69)] Scratch time--the closing time set by an association for written requests to withdraw from a race.

(73) [(70)] Show--to finish third in a race.

(74) [(71)] Specimen--a bodily substance, such as blood, urine, or saliva, taken for analysis from a horse, greyhound, or individual in a manner prescribed by the Commission.

(75) [(72)] Stakes payments--the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate.

(76) [(73)] Stallion owner--a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(77) [(74)] Starter--a horse or greyhound entered in a race when the doors of the starting gate or box open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

(78) [(75)] Straight pool--a mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

(79) [(76)] Subscription--money paid to nominate, enter, or start a horse or greyhound in a stakes race.

(80) [(77)] Tack room--a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(81) [(78)] Totalisator--a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(82) [(79)] Tote board--a facility at a racetrack that is easily visible to the public on which odds, payoffs, advertising, or other pertinent information is posted.

(83) [(80)] Tote room--the room in which the totalisator equipment is maintained.

(84) [(81)] Tout--an individual licensed to furnish selections on a race in return for a set fee.

(85) [(82)] Trial--a race designed primarily to determine qualifiers for finals of a stakes race.

(86) [(83)] Uplink--an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data emanating from a sending racetrack, and includes the elec-

tronic transfer of received signals from the receiving antenna to TV monitors within the receiving location.

(87) [(84)] Weigh in--the process by which a jockey is weighed after a race or by which a greyhound is weighed before being placed in the lockout kennel.

(88) [(85)] Weighing in weight--the weight of a greyhound on weighing in to the lockout kennel.

(89) [(86)] Weigh out--the process by which a jockey or greyhound is weighed before a race.

(90) [(87)] Weighing out weight--the weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

(91) [(88)] Win--to finish first in a race.

(92) [(89)] Winner--

(A) for horse racing, the horse whose nose reaches the finish line first, while carrying the weight of the jockey or is placed first through disqualification by the stewards; and

(B) for greyhound racing, the greyhound whose muzzle, or if the muzzle is lost or hanging, whose nose reaches the finish line first or is placed first through disqualification by the judges.

[(90) Active license--a racetrack license designated by the commission as active.]

[(91) Inactive license--a racetrack license designated by the commission as inactive.]

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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Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

16 TAC §307.62

The Texas Racing Commission proposes an amendment to 16 TAC §307.62, Disciplinary Action. The section relates to disciplinary hearings conducted by the stewards or racing judges. The proposed amendment modifies subsection (b), Notice of Hearing, by providing that a hearing notice may be: hand delivered; mailed by both certified mail, return receipt requested, and regular mail; or sent by email provided that the Commission verifies receipt by the licensee. The proposed amendment also creates new subsection (j), Discovery, to set out the process by which agency staff and licensees exchange evidentiary information prior to a disciplinary hearing. Finally, the amendment

changes the section's title to "Disciplinary Hearings" in order to more accurately reflect the section's content.

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

Mr. Trout has determined that for each year of the first five years that the rule is in effect the anticipated public benefit of the amendment to subsection (b) will be to ensure adequate notice to licensees of disciplinary hearings while also ensuring that the Commission can efficiently proceed with a case, and that the anticipated public benefit of new subsection (j) will be to provide an effective system for the parties to exchange information prior to a hearing.

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

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

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

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

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

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

§307.62. *Disciplinary Hearings [Action].*

(a) (No change.)

(b) Notice of Hearing. Except as otherwise provided by the Rules, the stewards and racing judges shall provide written notice to a person who is the subject of a disciplinary hearing at least 10 calendar days before the hearing. Notice given under this subsection must state the nature of the charges against the person and the possible penalties that may be imposed. The stewards and racing judges or their designee may hand deliver the written notice of the disciplinary hearing to the licensee who is the subject of the hearing. Alternatively, the stewards and racing judges may provide the notice by sending it by both certified mail, return receipt requested, and regular mail to the licensee's last known address as found in the Racing Commission's licensing records. The stewards and racing judges may also send the notice by electronic mail provided that the Commission verifies receipt by the licensee. The person may waive his or her right to 10 days notice. Nonappearance of a licensee to whom notice has been provided under this subsection shall be deemed a waiver of the right to a hearing before the stewards or racing judges.

(c) - (i) (No change.)

(j) Discovery.

(1) Prior to a disciplinary hearing, upon written request served on the opposing party, a party shall be entitled, subject to the limitations in §2.15 of the Act, to:

(A) the name and address of any witness who may be reasonably expected to testify on behalf of the opposing party, together with a brief summary of the subject matter of each witness's anticipated testimony; and

(B) copies of all documents or other materials in the possession or control of the opposing party that the opposing party reasonably expects to introduce into evidence in either its case-in-chief or in rebuttal. Rebuttal documents, to the extent that they are not immediately identifiable, shall be tendered to the opposing party forthwith upon identification.

(2) A party may obtain discovery only by making a written request for the production of witness lists, documents, and other materials, as provided in paragraph (1) of this subsection.

(3) The stewards and racing judges may exclude from a disciplinary hearing any witnesses, documents, and other materials that were not properly disclosed in accordance with this subsection unless good cause is shown for the failure to disclose them.

(4) Discovery requests under this section shall not be cause for postponement or delay of a disciplinary hearing or of the disposition of the proceedings.

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

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CHAPTER 311. OTHER LICENSES

SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.104

The Texas Racing Commission proposes an amendment to 16 TAC §311.104, Trainers. The section relates to qualifications and duties of horse and greyhound trainers. The proposed amendment creates new subsection (l) and prohibits any licensee from acting as a program/paper trainer and any owner from naming a program/paper trainer on an entry form. The amendment also identifies this conduct as a detrimental practice and as being inconsistent with maintaining the honesty and integrity of racing.

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

Mr. Trout has determined that for each year of the first five years that the rule is in effect the anticipated public benefit will be to discipline those who engage in being a program/paper trainer and those use them, and to thereby reduce and eventually eliminate the practice.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic

impact statement and a regulatory flexibility analysis is not required.

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

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

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

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §13.01, which requires the Commission to adopt rules providing for the exclusion or ejection of a person who has committed a corrupt or fraudulent act in connection with racing or pari-mutuel wagering.

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

§311.104. *Trainers.*

(a) - (k) (No change.)

(l) No licensee shall act as a program trainer, nor shall any owner name a program trainer on the entry form. Any licensee found to be acting as a program trainer and any owner who listed a program trainer is responsible for all violations occurring from participation of any horse or greyhound entered or raced by the licensee. Further, the Commission recognizes that identification of the correct trainer in the program is an important handicapping tool used by the wagering public. Therefore, the Commission identifies the practices of utilizing a program trainer and of acting as a program trainer as being inconsistent with maintaining the honesty and integrity of racing under §307.7 (relating to Ejection and Exclusion) and as a detrimental practice under §311.6 (relating to Denial, Suspension and Revocation of Licenses.)

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

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CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §§321.2, 321.11, 321.35, 321.41, and 321.42. Section 321.2 relates to the practice of odds manipulation and identifies it as a violation of the rules. Section 321.11 relates to the storage of magnetic media containing totalisator computer logs. Section 321.35 relates to claims on pari-mutuel tickets or vouchers

presented for payment. Section 321.41 relates to the cashing of outstanding pari-mutuel tickets. Section 321.42 relates to the cashing of outstanding pari-mutuel vouchers.

The proposed amendment to §321.2 corrects an incorrect rule reference. The proposed amendment to §321.11 deletes the term "magnetic media" and replaces it with the words "removable electronic media." The proposed amendment to §321.35 deletes the subsections requiring the approval of the executive secretary prior to a claim being paid by the association on an unclaimed ticket or voucher. The proposed amendments to both §321.41 and §321.42 delete the subsections requiring the associations to provide pari-mutuel auditor tote reports and copies of Outs tickets.

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

Mr. Trout has determined that for each year of the first five years that the rule amendments are in effect the anticipated public benefit of the proposed amendment to §321.2 will be to provide appropriate enforcement authority for violations of the odds manipulation rule. The public benefit of the proposed amendment to §321.11 will be to modernize technology references in the rule to be consistent with current business practices. The public benefit of the proposed amendments to §§321.35, 321.41 and 321.42 will be to alleviate unnecessary administrative burdens on the racing associations when paying patrons on outstanding tickets and vouchers.

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

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

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

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

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.2, §321.11

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

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.2. *Odds Manipulation.*

The Commission recognizes that the wagering public uses Odds and Will Pays as a handicapping tool. To maintain the integrity of the pools, the Commission, therefore, identifies the practice of canceling wagers that were placed for the sole purpose of manipulating the posted Odds or Will Pays as being inconsistent with the honesty and integrity of rac-

ing under §307.7, Ejection and Exclusion, and as a detrimental practice under §311.6 [§309.9], Denial, Suspension, and Revocation of Licenses.

§321.11. *Access to Removable Electronic [Magnetic] Media.*

(a) An association shall submit a storage plan for all removable electronic [magnetic] media storing computer logs to the executive secretary for approval. This plan must include sufficient information for the executive secretary to determine that the information will remain secure, including:

(1) sufficient space for the totalisator vendor to store all removable electronic [magnetic] media; and

(2) a storage cabinet that will protect the media from damage.

(b) An association shall include in its security plans a means by which access to the removable electronic [magnetic] media is restricted.

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

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DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §§321.35, 321.41, 321.42

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

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§321.35. *Claim for Payment.*

(a) - (c) (No change.)

(d) In the event a claim is made for a ticket that meets the criteria established in §321.41(a) of this chapter (relating to Cashing Outstanding Tickets), the claim must be approved by the executive secretary before the claim can be paid.

(e) In the event a claim is made for a voucher that meets the criteria established in §321.42(a) of this chapter (relating to Cashing Outstanding Vouchers), the claim must be approved by the executive secretary before the claim can be paid.

§321.41. *Cashing Outstanding Tickets.*

(a) - (c) (No change.)

(d) At the end of each race day, the mutuel manager shall deliver to the pari-mutuel auditor:

(1) a list of the outstanding tickets that were cashed on the previous race day; and

(2) a photostatic copy of each outstanding ticket cashed on the previous day.

(e) In the event a photostatic copy can not be provided, the association will not be held liable for:

(1) a reader cashed ticket if the association can produce documentation to support the ticket's existence; or

(2) a ticket cashed in accordance with the executive secretary's approval under §321.35(b) or (d) of this chapter (relating to Claim for Payment).

§321.42. *Cashing Outstanding Vouchers.*

(a) - (c) (No change.)

(d) At the end of each race day, the mutuel manager shall deliver to the pari-mutuel auditor:

(1) a list of the outstanding vouchers that were cashed on the previous race day; and

(2) a photostatic copy of each outstanding voucher cashed on the previous day.

(e) In the event a photostatic copy can not be provided, the association will not be held liable for:

(1) a reader cashed voucher if the association can produce documentation to support the voucher's existence; or

(2) a voucher cashed in accordance with the executive secretary's approval under §321.35(b) or (d) of this chapter (relating to Claim for Payment).

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The Texas Education Agency proposes an amendment to §101.3041, concerning implementation of the academic content

areas testing program. The proposed amendment would establish a final set of performance standards to be implemented for the State of Texas Assessments of Academic Readiness (STAAR®) Grades 3-8 and end-of-course (EOC) assessments beginning with the 2016-2017 school year.

In 2015, the commissioner of education adopted a standard progression approach for STAAR® performance standards from the 2015-2016 school year through the 2021-2022 school year, increasing performance standards annually toward the final recommended Level II performance standard in the 2021-2022 school year.

Given the STAAR® performance results for 2012 through 2016, the commissioner has recommended that the current phase-in schedule be replaced with a final set of standards and labels to indicate four levels of student performance, as follows.

Did Not Meet Grade Level: This performance category applies to students scoring below Approaches Grade Level. This performance level indicates that students are unlikely to succeed in the next grade or course without significant, ongoing academic intervention. Students in this category do not demonstrate a sufficient understanding of the assessed knowledge and skills.

Approaches Grade Level: Performance at this level indicates that students are likely to succeed in the next grade or course with targeted academic intervention. Students in this category generally demonstrate the ability to apply the assessed knowledge and skills in familiar contexts.

Meets Grade Level: Performance in this category indicates that students have a high likelihood of success in the next grade or course but may still need some short-term, targeted academic intervention. Students in this category generally demonstrate the ability to think critically and apply the assessed knowledge and skills in familiar contexts. For Algebra II and English III, this performance level indicates students are sufficiently prepared for postsecondary success.

Masters Grade Level: Performance at this level indicates that students are expected to succeed in the next grade or course with little or no academic intervention. Students in this category demonstrate the ability to think critically and apply the assessed knowledge and skills in varied contexts, both familiar and unfamiliar. For Algebra II and English III, this level of performance indicates students are well prepared for postsecondary success.

To implement the proposed performance standards, the proposed amendment to 19 TAC §101.3041 would modify Figure: 19 TAC §101.3041(b)(1) and Figure: 19 TAC §101.3041(c)(1) to replace the standard progression phase-in schedule with a final set of standards and labels to indicate student performance. The amendment would establish the 2015-2016 STAAR® passing standard as the minimum passing requirement (Approaches Grade Level) and set the current panel-recommended standard as the benchmark indicating a higher level of satisfactory achievement (Meets Grade Level). The Level III performance standard would be renamed "Masters Grade Level" to clearly indicate advanced grade-level performance on a STAAR® assessment and articulate the relationship between each of the performance levels.

For STAAR® EOC testing, since the standard in place when a student first takes an EOC assessment is the standard that is maintained throughout the student's school career, the 2012-2015 phase-in standard for the STAAR® EOC assessments would be maintained.

The proposed performance standards and labels would first be effective with the 2016-2017 school year.

The proposed amendment would have no procedural and reporting implications beyond those that apply to all Texas students.

The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. Penny Schwinn, deputy commissioner for academics, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Schwinn has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be implementing the final Level II STAAR® performance standard for all STAAR® Grades 3-8 and EOC assessments beginning with the 2016-2017 school year. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL 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 December 9, 2016, and ends January 9, 2017. 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 December 9, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(a), which authorizes the commissioner to adopt rules requiring a student in the foundation high school program under TEC, §28.025, to be administered an end-of-course assessment instrument listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner under TEC, §39.0241(a), on each end-of-course assessment instrument administered to the student.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §39.0241(a) and §39.025(a).

§101.3041. *Performance Standards.*

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as

required by the Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects.

(b) The figures in this subsection identify the performance standards established by the commissioner for the State of Texas Assessments of Academic Readiness (STAAR®) general and alternate assessments at Grades 3-8.

(1) The figure in this paragraph identifies the STAAR® general education performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(1)

[Figure: 19 TAC §101.3041(b)(1)]

(2) The figure in this paragraph identifies the STAAR® Alternate 2 performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(2) (No change.)

(c) For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures in this subsection identify the performance standards established by the commissioner for the STAAR® end-of-course (EOC) general and alternate assessments. The standard in place when a student first takes an EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career.

(1) The figure in this paragraph identifies the EOC general education assessment performance standards.

Figure: 19 TAC §101.3041(c)(1)

[Figure: 19 TAC §101.3041(c)(1)]

(2) The figure in this paragraph identifies the EOC alternate assessment performance standards.

Figure: 19 TAC §101.3041(c)(2) (No change.)

(d) For students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year, the figure in this subsection identifies the performance standards established by the commissioner for the Texas Assessment of Knowledge and Skills exit level. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career.

Figure: 19 TAC §101.3041(d) (No change.)

(e) The Texas Education Agency shall post annually to its website a 100-point score conversion table after the STAAR® assessment spring administrations. The 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. The percentile is based on the performance of students who took the paper, online, Braille, and L versions of the assessment during the spring administration of any given year.

(1) The following formula is used to calculate the percentile $p(S)$ for a scale score S : $p(S) = x/N \times 100$.

(2) In the formula in paragraph (1) of this subsection, N is the total number of students who took the tests, and x is the number of students with scale scores less than S . If the calculated percentile is not a whole number, then it is rounded down to the closest whole number.

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

Filed with the Office of the Secretary of State on November 28, 2016.

TRD-201606070

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

**PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD**

**CHAPTER 153. RULES RELATING TO
PROVISIONS OF THE TEXAS APPRAISER
LICENSING AND CERTIFICATION ACT**

22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to §153.19, Licensing for Persons with Criminal History. The proposed amendments add language to the caption of the rule and change the language in subsection (f) from criminal history evaluation to moral character determination to align the rule with statutory requirements in Chapter 1103, Texas Occupations Code, and current Board practice.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed amendments. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the section as proposed will be clarity for applicants and a requirement that is easier to understand and consistent with state and federal law.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1103.151 - 1103.152, which authorize TALCB to: adopt rules relating to certificates and licenses and prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.19. Licensing for Persons with Criminal History and Moral Character Determination.

(a) No currently incarcerated individual is eligible to obtain or renew a license. A person's license will be revoked upon the person's imprisonment following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

(b) The Board may suspend or revoke an existing valid license, disqualify an individual from receiving a license, deny to a person the opportunity to be examined for a license or deny any application for a license, if the person has been convicted of a felony, had their felony probation revoked, had their parole revoked, or had their mandatory supervision revoked. Any such action shall be made after consideration of the factors detailed in Texas Occupations Code §53.022 and subsection (d) of this section.

(c) A license holder must conduct himself or herself with honesty, integrity, and trustworthiness. Thus, the Board has considered the factors in Texas Occupations Code §53.022 and deems the following crimes to be directly related to the occupation of appraiser or appraiser trainee:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (3) offenses against public administration;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (5) offenses involving moral turpitude; and
- (6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) In determining the present fitness of an applicant or license holder who has been convicted of a crime, the Board will consider the following evidence:

- (1) the extent and nature of the past criminal activity;
- (2) the age at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the last criminal activity;
- (4) the conduct and work activity prior to and following the criminal activity;
- (5) evidence of rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence of present fitness including letters of recommendation from:
 - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility;
 - (B) the sheriff and chief of police in the community where the applicant or license holder resides; and
 - (C) any other person in contact with the applicant or license holder.

(e) It shall be the responsibility of the applicant or license holder to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has supported his or her dependents and otherwise maintained a record of good conduct, and is current on the payment of all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the person has been convicted.

(f) Moral Character Determination [~~Criminal History Evaluation~~]. Before applying for a license, a person [~~with a criminal history~~] may request the Board to determine if [~~evaluate~~] the prospective applicant's moral character satisfies the Board's requirements for licens-

ing [~~criminal history~~] by submitting the request form approved by the Board and paying the required fee. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for a license. [~~In responding to a request, the Board shall address each offense listed in the request.~~]

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

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606036
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: January 8, 2017
For further information, please call: (512) 936- 3652



PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.7

The Texas Board of Nursing (Board) proposes amendments to §211.7, concerning *Executive Director* by adding new subsection (j). The amendments are proposed under the authority of the Occupations Code §301.151 and §301.101(b).

The proposed amendments are necessary to authorize the Executive Director of the Board to accept the voluntary closure of a vocational nursing education program or a professional nursing education program without the need for Board ratification. These amendments are being proposed simultaneously with other proposed changes to Board Rules 214.3 and 215.3 and are necessary for consistency with those proposed changes. Those proposed amendments are being published elsewhere in this issue of the *Texas Register*.

The proposed amendments were considered and approved by the Board at its regularly scheduled October 2016 meeting.

Section by Section Overview

Proposed new §211.7(j) provides that the Executive Director of the Board is authorized to accept the voluntary closure of a vocational nursing education program or a professional nursing education program without Board ratification. Further, the proposed new subsection requires the Executive Director to report summaries of these types of voluntary education program closures to the Board at its regular meetings.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that promote efficient regulation. Permitting a program to submit a voluntary closure to the Board's Executive Director reduces the amount of time the program must wait until it is eligible to submit a new proposal for approval from the Board at a later

date. Additionally, appearing before the Board in open meeting can be a difficult experience for some programs that are ceasing their operations. Offering these programs an alternative to appearing before the Board in an open meeting may ease some anxiety during the closure process, and appearing before the Board is not necessary in order for the program to complete its teach out process.

Potential Costs of Compliance. The proposed amendments provide an alternative option for nursing education programs to submit voluntary closures to the Executive Director for approval. The Board does not anticipate any costs of compliance associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Board has determined it is not required to prepare a regulatory flexibility analysis under the Government Code §2006.002(c) and (f) because there are no anticipated costs associated with the proposal.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 8, 2017 to Kristin Benton, Director of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to kristin.benton@bon.texas.gov, or faxed to (512) 305-8101 and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.101(b).

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

Section 301.101(b) provides that under the direction of the Board, the Executive Director shall perform the duties required by this chapter or designated by the Board.

§211.7. *Executive Director.*

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

(j) The Executive Director is authorized to accept the voluntary closure of a vocational nursing education program or a professional nursing education program. Board ratification is not required. The Executive Director will report summaries of such closures to the Board at its regular meetings.

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

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606056

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 305-7400

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**CHAPTER 214. VOCATIONAL NURSING
EDUCATION**

22 TAC §214.3

The Texas Board of Nursing (Board) proposes amendments to §214.3, concerning Program Development, Expansion and Closure. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157.

The proposed amendments allow the Executive Director of the Board to accept a nursing education program's voluntary closure without the need for Board ratification. Since September 1, 2015, the Board has received four voluntary closures from nursing education programs. From January 2014 through July 2015, there were nine schools that were experiencing potential withdrawal of program approval, board action regarding the status of the program, or voluntary program closure. The Board's current rules do not contemplate the voluntary closure of a program. Under the Board's current structure, a program must wait for the Board to vote to close a program at one of its quarterly Board meetings. As such, this can be a difficult and lengthy period of time for a program. The proposed amendments will shorten the time period a program must wait to begin its teach out and submit a new program proposal for approval, should it choose to do so. However, the proposal does not, in any way, relieve a program of its obligations to complete an appropriate teach out for its students and to meet the other requirements of the chapter.

Further, the proposed amendments clarify that a nursing education program that submits its voluntary closure must wait one calendar year (12 months) from the date its voluntary closure is accepted by the Executive Director before submitting a new nursing education program proposal to the Board for approval. This time frame is consistent with current Board policy and rule (§214.4(c)(12)) that require a one year time out period for programs whose proposals are denied or whose approval is withdrawn by the Board.

The amendments to §214.3 are being proposed simultaneously with other proposed changes to Board Rules 215.3 and 211.7 and are necessary for consistency with those proposed changes. Those proposed amendments are being published elsewhere in this issue of the *Texas Register*. The proposed amendments to §214.3 were considered and approved by the Board at its regularly scheduled October 2016 meeting.

Section by Section Overview

Proposed amended §214.3(d)(4) provides that a program's voluntary closure may be accepted by the Executive Director of the Board without requirement of Board ratification. Further, notice of a program's accepted closure will be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity will also be notified by the Board when the program's closure is accepted by the Executive Director. Once the program's voluntary closure has been accepted by the Executive Director, the program shall then be

removed from the list of Board approved professional nursing education programs.

Proposed amended §214.3(d)(5) permits a program that has voluntarily closed to reapply for approval. However, the new proposal may not be submitted to the Board until at least twelve (12) calendar months have elapsed from the date the program's closure was accepted by the Executive Director.

Proposed amended §214.3(d)(6) ensures that a program submitting its voluntary closure to the Board must comply with all of the other requirements of the section, including requirements related to a student teach out.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that promote efficient regulation. Permitting a program to submit a voluntary closure to the Board's Executive Director reduces the amount of time the program must wait until it is eligible to submit a new proposal for approval from the Board at a later date. Additionally, appearing before the Board in open meeting can be a difficult experience for some programs that are ceasing their operations. Offering these programs an alternative to appearing before the Board in an open meeting may ease some anxiety during the closure process, and appearing before the Board is not necessary in order for the program to begin and complete its teach out process. Further, the proposed amendments ensure that the program must continue to comply with the other requirements of the section. Finally, the proposed amendments do not foreclose the possibility that the program may seek approval of a new nursing education program at a later date. Rather, the proposed amendments provide an avenue for a program to reapply for approval of a new program once twelve calendar months have passed since its closure was accepted by the Executive Director.

Potential Costs of Compliance. The proposed amendments merely provide an alternative option for nursing education programs to submit voluntary closures to the Executive Director for approval. As such, the Board does not anticipate any costs of compliance associated with the proposal, as such submissions will be voluntary and will be based on the program's own assessment of its probability for success and/or need for closure.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Board has determined it is not required to prepare a regulatory flexibility analysis under the Government Code §2006.002(c) and (f) because there are no anticipated costs associated with the proposal.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 8, 2017, to Kristin Benton, Director of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to kristin.benton@bon.texas.gov, or faxed to (512) 305-8101 and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority

The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157.

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

Section 301.157(a), (b), and (d) authorize the Board to prescribe nursing education programs of study, approve schools of nursing and educational programs, prescribe rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; and deny or withdraw approval from nursing education programs. Section 301.157(d-3) further provides that programs whose approval has been withdrawn may reapply for approval.

§214.3. Program Development, Expansion and Closure.

(a) - (c) (No change.)

(d) Closing a Program.

(1) - (3) (No change.)

(4) A program's voluntary closure under this section may be accepted by the Executive Director of the Board without requirement of Board ratification. Notice of a program's accepted closure shall be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity shall be notified by the Board when the program's closure is accepted by the Executive Director. The program shall then be removed from the list of Board approved vocational nursing education programs.

(5) A program that has voluntarily closed under this section may reapply for approval. However, a new proposal may not be submitted to the Board until at least twelve (12) calendar months from the date the program's closure was accepted by the Executive Director have elapsed.

(6) A program submitting its voluntary closure under this section must comply with all of the requirements of this section.

(e) (No change.)

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

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606057

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 305-7400



CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.3

Introduction

The Texas Board of Nursing (Board) proposes amendments to §215.3, concerning *Program Development, Expansion and Closure*. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157.

The proposed amendments allow the Executive Director of the Board to accept a nursing education program's voluntary closure without the need for Board ratification. Since September 1, 2015, the Board has received four voluntary closures from nursing education programs. From January 2014 through July 2015, there were nine schools that were experiencing potential withdrawal of program approval, board action regarding the status of the program, or voluntary program closure. The Board's current rules do not contemplate the voluntary closure of a program. Under the Board's current structure, a program must wait for the Board to vote to close a program at one of its quarterly Board meetings. As such, this can be a difficult and lengthy period of time for a program. The proposed amendments will shorten the time period a program must wait to begin its teach out and submit a new program proposal for approval, should it choose to do so. However, the proposal does not, in any way, relieve a program of its obligations to complete an appropriate teach out for its students and to meet the other requirements of the chapter.

Further, the proposed amendments clarify that a nursing education program that submits its voluntary closure must wait one calendar year (12 months) from the date its voluntary closure is accepted by the Executive Director before submitting a new nursing education program proposal to the Board for approval. This time frame is consistent with current Board policy and rule (§215.4(c)(12)) that require a one year time out period for programs whose proposals are denied or whose approval is withdrawn by the Board.

The amendments to §215.3 are being proposed simultaneously with other proposed changes to Board Rules 214.3 and 211.7 and are necessary for consistency with those proposed changes. Those proposed amendments are being published elsewhere in this issue of the *Texas Register*. The proposed amendments to §215.3 were considered and approved by the Board at its regularly scheduled October 2016 meeting.

Section by Section Overview

Proposed amended §215.3(d)(4) provides that a program's voluntary closure may be accepted by the Executive Director of the Board without requirement of Board ratification. Further, notice of a program's accepted closure will be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity will also be notified by the Board when the program's closure is accepted by the Executive Director. Once the program's voluntary closure has been accepted by the Executive Director, the program shall then be removed from the list of Board approved professional nursing education programs.

Proposed amended §215.3(d)(5) permits a program that has voluntarily closed to reapply for approval. However, the new proposal may not be submitted to the Board until at least twelve (12) calendar months have elapsed from the date the program's closure was accepted by the Executive Director.

Proposed amended §215.3(d)(6) ensures that a program submitting its voluntary closure to the Board must comply with all

of the other requirements of the section, including requirements related to a student teach out.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that promote efficient regulation. Permitting a program to submit a voluntary closure to the Board's Executive Director reduces the amount of time the program must wait until it is eligible to submit a new proposal for approval from the Board at a later date. Additionally, appearing before the Board in open meeting can be a difficult experience for some programs that are ceasing their operations. Offering these programs an alternative to appearing before the Board in an open meeting may ease some anxiety during the closure process, and appearing before the Board is not necessary in order for the program to begin and complete its teach out process. Further, the proposed amendments ensure that the program must continue to comply with the other requirements of the section. Finally, the proposed amendments do not foreclose the possibility that the program may seek approval of a new nursing education program at a later date. Rather, the proposed amendments provide an avenue for a program to reapply for approval of a new program once twelve calendar months have passed since its closure was accepted by the Executive Director.

Potential Costs of Compliance. The proposed amendments merely provide an alternative option for nursing education programs to submit voluntary closures to the Executive Director for approval. As such, the Board does not anticipate any costs of compliance associated with the proposal, as such submissions will be voluntary and will be based on the program's own assessment of its probability for success and/or need for closure.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Board has determined it is not required to prepare a regulatory flexibility analysis under the Government Code §2006.002(c) and (f) because there are no anticipated costs associated with the proposal.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on January 8, 2017 to Kristin Benton, Director of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to kristin.benton@bon.texas.gov, or faxed to (512) 305-8101 and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157.

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

constitutes the practice of professional nursing or vocational nursing.

Section 301.157(a), (b), and (d) authorize the Board to prescribe nursing education programs of study, approve schools of nursing and educational programs, prescribe rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; and deny or withdraw approval from nursing education programs. Section 301.157(d-3) further provides that programs whose approval has been withdrawn may reapply for approval.

§215.3. *Program Development, Expansion and Closure.*

(a) - (c) (No change.)

(d) Closing a Program.

(1) - (3) (No change.)

(4) A program's voluntary closure under this section may be accepted by the Executive Director of the Board without requirement of Board ratification. Notice of a program's accepted closure shall be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity shall be notified by the Board when the program's closure is accepted by the Executive Director. The program shall then be removed from the list of Board approved professional nursing education programs.

(5) A program that has voluntarily closed under this section may reapply for approval. However, a new proposal may not be submitted to the Board until at least twelve (12) calendar months from the date the program's closure was accepted by the Executive Director have elapsed.

(6) A program submitting its voluntary closure under this section must comply with all of the requirements of this section.

(e) (No change.)

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

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606058

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 305-7400



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3, §341.6

The Texas Board of Physical Therapy Examiners proposes amendments to §341.3, Qualifying Continuing Competence Activities and §341.6, License Restoration.

The amendments are proposed to eliminate the Practice Review Tool (PRT) as a qualifying continuing competence (CC) activity in §341.3(5)(E) and as a method of demonstrating competency for restoration in §341.6(d)(1)(E), as the Federation of

State Boards of Physical Therapy (Federation) is retiring both the General PRT and the Orthopedic PRT on November 30, 2016. Additionally, the Federation's self-assessment tool oPTion has been proposed as a qualifying CC activity in §341.3(5)(E) with an assigned value of 3 continuing competence units (CCUs).

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments and that there will be no adverse effect on public safety.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§341.3. *Qualifying Continuing Competence Activities.*

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

(1) - (4) (No change.)

(5) Advanced Training, Certification, and Recognition.

(A) - (D) (No change.)

(E) The self-assessment tool oPTion [Practice Review Tool (PRT)] of the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Completion of oPTion [a PRT] is valued at 3 [45] CCUs.

(ii) If selected for audit, the licensee must submit a copy of the FSBPT certificate of completion.

(6) (No change.)

§341.6. *License Restoration.*

(a) - (c) (No change.)

(d) Persons who are not currently licensed in another state or territory of the U.S.

(1) A licensee whose Texas license is expired for one to five years. The requirements for restoration are:

(A) - (D) (No change.)

(E) demonstration of competency. Competency may be demonstrated in one of the following ways:

(i) reexamination with a passing score on the national physical therapy exam;

(ii) completion of an advanced degree in physical therapy within the last five years;

(iii) supervised clinical practice (SCP) completed over a continuous 12 month period and board approved continuing competence activities. For PTs, the requirement is 480 hours of SCP and 30 CCUs. For PTAs, the requirement is 320 hours of SCP and 20 CCUs.

~~[(iii) For PTs only: successful completion of a board-approved practice review tool and 30 CCUs of board-approved continuing competence activities within the previous 24 months;]~~

~~[(iv) For PTs only: 480 hours on-site supervised clinical practice completed over a continuous 12 month period and 30 CCUs of board-approved continuing competence activities within the previous 24 months.]~~

~~[(v) For PTAs only: 320 hours on-site supervised clinical practice completed over a continuous 12 month period and 20 CCUs of board-approved continuing competence activities within the previous 24 months.]~~

(2) (No change.)

(e) - (f) (No change.)

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

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606039

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 305-6900



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER X. PREFERRED AND EXCLUSIVE PROVIDER PLANS

DIVISION 1. GENERAL REQUIREMENTS

28 TAC §3.3705

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 3, Subchapter X, Division 1, §3.3705, relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations. The amendments are necessary because of an inadvertent clerical error omitting unchanged subsections (l)(3) - (q) in the adoption of amendments to the section.

EXPLANATION. Section 3.3705 needs to be amended to restore subsections inadvertently omitted from the order adopting amendments to another subsection of the section. In the May

27, 2016, issue of the *Texas Register* (41 TexReg 3832), the department proposed amendments to 28 TAC §3.3705(f) and §3.3708(e). The department also proposed §3.3705(a) - (e) and (g) - (q) and the remainder of §3.3708 with no changes. Subsections (g) - (q) of §3.3705 were specifically proposed as "No change."

On October 14, 2016, the commissioner adopted amendments to 28 TAC §3.3705 and §3.3708, specifically noting three changes to the proposed amendments to §3.3705(f) and three changes to the proposed amendments to §3.3708(3). The order noted that the department was making no further changes to either section.

The adoption order was required to reproduce the entirety of §3.3705 and §3.3708 for publication in the *Texas Register*. This required copying and pasting the unchanged text of §3.3705 (g) - (q) into the order after the amended text of subsection (f). Due to a clerical error, only the unchanged text of subsections (g) - (l)(2) was pasted in. As a result, the adoption order omitted the unchanged text of §3.3705(l)(3) - (q). The adoption order was published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8605) with §3.3705(l)(3) - (q) still missing. The omission was not noticed during the period the *Texas Register* allows for correction of error, and the adoption became effective on November 3, 2016.

To correct the error, §3.3705 needs to be amended to restore the inadvertently omitted subsections.

A description of changes to specific sections follows.

Section 3.3705. The proposal restores the text of subsections (l) - (q) that was excluded from the publication of §3.3705 in the October 28, 2016, issue of the *Texas Register*.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deanna Osmonson, assistant director, Life and Health Lines Office, has determined that during each year of the first five years that the proposed amendment is in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the sections, since the amendment merely restores subsections (l) through (q) that was inadvertently excluded from the publication of §3.3705 in the October 28, 2016, issue of the *Texas Register*. There will not be any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Osmonson has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administration and enforcement of the amended sections will be compliance with subsections (l) through (q) and communication by insurers with insureds. There is no anticipated economic cost to persons who are required to comply with the proposed amendments because these are requirements already included in §3.3705 prior to the October 28, 2016, issue of the *Texas Register*. The subsections deal with communications already made by regulated entities, which the department believes regulated entities have continued to do despite the inadvertent omission in the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses because, to the extent they contain requirements, they simply re-

store §3.3705(l) - (q) to their state before November 3, 2016. Therefore, in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

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

REQUEST FOR PUBLIC COMMENT. The department invites the public to comment on this proposal. Submit your written comments no later than 5 p.m., Central time, on January 9, 2017. Send written comments by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comments by mail to Patricia Brewer, Team Lead, Life and Health Regulatory Initiatives Team, Regulatory Policy Division, MC 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to LHLComments@tdi.texas.gov. You must submit any request for a public hearing separately to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. These amendments are proposed under Insurance Code §§36.001, 1301.007, and 1301.0042.

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

Insurance Code §1301.007 authorizes the commissioner to adopt rules to implement Insurance Code Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1301.0042 provides that a provision of the Insurance Code or another insurance law of Texas that applies to a preferred provider benefit plan applies to an exclusive provider benefit plan except to the extent that the commissioner determines the provision to be inconsistent with the function and purpose of an exclusive provider benefit plan.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Insurance Code §1301.007 and §1301.0042.

§3.3705. Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations.

(a) - (k) (No change.)

(l) Additional listing-specific disclosure requirements. In all preferred provider listings, including any Internet-based postings of information made available by the insurer to provide information to insureds about preferred providers, the insurer must comply with the requirements in paragraphs (1) - (9) of this subsection.

(1) The provider information must include a method for insureds to identify those hospitals that have contractually agreed with the insurer to facilitate the usage of preferred providers as specified in subparagraphs (A) and (B) of this paragraph.

(A) The hospital will exercise good faith efforts to accommodate requests from insureds to utilize preferred providers.

(B) In those instances in which a particular facility-based physician or physician group is assigned at least 48 hours prior to services being rendered, the hospital will provide the insured with information that is:

(i) furnished at least 24 hours prior to services being rendered; and

(ii) sufficient to enable the insured to identify the physician or physician group with enough specificity to permit the insured to determine, along with preferred provider listings made available by the insurer, whether the assigned facility-based physician or physician group is a preferred provider.

(2) The provider information must include a method for insureds to identify, for each preferred provider hospital, the percentage of the total dollar amount of claims filed with the insurer by or on behalf of facility-based physicians that are not under contract with the insurer. The information must be available by class of facility-based physician, including radiologists, anesthesiologists, pathologists, emergency department physicians, and neonatologists.

(3) In determining the percentages specified in paragraph (2) of this subsection, an insurer may consider claims filed in a 12-month period designated by the insurer ending not more than 12 months before the date the information specified in paragraph (2) of this subsection is provided to the insured.

(4) The provider information must indicate whether each preferred provider is accepting new patients.

(5) The provider information must provide a method by which insureds may notify the insurer of inaccurate information in the listing, with specific reference to:

(A) information about the provider's contract status;
and

(B) whether the provider is accepting new patients.

(6) The provider information must provide a method by which insureds may identify preferred provider facility-based physicians able to provide services at preferred provider facilities.

(7) The provider information must be provided in at least 10 point font.

(8) The provider information must specifically identify those facilities at which the insurer has no contracts with a class of facility-based provider, specifying the applicable provider class.

(9) The provider information must be dated.

(m) Annual policyholder notice concerning use of a local market access plan. An insurer operating a preferred provider benefit plan that relies on a local market access plan as specified in §3.3707 of this title (relating to Waiver Due to Failure to Contract in Local Markets) must provide notice of this fact to each individual and group policyholder participating in the plan at policy issuance and at least 30 days prior to renewal of an existing policy. The notice must include:

(1) a link to any webpage listing of regions, counties, or ZIP codes made available pursuant to subsection (e)(2) of this section;

(2) information on how to obtain or view any local market access plan or plans the insurer uses; and

(3) a link to the department's website where the department posts information relevant to the grant of waivers.

(n) Disclosure of substantial decrease in the availability of certain preferred providers. An insurer is required to provide notice as specified in this subsection of a substantial decrease in the availability of preferred facility-based physicians at a preferred provider facility.

(1) A decrease is substantial if:

(A) the contract between the insurer and any facility-based physician group that comprises 75 percent or more of the preferred providers for that specialty at the facility terminates; or

(B) the contract between the facility and any facility-based physician group that comprises 75 percent or more of the preferred providers for that specialty at the facility terminates, and the insurer receives notice as required under §3.3703(a)(26) of this title (relating to Contracting Requirements).

(2) Notwithstanding paragraph (1) of this subsection, no notice of a substantial decrease is required if the requirements specified in either subparagraph (A) or (B) of this paragraph are met:

(A) alternative preferred providers of the same specialty as the physician group that terminates a contract as specified in paragraph (1) of this subsection are made available to insureds at the facility so the percentage level of preferred providers of that specialty at the facility is returned to a level equal to or greater than the percentage level that was available prior to the substantial decrease; or

(B) the insurer provides to the department, by e-mail to mcqa@tdi.texas.gov, a certification of the insurer's determination that the termination of the provider contract has not caused the preferred provider service delivery network for any plan supported by the network to be noncompliant with the adequacy standards specified in §3.3704 of this title (relating to Freedom of Choice; Availability of Preferred Providers), as those standards apply to the applicable provider specialty.

(3) An insurer must prominently post notice of any contract termination specified in paragraph (1)(A) or (B) of this subsection and the resulting decrease in availability of preferred providers on the portion of the insurer's website where its provider listing is available to insureds.

(4) Notice of any contract termination specified in paragraph (1)(A) or (B) of this subsection and of the decrease in availability of providers must be maintained on the insurer's website until the earlier of:

(A) the date on which adequate preferred providers of the same specialty become available to insureds at the facility at the percentage level specified in paragraph (2)(A) of this subsection;

(B) six months from the date that the insurer initially posts the notice; or

(C) the date on which the insurer provides to the department, by e-mail to mcqa@tdi.texas.gov, a certification as specified in paragraph (2)(B) of this subsection indicating the insurer's determination that the termination of provider contract does not cause non-compliance with adequacy standards.

(5) An insurer must post notice as specified in paragraph (3) of this subsection and update its Internet-based preferred provider listing as soon as practicable and in no case later than two business days after:

(A) the effective date of the contract termination as specified in paragraph (1)(A) of this subsection; or

(B) the later of:

(i) the date on which an insurer receives notice of a contract termination as specified in paragraph (1)(B) of this subsection; or

(ii) the effective date of the contract termination as specified in paragraph (1)(B) of this subsection.

(o) Disclosures concerning reimbursement of out-of-network services. An insurer must make disclosures in all insurance policies, certificates, and outlines of coverage concerning the reimbursement of out-of-network services as specified in this subsection.

(1) An insurer must disclose how reimbursements of non-preferred providers will be determined.

(2) Except in an exclusive provider benefit plan, if an insurer reimburses nonpreferred providers based directly or indirectly on data regarding usual, customary, or reasonable charges by providers, the insurer must disclose the source of the data, how the data is used in determining reimbursements, and the existence of any reduction that will be applied in determining the reimbursement to nonpreferred providers.

(3) Except in an exclusive provider benefit plan, if an insurer bases reimbursement of nonpreferred providers on any amount other than full billed charges, the insurer must:

(A) disclose that the insurer's reimbursement of claims for nonpreferred providers may be less than the billed charge for the service;

(B) disclose that the insured may be liable to the non-preferred provider for any amounts not paid by the insurer;

(C) provide a description of the methodology by which the reimbursement amount for nonpreferred providers is calculated; and

(D) provide to insureds a method to obtain a real time estimate of the amount of reimbursement that will be paid to a non-preferred provider for a particular service.

(p) Plan designations. A preferred provider benefit plan that utilizes a preferred provider service delivery network that complies with the network adequacy requirements for hospitals under §3.3704 of this title without reliance on an access plan may be designated by the insurer as having an "Approved Hospital Care Network" (AHCN). If a preferred provider benefit plan utilizes a preferred provider service delivery network that does not comply with the network adequacy requirements for hospitals specified in §3.3704 of this title, the insurer is required to disclose that the plan has a "Limited Hospital Care Network":

(1) on the insurer's outline of coverage; and

(2) on the cover page of any provider listing describing the network.

(q) Loss of status as an AHCN. If a preferred provider benefit plan designated as an AHCN under subsection (p) of this section no longer complies with the network adequacy requirements for hospitals under §3.3704 of this title and does not correct such noncompliant status within 30 days of becoming noncompliant, the insurer must:

(1) notify the department in writing concerning such change in status at Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104;

(2) cease marketing the plan as an AHCN; and

(3) inform all insureds of such change of status at the time of renewal.

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

Filed with the Office of the Secretary of State on November 23, 2016.

TRD-201606062

Norma Garcia
General Counsel

Texas Department of Insurance

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 676-6584



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §§433.1, 433.3, 433.5, 433.7

The Texas Commission on Fire Protection (the commission) proposes the repeal of Chapter 433, Minimum Standards For Driver/Operator-Pumper, concerning sections, §433.1, Driver/Operator-Pumper Certification, §433.3, Minimum Standards for Driver/Operator-Pumper Certification, §433.5, Examination Requirements, and §433.7, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed repeal is to establish new Chapter 433 with Subchapter A for Driver/Operator - Pumper consisting of current rule language and Subchapter B that will identify and define requirements for a Driver/Operator - Aerial Apparatus.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed repeal is in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit from the passage is clear and concise rules and will offer two separate certifications for Driver/Operator which has been requested by constituents. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties;

§419.032 which allows the commission to appoint fire protection personnel.

The proposed repeal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§433.1. *Driver/Operator-Pumper Certification.*

§433.3. *Minimum Standards for Driver/Operator-Pumper Certification.*

§433.5. *Examination Requirements.*

§433.7. *International Fire Service Accreditation Congress (IFSAC) Seal.*

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

Filed with the Office of the Secretary of State on November 28, 2016.

TRD-201606067

Tim Rutland
Executive Director
Texas Commission on Fire Protection

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 936-3812



CHAPTER 433. DRIVER/OPERATOR

The Texas Commission on Fire Protection (the commission) proposes new Chapter 433, Driver/Operator, concerning Subchapter A, Minimum Standards for Driver/Operator-Pumper, §433.1, Driver/Operator-Pumper Certification, §433.3, Minimum Standards for Driver/Operator-Pumper Certification, §433.5, Examination Requirements, and §433.7, International Fire Service Accreditation Congress (IFSAC) Seal; and Subchapter B, Minimum Standards for Driver/Operator-Aerial Apparatus, §433.201, Driver/Operator-Aerial Apparatus Certification, §433.203, Minimum Standards for Driver/Operator-Aerial Apparatus Certification, and §433.205, Examination Requirements.

The purpose of the proposed new chapter is to establish new rule language that identifies and defines requirements for a Driver/Operator certification for both Driver/Operator-Pumper and Driver/Operator-Aerial Apparatus.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed new chapter is in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed new sections are in effect, the public benefit from the passage is that the commission will now offer two separate certifications for Driver/Operator which has been requested by the fire service. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments and new sections may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to

info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §§433.1, 433.3, 433.5, 433.7

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§433.1. Driver/Operator-Pumper Certification.

A driver/operator-pumper is defined as an individual who safely operates a fire pumper in accordance with all state and local laws; operates a fire pump in a safe manner; and determines effective fire stream calculations and pump discharge pressures. Responsibilities include routine apparatus tests, maintenance, inspections, and servicing functions.

§433.3. Minimum Standards for Driver/Operator-Pumper Certification.

(a) In order to obtain Driver/Operator-Pumper certification, the individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation as a Driver/Operator-Pumper from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements - General); or

(3) complete a commission approved Driver/Operator-Pumper Curriculum and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator-pumper program must consist of one of the following:

(A) complete a commission approved Driver/Operator-Pumper Curriculum as specified in Chapter 7 of the commission's Certification Curriculum Manual;

(B) complete an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Driver/Operator-Pumper Curriculum; or

(C) complete a military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Driver/Operator-Pumper Curriculum.

(b) Out-of-state or military training programs, which are submitted to the commission for the purpose of determining equivalency, will be considered equivalent if all competencies set forth in Chapter 7 (pertaining to Driver/Operator-Pumper) of the commission's Certification Curriculum Manual are met.

§433.5. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive driver/operator-pumper certification.

(b) Individuals will be permitted to take the Commission examination for driver/operator-pumper by documenting, as a minimum, completion of the NFPA 1001 Fire Fighter I training, and completing a Commission-approved driver/operator-pumper curriculum.

§433.7. International Fire Service Accreditation Congress (IFSAC) Seal.

Individuals completing a commission approved driver/operator-pumper program; documenting, as a minimum, an IFSAC seal for Fire Fighter I; and passing the applicable state examination may be granted an IFSAC seal as a Driver/Operator-Pumper by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

Filed with the Office of the Secretary of State on November 28, 2016.

TRD-201606068

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 936-3812



SUBCHAPTER B. MINIMUM STANDARDS FOR DRIVER/OPERATOR-AERIAL APPARATUS

37 TAC §§433.201, 433.203, 433.205

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§433.201. Driver/Operator-Aerial Apparatus Certification.

A Driver/Operator-Aerial Apparatus is defined as an individual who operates an aerial apparatus safely and in accordance with all state and local laws; safely and correctly maneuvers, positions, stabilizes, and operates an aerial apparatus and device; and effectively deploys and operates an elevated master stream from a water source. Other responsibilities include routine apparatus testing, maintenance, inspections, and servicing functions.

§433.203. Minimum Standards for Driver/Operator-Aerial Apparatus Certification.

(a) In order to obtain Driver/Operator-Aerial Apparatus certification, the individual must:

(1) Hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation as a Driver/Operator-Aerial Apparatus from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2014 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements - General); or

(3) complete a commission approved Driver/Operator-Aerial Apparatus training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator-aerial apparatus training program must consist of one of the following:

(A) completion of an in-state Driver/Operator-Aerial Apparatus program meeting the requirements of the applicable NFPA standard and conducted by a commission certified training provider, that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard; or

(C) completion of a military training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

(b) Out-of-state or military training programs submitted to the commission for the purpose of determining equivalency will be con-

sidered equivalent if the training addresses all job performance requirements of the applicable NFPA standard.

§433.205. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Driver/Operator-Aerial Apparatus certification.

(b) Individuals will be permitted to take the commission examination for Driver/Operator-Aerial Apparatus by documenting, as a minimum, completion of the NFPA 1001 Fire Fighter I training, and completing a commission-approved Driver/Operator-Aerial Apparatus training program.

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

Filed with the Office of the Secretary of State on November 28, 2016.

TRD-201606069

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 8, 2017

For further information, please call: (512) 936-3812



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §§1.401 - 1.409

(Editor's note: Due to a Texas Register editing error, the text of the following rules adopted with changes from the proposal was not republished. This adoption was published in the November 18, 2016 issue of the Texas Register, but is being republished in its entirety due to the error. The effective date of the rules (December 4, 2016) is not affected by the error.)

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds. This new subchapter is being adopted with changes made in response to public comment to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6859).

REASONED JUSTIFICATION: The purpose of the new section is to establish more clearly for program participants in one central rule location the federal and state guidance applicable to Department subrecipients and administrators and includes such types of issues as Cost Principles, Travel, Single Audit Requirements, Purchase and Procurement, Inventory Reports, Bonding, and Record Retention.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. Comments and responses are presented in the order they appear in the rule with comments received from Raimond Gideon, Habitat for Humanity of Smith County (#1); Dan Boyd, Community Services of Northeast Texas (#2); Joanna Guillen, El Paso Collaborative for Community and Economic Development (#3); and Miguel Chacon, AYUDA, Inc. (#4). Some "comment" received posed questions not related to the wording of the rule or asked for further training, but did not provide specific suggested revisions to the rule. In those cases, only items that were specific comments on the rule are summarized below; training will be available after rule adoption if needed.

1. General Comment

COMMENT SUMMARY: Comment was made that the Uniform Grant Management Standards ("UGMS") were not intended to apply to non-profits (#1). It was also commented that adhering

to these requirements would require additional staff time and expense to perform the requirements (#1). It was commented that the preamble provided by the Department in the *Texas Register* noted no cost to the rule, but that there is concern that some of the requirements would in fact have some cost. (#3, 4)

STAFF RESPONSE: This rule, as drafted, makes UGMS applicable for private nonprofits receiving state or federal funds for which 2 CFR 200, or UGMS, are not currently applicable. Historically, through the release of Notices of Funding Availability ("NOFAs"), a variety of the requirements of UGMS have been made applicable to contract awardees, and so the costs may have existed and were in some cases intended to apply to non-profit subrecipients. In response to feedback from KPMG (received during the Department's federally-required Single Audit) to be more clear on the applicability of cost principles to state funds, this revision was proposed in rule for transparency and clarity. It should be noted that the commenter provided no alternative set of standards, and having no standards is considered a risk. Regarding the comment that the requirements may add cost, the policies as a whole do not necessarily add costs, but some specific sections may, depending on the specific program, have a cost. It is emphasized that any costs added are eligible costs under the grant and pose no new costs that would have to be borne by funds other than the state or federal assistance. Issues of cost have been addressed in individual sections below, when applicable. It should be noted that because these requirements were often made applicable through the NOFA process, perceived added costs may have been applicable in any case.

2. §1.402, Cost Principles and Administrative Requirements

COMMENT SUMMARY: One commenter questioned under which circumstances HOME contracts would have to adhere to UGMS (#4). Two commenters noted that for smaller nonprofits, the language regarding separation of duties, and ensuring that no individual has the ability to perform more than one of the functions listed, is problematic, particularly for organizations without at least 5 employees (#3, 4).

STAFF RESPONSE: As it relates to the comment regarding uncertainty of when HOME subrecipients might have to adhere to UGMS, the rule specifies as currently drafted that Private non-profit subrecipients of HOME do not have to comply with UGMS "unless otherwise required by Notice of Funding Availability ("NOFA") or Contract" and further notes that: "For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency." The Department does not believe any edits are needed in relation to that comment. As it relates to the separation of functions, the Department appreciates the challenge posed by this requirement for small nonprofits that may not have enough employees to ensure the separation of duties. An additional subsection has been added noting how such small entities could still satisfy this requirement:

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for.

3. §1.403, Single Audit Requirements

COMMENT SUMMARY: The commenter suggests in association with section (b)(1) that Subrecipients be permitted to have a qualification preference of "a familiarity with TDHCA/Subrecipient relationships" when selecting a single auditor. The commenter noted that this was not suggested to generate a rule change, per se, but that such a preference be considered permissible when compliance with the rule is determined (#2). The commenter also suggested for section (b)(2) to revise "a sealed bid method" to "the sealed bid method" to more clearly reference back to the specific method cited in the rule (#2). Another commenter noted that the following sentence in §1.403(e) is confusing: "Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted." (#3). Another commenter noted that the possible requirement to advertise for the single auditor outside the entity's service area could add cost to the advertising of the service (#4).

STAFF RESPONSE: As it relates to the qualification preference, such a preference is not permitted if it is overly restrictive to competition. The determination of being overly restrictive is dependent on a specific fact situation. No rule change is being made. Staff concurs with the clarifying edit relating to "the" sealed bid as noted below. Staff concurs with the comment relating to confusion on when an audit is triggered in (e) and makes clarifying edits below. As it relates to the advertising outside of a service area possibly adding cost, it should be noted that the rule only indicates that "Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources." For a service area the size of the El Paso metropolitan area, the community of the commenter, it is likely that it is sufficiently large to generate two or more respondents, so no additional advertising outside the area would be needed.

(b)(2) Subrecipients may not use the sealed bid method for procurement of the Single Auditor.

(e) Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted.

4. §1.404, Purchase and Procurement Standards

COMMENT SUMMARY: One commenter noted that while they use historically underutilized businesses, it would require additional staff time and expense to comply with the proposed documentation requirements associated with Historically Underutilized Business ("HUB") Procurement required under section (d) (#1). Another commenter echoed that the procurement items associated in the rule with UGMS would likely result in additional costs to nonprofit administrators (#3). Two commenters indicated that section (b) which requires that subrecipients require subcontractors to establish written procurement procedures, would be challenging because it is difficult enough to find "good" contractors willing to work in rural and colonia areas and will likely result in an undue burden on subrecipients to find

contractors that can understand, let alone meet this requirement (#3, 4).

STAFF RESPONSE: As it relates to the comment that complying with HUB documentation would be costly, the Uniform Grant Management Standards references the State of Texas Procurement Manual located at <https://www.comptroller.texas.gov/purchasing/publications/procurement-manual.php>. The manual provides procurement guidelines that include HUB compliance and should assist with associated cost efficiencies. It should be noted that the costs associated with the procurement are eligible costs under the grant. As it relates to the comment about requiring subcontractors to have written procurement procedures, this is an issue of how the terms of 'subcontractor' and/or 'vendor' are used in UGMS and 2 CFR 200 versus how Subcontractor is used in the weatherization program. In general, construction contractors in housing programs would not be required to have such written procurement procedures because their role is that of a vendor. The requirement does not apply to 'vendors' but only to true subcontractors or other entities who administer some part of the Subrecipient's program on their behalf. Clarification to the rule is being made to include the word subrecipients, which is the term some programs (e.g. ESG and HOME) use. This is also an issue on which further training can be provided if needed.

(b) Subrecipients shall establish, and require (its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts.

5. §1.405, Bonding Requirements

COMMENT SUMMARY: One commenter, a recipient of Housing Trust Fund program funds, noted that the "requirement of builders risk" would add an unnecessary expense with no added benefit; in the commenters extensive years of construction experience, they have found that most insurance companies do not provide such coverage for remodels (#1). Two other commenters, administrators of HOME funds, similarly noted that the bonding requirements would likely add additional costs to nonprofit administrators, and it was noted that this cost could negatively affect those assisted with Contract for Deed funds because of those costs possibly then limiting the soft costs for the nonprofit (#3, 4). There was concern noted that the applicability of this requirement could negatively affect subcontractors that are Section 3 businesses (#4).

STAFF RESPONSE: This section of the rule as proposed only is applicable to specific federal programs noted in the rule: DOE WAP, HOME, CDBG, NSP and ESG. It would not be applicable to state Housing Trust Fund program funds. For the other comments provided about cost, which were from HOME subrecipients, first it should be noted that Builder's Risk is already required in existing HOME contracts, so this is something being added to rule, but already applicable. Second, it is noted that any costs are eligible costs under the grant and pose no new costs that would have to be borne by funds other than the state or federal assistance. Third, it is not expected that the costs associated with bonding would be applicable as they are only prompted for construction contracts in excess of \$100,000. This comment identified the need for a clarification in section (a) of the rule- the standard for the bond requirement is not based on the Subrecipient's contract with the Department, but rather the construction contract between the Subrecipient and the contractor, which based on HOME program limitations would likely

not exceed \$100,000 (for example, the construction activity for Contract for Deed is typically \$85,000). To ensure consistency, and provide clarification, clarifications made in §1.404 relating to Subrecipients and vendors are also applicable to this section and have been edited as shown below.

(1) For construction contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of \$100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested.

(a)(2):

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

6. §1.406, Fidelity Bond Requirements

COMMENT SUMMARY: The commenter noted that the requirement of a fidelity bond is an unnecessary requirement (#1).

STAFF RESPONSE: The commenter did not specify why the requirement is unnecessary, but the Department does not agree. The requirement for a fidelity bond was added for some programs because in the last several years there have been several instances of Subrecipients who have left houses incomplete and the Department and the households did not have an immediate remedy. Had a fidelity bond requirement been in place, a more expedient recourse may have been possible. The Department believes this is a prudent requirement.

The Board approved the adoption of this new rule on November 10, 2016.

STATUTORY AUTHORITY. This rule is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rule affects no other code, article, or statute. Subchapter D. Uniform Guidance for Recipients of Federal and State Funds.

§1.401. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for

financial statement purposes, or \$5,000. Entities not subject to UGMS do not have to include information technology systems unless the item exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000.

(4) Executive Award Review and Advisory Committee ("EARAC")--the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds.

(5) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(6) Single Audit--The audit required by Office of Management and Budget ("OMB"), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(7) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(8) Subrecipient--Includes any entity, or Administrator as defined under Chapter 20, receiving or applying for federal or state funds from the Department. Except as otherwise noted, the definition does not include Applicants/Owners in the Multifamily program, except for CHDO Operating funds.

(9) Supplies--means tangible personal property other than "Equipment" in this section.

(10) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

§1.402. Cost Principles and Administrative Requirements.

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth in UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. Private Nonprofit Subrecipients of ESG, HOME, NSP, National Housing Trust Fund, and DOE WAP do not have to comply with UGMS unless otherwise required by Notice of Funding Availability ("NOFA") or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) that might result in a release of funds without appropriate controls:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for.

§1.403. Single Audit Requirements.

(a) For this section, the word Subrecipient includes Multifamily Development Owners who have Direct Loan Funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government and nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) Subrecipients may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate

experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) Subrecipients and Affiliates must confirm that they are contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) Subrecipients are required to submit a Single Audit Certification form within two (2) months after the end of their fiscal year indicating the amount they expended in Federal and State funds during their fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR 200, subpart F, the report must be submitted to the Department the earlier of 30 days after receipt of the auditor's report or nine months after the end of its respective fiscal year.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five (5) business days of the Department's management decision letter.

(j) If the Subrecipient disagreed with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient did not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §.225, with the exception of nondiscretionary

CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts until the Single Audit is received. In addition, the Department may fail to renew, amend, extend and/or not enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subparagraph (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to EARAC.

§1.404. Purchase and Procurement Standards.

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200 and UGMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to, rationale for the type of procurement, cost or price analysis, procurement package, advertising, responses, selection process, contractor selection or rejection, certification of conflict of interest requirements being satisfied, and evidence that the awardee is not an excluded entity in the System for Award Management ("SAM") must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program.

(d) In accordance with 34 Texas Administrative Code §20.13, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of

Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department via written correspondence from the Department. Procurement procedures must include provisions for free and open competition. Any vehicle purchased without approval may result in disallowed costs.

§1.405. Bonding Requirements.

(a) The requirements described in this subsection relate only to construction or facility improvements for DOE WAP, HOME, CDBG, NSP, and ESG Subrecipients.

(1) For construction contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of \$100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements of Texas Civil Statutes, Articles 2252, 2253, and 5160, and Local Government Code, §252.044 and §262.032, as applicable.

§1.406. Fidelity Bond Requirements.

The Department is required to assure that fiscal control and accounting procedures for federally funded entities will be established to assure the proper disbursement and accounting for the federal funds paid to the state. In compliance with that assurance the Department requires program Subrecipients to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust.

(1) In administering Contracts, Subrecipients shall observe their regular requirements and practices with respect to bonding and insurance. In addition, the Department may impose bonding and insurance requirements by Contract.

(2) If a Subrecipient is a non-governmental organization, the Department requires an adequate fidelity bond. If the amount of the fidelity bond is not prescribed in the contract, the fidelity bond must be

for a minimum of \$10,000 or an amount equal to the contract if less than \$10,000. The bond must be obtained from a company holding a certificate of authority to issue such bonds in the State of Texas.

(3) The fidelity bond coverage must include all persons authorized to sign or counter-sign checks or to disburse sizable amounts of cash. Persons who handle only petty cash (amounts of less than \$250) need not be bonded, nor is it necessary to bond officials who are authorized to sign payment vouchers, but are not authorized to sign or counter-sign checks or to disburse cash.

(4) The Subrecipient must receive an assurance letter from the bonding company or agency stating the type of bond, the amount and period of coverage, the positions covered, and the annual cost of the bond. Compliance must be continuously maintained thereafter. A copy of the actual policy shall remain on file with the Subrecipient and shall be subject to monitoring by the Department.

(5) Subrecipients are responsible for filing claims against the fidelity bond when a covered loss is discovered.

(6) The Department may take any one or more of the actions described in Chapter 2, of this Part, titled "Enforcement" in association with issues identified as part of filing claims against the fidelity bond.

§1.407. Inventory Report.

(a) The Department requires the submission of an inventory report for all Contracts on an annual basis to be submitted to the Department, no later than 45 days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract term.

§1.408. Travel.

The governing body of each Subrecipient must adopt travel policies that adhere to 2 CFR Part 200, for cost allowability. The Subrecipient must follow either the federal travel regulations or State of Texas travel rules and regulations found on the Comptroller of Public Accounts website at www.cpa.state.tx.us, as applicable.

§1.409. Records Retention.

(a) Client Records including Multifamily Development Owners. The Department requires Subrecipient organizations to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five (5) years starting from the date the household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605820

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 4, 2016

Proposal publication date: September 9, 2016

For further information, please call: (512) 475-1762



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

The Texas Board of Professional Engineers (Board) adopts amendments to §131.1, concerning Purpose and Duties; §131.3, concerning Headquarters of the Board; §131.7, concerning Organization of the Board; §131.81, concerning Definitions; and §131.85, concerning Board Rules Procedures, without changes to the proposed text as published in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7239). The text of the rules will not be republished.

The adopted rule changes are clean-up changes to make some minor corrections and updates. These changes clarify, correct or simplify existing rules to make them more consistent with the current statute and procedures and update the Board's physical address.

The Board received no comments for or against the proposed rule changes. No changes were made to the rules as proposed.

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §§131.1, 131.3, 131.7

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606021

Lance Kinney, P.E.
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Texas Board of Professional Engineers
Effective date: December 11, 2016
Proposal publication date: September 16, 2016
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SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81, §131.85

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606022
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 11, 2016
Proposal publication date: September 16, 2016
For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.35, concerning Proof of Educational Qualifications--Accredited/Approved Programs and §133.67, concerning Examination on the Principles and Practice of Engineering, without changes to the proposed text as published in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7241). The text of the rules will not be republished.

The adopted rule change to §133.35 extended the acceptance of transcripts from the National Council of Examiners for Engineering and Surveying (NCEES) and board approved commercial evaluation services provided the transcripts were forwarded directly from the registrar of the institution from which the applicant graduated.

The adopted rule change to §133.67 clarified the time frame when an applicant may re-apply for approval to register for the principles and practice of engineering (PE) exam after exhausting the approved exam attempts or having the approval period expire.

The Board received no comments for or against the proposed rule changes. No changes were made to the rules as proposed.

SUBCHAPTER D. EDUCATION

22 TAC §133.35

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and

enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.67

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

The Texas Board of Professional Engineers (Board) adopts amendments to §137.5, concerning License Holder Notification Requirements; §137.17, concerning Continuing Education Program; §137.31, concerning Seal Specifications; §137.33, concerning Sealing Procedures; §137.37, concerning Sealing Misconduct; and §137.63, concerning Engineers' Responsibility to the Profession, without changes to the proposed text as published in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7242). The text of the rules will not be republished.

The adopted rule changes are clean up changes to make some minor corrections and updates. These changes clarify, correct or simplify existing rules to make them more consistent with the current statute and procedures.

The Board received no comments for or against the proposed rule changes. No changes were made to the rules as proposed.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5, §137.17

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §§137.31, 137.33, 137.37

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.63

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT

The Texas Board of Professional Engineers (Board) adopts amendments to §139.13, concerning Filing a Complaint; §139.15, concerning Processing a Complaint; §139.17, concerning Investigating a Complaint; §139.19, concerning Final Resolution of Complaint; §139.31, concerning Enforcement Actions for Violations of the Act; §139.35, concerning Sanctions and Penalties; and §139.47, concerning Probation, without changes to the proposed text as published in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7244). The text of the rules will not be republished.

The adopted rule changes are clean up changes to make some minor corrections and updates. These changes clarify, correct or simplify existing rules to make them more consistent with the current statute and procedures.

The Board received no comments for or against the adopted rule changes. No changes were made to the rules as proposed.

SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §§139.13, 139.15, 139.17, 139.19

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lance Kinney, P.E.
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Texas Board of Professional Engineers
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SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.31, §139.35

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
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SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.47

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.15

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to §153.15, Experience Required for Licensing, without changes as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6910). The amendments clarify the criteria required for awarding experience credit for applicants and license holders based on a revised interpretation of the Appraisal Subcommittee (ASC). The amendments also remove redundant language and reorganize this section to improve readability.

The reasoned justification for the amendments is to implement revisions recognized by the Board's federal oversight agency and provide clarity for license holders.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §§1103.151 - 1103.152, which authorize TALCB to: adopt rules relating to certificates and licenses and prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606031
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 11, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 936-3652



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.52

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to §159.52, Fees, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6912). The amendments reduce the renewal fee for appraisal management

companies (AMCs) by \$300 per two-year license renewal period and reduce the fee to add or remove an appraiser from an AMC panel from \$10 to \$5.

The reasoned justification for the amendments is to implement the fee reduction adopted by the Board as part of its budget for fiscal year 2017.

One comment was received on the amendments as proposed. The commenter is an AMC trade association. The commenter supports the AMC fee reductions as proposed.

The AMC Advisory Committee considered the comments at its meeting on October 25, 2016, and recommends adopting the amendments as proposed without changes.

The amendments are adopted under Texas Occupations Code, §1104.051, which authorizes the TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Texas Occupations Code, Chapter 1104. No other statute, code or article is affected by the proposed amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606033

Kristen Worman
General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: January 1, 2017

Proposal publication date: September 9, 2016

For further information, please call: (512) 936-3652



22 TAC §159.161

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to §159.161, Appraiser Panel, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6913). As recommended by the Appraisal Management Company (AMC) Advisory Committee, the amendments allow the Board to remove an appraiser from an AMC's panel without any charge to the AMC if the Board suspends or revokes the appraiser's license. The amendments also clarify when an appraiser will be removed from an AMCs panel after the appraiser's license expires.

The reasoned justification for the amendments is to provide clarity for license holders and align the rule with current Board practices.

One comment was received on the amendments as proposed. The commenter is an AMC trade association. The commenter supports the amendments as proposed.

The AMC Advisory Committee considered the comments at its meeting on October 25, 2016, and recommends adopting the amendments as proposed without changes.

The amendments are adopted under Texas Occupations Code, §1104.051, which authorizes the TALCB to adopt rules neces-

sary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Texas Occupations Code, Chapter 1104. No other statute, code or article is affected by the proposed amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606034

Kristen Worman
General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: January 1, 2017

Proposal publication date: September 9, 2016

For further information, please call: (512) 936-3652



22 TAC §159.201

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to §159.201, Guidelines for Revocation, Suspension, or Denial of a License, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6914).

The amendments are adopted to allow an appraisal management company (AMC) to conduct additional criminal history checks for appraisers beyond those required by the Board, so long as an AMC does not require an appraiser to pay for or reimburse the AMC for the additional criminal history checks.

The reasoned justification for the amendments is to allow AMCs to continue the business practice of conducting additional criminal background checks required in AMC contracts with lender contracts without passing the costs for these additional checks along to individual appraisers.

One comment was received on the amendments as proposed. The commenter is an AMC trade association. The commenter opposes the amendments as proposed because the amendments interfere with the contractual relationship between an AMC and its lender clients.

The AMC Advisory Committee considered the comments at its meeting on October 25, 2016, and recommends the Board adopt the amendments as proposed without changes.

After considering all of the comments received, the Board adopts the amendments as recommended by the AMC Advisory Committee.

The amendments are adopted under Texas Occupations Code, §1104.051, which authorizes the TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Texas Occupations Code, Chapter 1104. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606035

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: December 11, 2016

Proposal publication date: September 9, 2016

For further information, please call: (512) 936-3652



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, Licensure by Examination, relating to (b) Re-examination and (d) Exam Accommodations, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6916).

The amendments are adopted to allow for the implementation of the Alternate Approval Process through the Federation of State Boards of Physical Therapy (Federation) for candidate eligibility for the National Physical Therapy Examination (exam). The procedures for applying for re-examination if a candidate fails the exam and for applying for accommodations for taking the exam will be included in the Federation's requirements for eligibility and will be processed by the Federation.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016.

TRD-201606020

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: January 1, 2017

Proposal publication date: September 9, 2016

For further information, please call: (512) 305-6900



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

SUBCHAPTER K. DEFINITION, TREATMENT, AND DISPOSITION OF SPECIAL WASTE FROM HEALTH CARE-RELATED FACILITIES

25 TAC §§1.132 - 1.137

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§1.132 - 1.137, concerning the definition, treatment, and disposition of special waste from health care-related facilities. Sections 1.132, 1.133, 1.134 and 1.136 are adopted with changes to the proposed text as published in the September 30, 2016 issue of the *Texas Register* (41 TexReg 7659). Sections 1.135 and 1.137 are adopted without changes to the proposed text and will not be published in the *Texas Register*.

BACKGROUND AND JUSTIFICATION

The rule amendments provide language and offer clarification to enhance the understanding of the rules, as well as to update outdated references, terminology, and disposition methods. Government Code, §2001.039 requires a review of rules, including an assessment of whether the reasons for initially adopting the rules continue to exist. Chapter 1, Subchapter K, Title 25 of the Texas Administrative Code (TAC) was originally adopted in 1989, and amendments were made in 1991 and 1994. The department also reviewed §§1.131 - 1.137 and determined that the reasons for adopting the rules continue to exist because the rules on this subject are needed. The department not only addressed outdated terms and methods but its charge to ensure the health and safety of the public pursuant to Texas Health and Safety Code, Chapters 12 and 81 through, among many things, the proper disposition of tissue that results from spontaneous and induced abortions. In conjunction with its review, the department also considered and gave great weight to the Legislature's policy objective of ensuring dignity for the unborn, which is articulated in a number of Texas laws. In undertaking this review, the department took into consideration a variety of statutes that express the Legislature's will to afford the level of protection and dignity to unborn children as state law affords to adults and children. See, e.g., Texas Penal Code, §1.07(26) (defining "individual" to include "an unborn child at every stage of gestation from fertilization until birth"); Texas Civil Practice and Remedies Code, §71.001(4) (defining "individual" in the wrongful death statute to include "an unborn child at every stage of gestation from fertilization until birth"); Texas Estates Code, §1002.002 (allowing for appointment of attorney ad litem for an unborn person in a guardianship proceeding); Texas Health and Safety Code, §241.010 (requiring hospitals to release to a parent remains of an unborn child who dies as a result of an unintended, intrauterine death). The rules carry out the department's duty to protect public health in a manner that is consonant with the State's respect for life and dignity of the unborn. The department accomplished this through amendments to the rules and inclusion of new provisions in the rules, including prohibiting the disposal of fetal tissue in a landfill and eliminating grinding as a method of fetal tissue disposition, that afford protection and dignity to the unborn consistent with the Legislature's expression of its intent. These rules provide a comparable level of protection to public health, while eliminating disposition options that are clearly incompatible with the Legislature's articulated objective of protecting the dignity of the unborn. The adopted rules meet the department's duties under law, while properly weighing considerations regarding public health, overall public benefit, and costs.

SECTION-BY-SECTION SUMMARY

Amendments to §1.132, Definitions, are modified at adoption in response to comments to achieve greater clarity while updating references to the department; define the terms cremation, executive commissioner, and fetal tissue; remove the definition for the term cremated remains; amend the definition of interment; update references to the Texas Commission on Environmental Quality (TCEQ); correct a mathematical unit for "log₁₀;" and necessitate the renumbering of paragraphs. Paragraph (18) has been amended at adoption in response to comments received stating that the rule was not clear regarding the difference between incineration and cremation and that the rules appeared to emphasize cremation over incineration. The department has modified the definition to clarify that the term "cremation" in this subchapter includes the process of incineration. Paragraph (21) has been amended at adoption to update the term "Department" to read "Texas Department of State Health Services" instead of the outdated "Texas Department of Health" contained in the proposed rule. This update was inadvertently omitted while this reference was updated in all other parts of the proposed rules. Paragraph (33) has been amended at adoption in response to comments received stating that the rules did not provide direction on what to do with ashes after cremation. As a result, the definition of "interment" has been amended to include language regarding disposition of ashes after the process of cremation (and incineration) as authorized by law, unless prohibited by the adopted rules. The adopted rules prohibit the disposition of fetal tissue in a sanitary landfill, and the language added to paragraph (33) on adoption is subject to that limitation, prohibiting the scattering of ashes in a landfill. Paragraph (42) has been amended at adoption in response to comments received stating that the rules apply "at any gestational age" however, the rules contain exemptions that limit that application. As a result, paragraph (42)(B) under the definition of "pathological waste" in reference to "products of spontaneous or induced human abortion, regardless of period of gestation" contains a cross-reference to the exemptions in §1.133 that was added at adoption to assist the reader in applying the exemptions, which limit the applicability of the language in paragraph (42)(B).

Amendments to §1.133, Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health, are adopted to update references to the department and a legal reference. New subparagraph (G) has been added at adoption in response to comments received stating that the rule should be clarified to state that fetal tissue which results from a miscarriage or other abortion that occurs at home, whether induced or spontaneous, is not subject to the rules. An exemption was added at adoption under new subparagraph (G) that exempts from the rule's requirements human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a healthcare facility. New subparagraph (H) has been added at adoption in response to comments received stating that the rule did not comport with House Bill (HB) 635 (Acts 2015, 84th Legislature, Regular Session, Chapter 342), which requires a hospital to release the remains of an unintended, intrauterine fetal death on the request of a parent of the unborn child. An exemption was added at adoption under new subparagraph (H) that exempts from the rule's requirements fetal remains required to be released to the parent of an unborn child pursuant to Texas Health and Safety Code, §241.010. New subparagraph (I) has been added at adoption in response to comments received stating that the rule did not comport with HB 1670 (Acts 2015, 84th

Legislature, Regular Session, Chapter 740), which added Chapter 172 to the Texas Health and Safety Code and requires a hospital or birthing center to allow a woman who gave birth in the facility to take the placenta from the facility in certain circumstances. Language was added under new subparagraph (I) at adoption which creates an exemption from the rules applicability when a placenta is removed from a hospital or birthing center pursuant to Texas Health and Safety Code, Chapter 172.

Amendments to §1.134, Application, are adopted to update references to facilities providing mental health and intellectual disability services; and add freestanding emergency medical care facilities to the list of health care-related facilities to which this rule applies. New subsection (a) has been added at adoption in response to comments received stating that the rule would require that confidential and/or private information regarding an individual be part of public information and/or vital statistics data collected by the department and that a death certificate would be required to dispose of fetal tissue. To clarify the intended impact of the rules, language was added to this section at adoption to state that the rules are not to be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws, and that the rules do not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities, and that this subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue.

Amendments to §1.135, Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities, are adopted to update references to the department and correct a mathematical unit to "log₁₀."

Amendments to §1.136, Approved Methods of Treatment and Disposition, are adopted to update references to the department; update terminology regarding the TAC; update references to TCEQ and its rules; clarify disposition methods for fetal tissue; clarify disposition methods for fetal tissue and other tissues that are products of spontaneous or induced human abortion; and clarify that disposition methods for anatomical remains are established in 25 TAC §479.4. Subsection (a)(4)(A)(v) and (B)(i) have been amended at adoption in response to comments received stating that the rules apply "at any gestational age" however, the rules contain exemptions that limit that application. As a result, subsection (a)(4)(A)(v) regarding "fetal tissue, regardless of period of gestation" and subsection (a)(4)(B)(i) regarding "fetal tissue, regardless of period of gestation" contain a cross-reference to the exemptions in §1.133 that was added at adoption to assist the reader in applying the exemptions, which limit the applicability of the language in paragraph (4)(A) and (B). Subsection (a)(4)(A)(v)(II) and (B)(i)(IV) have been amended at adoption in response to comments received stating that the rule was not clear regarding the difference between incineration and cremation and that the rules appeared to emphasize cremation over incineration. The stand-alone term "cremation" was deleted at adoption in both subsection (a)(4)(A)(v)(II) and (B)(i)(IV). This term already existed as a form of interment, and thus was included as method of disposition in the previous rules. It is retained in the adopted rules under the term "interment" along with the amendments made to §1.132(18) specified above.

Amendments to §1.137, Enforcement, are adopted to reflect the Executive Commissioner's role in rulemaking; remove home and community support services agencies from the list of the department's regulatory programs; and add end-stage renal disease facilities and freestanding emergency medical centers to the list of the department's regulatory programs.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to comments regarding the proposed rules that were submitted during two 30-day comment periods and at two public hearings, held on August 4, 2016 and November 9, 2016, which the commission has reviewed and considered. A total of 35,663 written and oral public comments were received.

The following interested groups and/or associations provided comments in favor of the rules: Texas House Republican Caucus, Texas Alliance for Life, Texas Right to Life, American Academy of Fertility Care Professionals, Houston Coalition for Life, Texans for Life Committee, Roman Catholic Diocese of Austin, Young Women for America and Concerned Women for America Legislative Action Committee, Choose Life Midland, Birth Choice Dallas, Woman to Woman Pregnancy Resource Center, Texas Catholic Conference, Life Choices Medical Clinic of San Antonio, Texas Values, St. Ignatius Martyr Catholic Parish, Southern Baptists of Texas Convention, Justice Foundation, Operation Outcry, Students for Life of America, Pro-Life Organization of Grimes and Waller Counties, Office of Life Charity and Justice of Roman Catholic Church, Our Lady of the Rosary Cemetery and Prayer Garden, Diocese of San Angelo, Trinity Legal Center, Cathedral of Our Lady of Walsingham Catholic Church and Shrine, Mercy Ministry of the Prince of Peace Catholic Community, Catholic Pro-Life Committee of North Texas, Catholic Healthcare Professionals of Houston, SA Pregnancy Care Center, 3d Houston, and St. Clair of Assisi Catholic Church.

The following interested groups and/or associations provided comments that were opposed to the rules: Texas House Women's Health Caucus, Texas Medical Association and Texas Hospital Association, American Civil Liberties Union, Center for Reproductive Rights, Funeral Consumers Alliance of Texas (FCAT), NARAL Pro-Choice Texas, Medical Students for Choice, Unite Women Texas, Planned Parenthood of Greater Texas, Inc., Planned Parenthood South Texas Surgical Center, Planned Parenthood Center for Choice, Inc., Planned Parenthood of Texas Votes, Lilith Fund, Austin National Organization for Women, Texas Equal Access Fund, Public Leadership Institute/Fund Texas Choice, National Abortion Federation, National Latina Institute for Reproductive Health, Physicians for Reproductive Health, Healthcare Waste Institute of the National Waste and Recycling Association, American Congress of Obstetricians and Gynecologists, League of Women Voters of Texas, Teaching Hospitals of Texas, and National Association of Social Workers.

The department, on behalf of the commission, acknowledges these comments and responds below, according to the various issues raised by these commenters.

Comment: The Center for Reproductive Rights stated that the department lacks statutory authority to promulgate the amendments; the amendments would unduly burden patients seeking abortion care while providing no health or safety benefit; are unconstitutionally vague and further shame and stigmatize women seeking reproductive health care. The commenter states that the

rules do not confer any additional public health benefit to the patients or the general public and the fact that the new rules apply only to fetal tissue confirms as much. The commenter states that the U.S. Supreme Court held in *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292 (2016) (*Whole Woman's Health*), that a state's justification for an abortion restriction must be supported by credible medical evidence which the state has not brought forth. Offers from religious entities to offset the cost of burial do not change the constitutional argument and fail to respect the diversity of faith and secular traditions and beliefs Texans hold. The commenter states that the rule is unconstitutionally vague in that it does not clarify whether the regulations apply to the transport and disposition of embryonic and fetal remains and do not adequately define interment or cremation. The commenter adds that the rules fail to provide legally sufficient clarity as to whether they are intended to apply to disposition of tissue across state lines. The commenter states that the amendments will burden abortion access and miscarriage management by mandating its own moral code upon Texas women.

Response: The commission respectfully disagrees. The rule does not restrict access to abortion. The department has the statutory authority to promulgate rules to protect the public from the spread of communicable disease pursuant to Texas Health and Safety Code, Chapters 12 and 81. In doing so, the department undertook the review of outdated rules in conjunction with this authority while trying to balance cost considerations, public benefit, legislative intent, and the state's history of protection of the unborn. These considerations resulted in the amended rules. The rules impose an obligation on facilities, not on individuals, and as a result do not shame or stigmatize women seeking abortions. The rules do not unduly burden individuals seeking abortions, as the department estimates that the costs for health care-related facilities to comply will be sufficiently low such that the costs can be absorbed by facilities as part of their operating costs while providing a public health benefit by ensuring the proper disposal of fetal tissue. The rules also do not require any facility to accept the offer of a religious entity to assist with the disposition of fetal tissue and, therefore, do not impose any particular faith or tradition on an individual. The rules are not unconstitutionally vague because they specify the procedures used and the facilities to which they apply. With regard to the issue of whether the rules are intended to apply to disposition across state lines, regardless of where the disposition of waste occurs, the health care-related facility remains responsible for ensuring that the fetal tissue disposition is in compliance with these rules. The department does not have jurisdiction over disposition methods in other states or across state lines. The health care-related facility will need to demonstrate to the department that it has provided for disposition in compliance with the rules.

Comment: The Healthcare Waste Institute of the National Waste and Recycling Association stated that the rules require the generator to separate out waste materials for proper handling. Most healthcare facilities use off-site waste management companies to dispose of regulated medical waste. These commercial facilities do not have the ability to segregate materials received. Even attempting to do so would place employees at great risk. The commenter states that compliance by the healthcare waste management industry is impractical, if not impossible and requests that the department remove "*incineration followed by interments {and} steam disinfection followed by interment*" from the proposed rules. The commenter also suggested that the department add the following language:

"Any transporter, treatment or final disposal facility who unknowingly fails to comply with subsections of this section because such waste has not been properly segregated or separated from other solid wastes by the generating facility is not guilty of a violation under this rule."

Response: The commission declines to add the suggested language because the department does not have the authority to regulate medical waste transporters, waste treatment facilities, or final disposal facilities. Instead, the TCEQ regulates medical waste transport, treatment, and disposition. The commission also declines to remove rules in §1.136(a)(4)(A)(v)(II) and (III), as these are practices and methods currently utilized by health care-related facilities for disposition of fetal tissue and do not adversely impact the balance of considerations the department was trying to achieve in the rules relating to the dignity of the unborn and public health protections and cost. The commission believes the methods allowed by the rules will protect the public by preventing the spread of disease while also preserving the dignity of the unborn in a manner consistent with Texas laws. The commission understands that many health care-related facilities already segregate fetal tissue from medical waste and, therefore, the rule would not impose additional requirements on those facilities.

Comment: FCAT submitted initial comments stating that the proposal for the rule changes appears to be incomplete in that it does not complete the small and micro-business impact analysis nor does it identify a fiscal impact to state or local governments. The commenter expressed their disappointment that a public hearing has not been called and that the exclusion of stakeholders, particularly women, is ethically negligent. The commenter states that proposed rules will forcibly increase the cost of abortion by requiring cremation or interment of all fetuses by state-licensed funeral establishments who charge a basic fee of \$2,000. The commenter calculated the annual cost for 48,000 - 54,000 total abortions, typically occurring at 13 weeks, to add up to \$96 million. The commenter assumes that the facilities will not bear this cost and will force the woman to pay, and if the woman cannot pay, the cost will be borne by county governments or that a woman would be put in jail for not paying. The commenter states that the proposed rules will force women into a narrower set of emotional and financial choices with no added benefit. This newly regulated life event will effect social, psychological, financial and pastoral services, with little to no experience on how to support the woman. The rule appears to force women to reveal to family, friends, and the community, her very personal choice as it requires the assistance of a funeral establishment or asking friends and family's support with fetal disposition. The commenter stated that women will be forced to "shop and trade in the dizzying emotional dither of the deathcare business," or dispose of the fetus themselves. FCAT submitted additional comments stating that cremation and burial are terms specified by the Texas Funeral Service Commission and only regulate the burial and cremation of "dead human bodies." Funeral directors are not regulated or ethically allowed to participate in the disposition of aborted fetuses. This apparent exclusion is positive to a woman's health as it protects her privacy and does not force her to assign disposition responsibility to a publicly accessible business and by eliminating actual or pass through costs from a funeral business. FCAT offered that under the legal definition of cremation, 89% of aborted fetuses can be cremated under current code by using a \$17 hand held propane torch from the hardware store. FCAT views cremation as being as insufferable to women as the grinding and discharging of a fetus in

a commercial garbage disposer. The commenter recommends that earth burial be the only disposition method allowed. Simple earth burial requires no special skills or extra expense. A fetus or embryo burial place would not fit the definition of cemetery because a cemetery is defined as a place of interment with one "dead human body" or more, thus a fetus or embryo burial place provides a simple and less costly burial method and location than a designated and regulated cemetery. The proposed rule should state the process to follow, in detail, for burial of a human fetus or embryo; listing the choices a woman must make and the expected results. To do otherwise would result in multiple interpretations. Practically speaking, an earth burial can be respectful, easy and an economical choice for women. Since the rules allow for group burial, the cubic volume of 89% of the aborted fetuses in Texas, in one year, would be 3x3x3 yards, the size of a very small bedroom. Spread out across 254 counties, the anticipated volume of fetal remains in a year for a large metropolitan area would be the size of a large household refrigerator. The commenter recommends that the woman bury the fetus on private property with the location recorded in the property deed, or, the woman choose for the county to bury in a designated location in the county with a simple durable marker. As each county already is required to have a policy for indigent burial, it is assumed that a county employee is budgeted and assigned this task as part of those duties.

Response: The commission respectfully disagrees. The department republished the rules with a more comprehensive small and micro-business impact analysis. The department received cost data from waste disposal companies, private and public landfills, FCAT (comments as noted above), the Funeral Services Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. For those health care-related facilities not already disposing of fetal tissue through cremation and burial, the cost of any of the new available methods would be offset by the elimination of the cost of landfill disposition. The department believes this cost to be minimal and absorbable by health care-related facilities. The department also determined that there will be no fiscal implications for state or local governments during the first five years that the proposed rules will take effect. The department further notes that it has conducted a public hearing on the proposed rules that were withdrawn and another public hearing on the proposed rules at issue. The proposed rules will not narrow the choices of women, because the proposed rules apply to health care-related facilities and not to individuals. The proposed rules do not require a patient or a health care-related facility to obtain funeral services. The commission appreciates the suggestion but declines to eliminate cremation as a method of disposition of fetal tissue. The department agrees that Chapter 651 of the Texas Occupations Code does not apply to fetal tissue that does not meet the definition of a "dead human body." Cremation was an option under the previous rules and continues to be an option in these rules. These are practices and methods currently utilized by health care-related facilities for disposition and do not adversely impact the balance of considerations the department was trying to achieve in the rules relating to the dignity of the unborn with the public health protections and cost. The proposed rules already specify which processes are authorized, and the department notes that it is the responsibility of facilities, not patients, to comply with the rules. The department has no authority to require an individual to bury a fetus in a certain location. The de-

partment believes the methods allowed by the rules will protect the public by preventing the spread of disease while preserving the dignity of the unborn in a manner consistent with Texas laws and the Legislature's expressed intent.

Comment: The Texas House Women's Health Caucus submitted comments regarding the justifiable reasoning for the proposed changes; the lack of identified health benefit; the uncertainty around the full impact of the rules; the fiscal impact, and the potential violation of privacy of Texas women and their families. The department has not provided information on why the current methods being removed from the rule do not provide a safe and effective manner to dispose of tissue. Nor has the department explained why the disposition of fetal tissue should be different from any other human tissue and how one endangers public health and safety more than another. The commenter states that the department is required to provide a reasoned justification and factual basis for the need to change the rule and it has not. Additionally, the department has not provided any research or evidence to explain how it developed the new rules and whether they meet medical standards. The emotional damage that may result from implementation of these new requirements cannot be known. The requirement that a grieving mother have to choose incineration or cremation after losing a pregnancy through miscarriage or due to an ectopic pregnancy where there is no hope of viability and the fetus is removed to save the mother's life, is cruel and intrusive. Many miscarriages occur outside of a clinical setting. Are these women required to carry the fetal tissue to a healthcare facility? If the rules apply at any gestational age, does this include a fertilized egg, and if so, will these rules apply to families undergoing in vitro fertilization? The commenter questions the fiscal impact of the rules and states that although the department indicated that there would be some absorbable costs associated with compliance, FCAT has stated that the average basic services fee for professional services starts at \$2,000. FCAT indicates that the rules will bring an additional \$96 million in revenue to the Texas funeral business. The commenter asks who will be responsible for the cost if the woman and her family are unable to pay. The commenter questions whether the department can ensure sufficient vendor availability to provide these additional services. The commenter asks for clarity on whether the rules will require a fetal death certificate and if so, privacy issues are a concern. The Texas Public Information Act protects death records from being publicly available until the 25th anniversary of the date of death, however, an unknown decedent's death record is public after only one year. The commenter further states that fetal death certificate data is used for a variety of health-related studies in the pursuit of improving patient health and advancing medical science. Requiring death certificates for fetal tissue will skew these numbers. The commenters go on to state that the rules would impose a heavy burden on women seeking abortion care in Texas and do not offer a proportional benefit, as required by the United States Constitution and further clarified in *Whole Woman's Health*. The commenter expresses concern that these rules will likely result in costly litigation in a budget cycle where agencies have been told to tighten their belts. These funds could be better spent on education or health care rather than wastefully litigating unconstitutional regulations.

Response: The commission respectfully disagrees with the commenter's assertions and responds accordingly. The department has the statutory authority to promulgate rules to protect the public from the spread of communicable disease pursuant to Texas Health and Safety Code, Chapters 12 and 81. In doing

so, the department undertook the review of outdated rules in conjunction with this authority while trying to balance cost considerations, public benefit, and the Legislature's intent and history of the protection of the unborn. These considerations resulted in the amended rules. Inclusion of a reasoned justification is required on adoption pursuant to Texas Government Code, §2001.033, and is included in this adoption preamble under the section entitled "Background and Justification" above. The department stresses that the proposed amendments apply only to health care-related facilities and not to individuals, so the rules do not impose requirements on a individual who suffers a miscarriage or induced abortions; those requirements fall solely on the health care-related facility. The rules do not now, nor have they ever, imposed a requirement that a patient be informed of the method of disposition. The department notes that the proposed rules do not prohibit mass cremation (including mass incineration) and interment, and believes such options are currently used. The department received cost data from waste disposal companies, private and public landfills, FCAT (comments as noted above), the Funeral Services Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated, the estimated cost of using such services would be no more than \$450 per year, per facility, a cost of business that facilities should be able to absorb. There should, therefore, be no undue burden placed on a woman seeking an abortion. A certificate of fetal death (fetal death certificate) is only required for a fetus weighing 350 grams or more, or if the weight is unknown, a fetus aged 20 weeks or more as calculated from the start date of the last normal menstrual period. See 25 TAC §181.7(a). Based on an exemption that was contained in the previous rules, fetal deaths subject to the fetal death certificate requirement are exempt from the adopted rules pursuant to §1.133(a)(2)(F). The department retained that exemption in these rules, and has not modified it in the proposed or adopted rules. As a result, vital statistics data collection and reporting results will not be affected. To further clarify the impact of the rules, the department added the following language to rule §1.134. Application: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue." Additionally, the rules do not unduly burden women seeking abortions, as the department estimates that the costs for health care-related facilities to comply will be sufficiently low such that the costs can be absorbed by facilities as part of their operating costs while providing a public health benefit by ensuring the proper disposal of fetal tissue. The amendments to the rules do not change the impact of the rules for in vitro fertilization. Pursuant to §1.132(28), the term "Fetal Tissue" is defined as "a fetus, body parts, organs or other tissue from a pregnancy" and does not include "the umbilical cord, placenta, gestational sac, blood or body fluids." This term was added in the proposed rules and has not been amended at adoption. The rule amendments relating to fetal tissue do not apply prior to pregnancy. Once a pregnancy occurs, the rules application is the same to both the in vitro fertilized pregnancy and an unassisted natural pregnancy, if there is an induced or spontaneous abortion of the pregnancy.

Comment: The Texas Medical Association and Texas Hospital Association (TMA/THA) submitted joint comments and reiterated their comments from the earlier publishing of the rules. The commenters stated that the rules should not apply to miscarriages, ectopic or molar pregnancies regardless of the location of the woman at the end of her pregnancy. The commenters state that forcing a woman who miscarries at home to bring fetal tissue to her physician or whose ectopic or molar pregnancy was ended in a hospital setting, would make a difficult situation even more difficult. The commenters also inquire whether physicians and hospitals will be subject to penalties if their patients do not deliver fetal tissue to them after a pregnancy that ends outside of a health care setting. Should the department decide not to make the recommended exceptions stated above, TMA/THA suggested that the department should provide printed materials to Texas physicians and hospitals detailing the rule requirements and associated costs as well as who will be responsible for paying those costs. The commenters inquire who will be responsible for the costs and note that one hospital estimates that an average of 140 fetal tissue specimens under 350 grams are disposed of each month from spontaneous miscarriages or ectopic pregnancies. The commenters inquire whether the rules apply to miscarriages that occur outside of a healthcare facility, and if so, in what time frame is the woman expected to carry the fetal tissue to the healthcare facility. The commenters ask who would be responsible for the \$1,500 to \$4,000 cremation cost and the \$7,000 to \$10,000 funeral service fees; and whether the department has done a cost estimate or established a governmental resource or exceptional item to cover the added process and procedure costs. The commenters state that 10% to 15% of women who know they are pregnant have a spontaneous miscarriage, usually during the first trimester, and question whether the department has conducted any research as to how the rules will affect health care-related facilities' and providers' processes relating to storage, cremation, interment and responsibility for cremated remains. The commenters ask whether a study has been conducted on the impact to rural health facilities where tissue disposal alternatives are limited or for high volume obstetric hospitals. TMA/THA state that funeral directors must have a fetal death certificate to accept fetal tissue and that the rules are in conflict with this requirement and inquire whether funeral directors' involvement is required. Additionally, burial transit permits are required and cemeteries are required to register plots so they know who is buried in each plot. The commenters state that the rules require fetal death certificates and that including miscarriages, ectopic and molar pregnancies in the recording of fetal death certificates and other required reporting will skew public health data. The commenters express concern about lack of awareness and the need to enter into new contractual arrangements and request a delayed implementation date to allow for such arrangements. The commenters also express concern over how these rules comport with HB 635 for the release of fetal remains to parents, if requested. The commenters inquire as to how third-party vendors will comply with the rules. The commenters inquire who will be responsible for the cremated remains.

Response: The commission appreciates the comments but respectfully disagrees with the commenters. Each health care-related facility is responsible for complying with the rules, regardless of whether it actually provides the disposition of fetal tissue or contracts with a third party vendor. The department has considered the impact of the proposed rules on costs and determined that they are absorbable by health care-related facilities required to comply with the rules. The department received

cost data from waste disposal companies, private and public landfills, FCAT (comments as noted above), the Funeral Service Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of the current method of disposition. The department believes this cost to be minimal and absorbable by each health-care facility. Health care-related facilities will be responsible for ensuring that the cremated remains are handled in compliance with the rules. The commission emphasizes that the proposed rules do not require a individual who miscarries to deliver fetal tissue to a physician or a hospital and notes that the rules apply to health care-related facilities and not to individuals. The commission declines to change the proposed rules to exclude miscarriages, ectopic or molar pregnancies regardless of the location of the individual at the end of her pregnancy. The commission again notes that the rules apply to health care-related facilities and not to individual patients. The commission does not at this time see a need for printed materials for Texas physicians and hospitals detailing the rule requirements. The rules were published in the *Texas Register* as required by the Administrative Procedure Act and also made available on the department's website. If it becomes necessary in implementation of the rules, the department will consider issuing guidance documents to all facilities required to comply. The department does not regulate costs of treatment and disposition of special waste, as these costs are the responsibility of each facility. The commission notes that Texas Occupations Code, Chapter 651 does not apply to fetal tissue weighing less than 350 grams or requires consent for comingling during cremation of fetal tissue, thus compliance with Chapter 651 or Funeral Service Commission's rules will not increase costs or limit currently available methods of disposition that are consistent with respect for life. A certificate of fetal death (fetal death certificate) is only required for a fetus weighing 350 grams or more, or if the weight is unknown, a fetus aged 20 weeks or more as calculated from the start date of the last normal menstrual period. See 25 TAC §181.7(a). Based on an exemption that was contained in the previous rules, fetal deaths subject to the fetal death certificate requirement are exempt from the adopted rules pursuant to §1.133(a)(2)(F). The department retained that exemption in these rules, and has not modified the language of the exemption in the proposed or adopted rules. Also, in response to public comments, to make the applicability of the exemption more evident to the reader, the department has added a cross reference to the exemption in three places in the rules: (1) §1.132(42)(B) regarding the definition of "pathological waste;" (2) §1.136(a)(4)(A)(v) regarding fetal tissue, "regardless of the period of gestation;" and (3) §1.136(a)(4)(B)(i) regarding "fetal tissue, "regardless of the period of gestation." Additionally, to further clarify the impact of the rules, the commission added the following language to rule §1.134. Application: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health-care related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue." Although the commenter expressed concern about

lack of awareness of the proposed rules, there is evidence to the contrary that shows that the public is aware of and has commented on the rules. More than 35,000 comments were received by the department, including oral and written comments received at two public hearings conducted by the department and during two separate 30-day public comment periods on proposed rules that were substantially the same which followed a June 20, 2016 initial posting. Therefore, the commission declines to delay the implementation date.

The commission agrees that the commenters' concerns regarding whether the rules comport with HB 635 need to be addressed. House Bill 635 (Acts 2015, 84th Legislature, Regular Session, Chapter 342) added §241.010 to the Texas Health and Safety Code. This statute requires a hospital to release the remains of an unintended, intrauterine fetal death, including remains that weigh less than 350 grams, on the request of a parent, in a manner appropriate under law and the hospital's policy. In response to public comments and to conform with the impact of HB 635, the department has added subsection (a)(2)(H) to §1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services, which states that the rules do not apply to "fetal remains required to be released to the parent of an unborn child pursuant to Texas Health and Safety Code, §241.010{.}" Also in response to comments, the department has added a cross-reference to the exemption in §1.133 to §1.136(a)(4)(A)(v) and (B)(i) regarding "fetal tissue, regardless of the period of gestation."

Many health care-related facilities are already in compliance with the rules as adopted. Facilities will be responsible for disposition of cremated remains in a manner not otherwise prohibited by law. Regarding the comment pertaining to a burial transit permit, the rules do not invoke any new requirements that require a burial transit permit be issued. A fetal death certificate is only required for a fetus that weighs 350 grams or is 20 weeks or more. If fetal death meets this threshold age or weight requiring a death certificate, the fetal death is exempt from the rule pursuant to §1.133(a)(2)(F). If no fetal death certificate is required, due to age or weight, there is no requirement for a funeral director, who assumes custody of a fetus, to file a report; or to provide such documentation in order to cremate fetal tissue, as defined in this subchapter.

Comment: Three Planned Parenthood entities joined in submitting comments: Planned Parenthood of Greater Texas, Inc., Planned Parenthood South Texas Surgical Center, and Planned Parenthood Center for Choice, Inc. The commenters state that the rules go beyond the limits of statutory authority and do not further the aims of the department to protect and enhance public health and safety. The rules eliminate safe and effective disposal methods without any authority to adopt rules in order "to better preserve the dignity of these unborn lives." The commenters cite the statutory requirement that the department provide a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted, and states that no such factual basis has been provided. The commenters ask for citations to studies or other documentary evidence that indicate that the methods of disposal that were removed from the rule endangered the safety of the public. The rules are another attempt to restrict access to abortion and shame, judge and stigmatize women in the process. The commenters state that the department has not provided any evidence that the proposed rules ensure current best

practices or why this pathological waste should be treated different from other pathological waste. The commenters note that there is no practical difference between incineration and cremation beyond the administrative requirements. The commenters stated that the rules are silent as to where cremated tissue must be deposited. Incinerated material deposited in a landfill is subject to Texas statutes relating to solid waste management by controlling access and disease vectors and by preventing windblown waste. The commenters state that the department has not provided information as to how this is less safe than scattering cremated ash. Even assuming that scattering of cremated tissue might somehow be safer than depositing incinerated tissue in a sanitary landfill, the resulting ash - from either cremation or incineration - poses little or no risk to the public. Texas and federal law deem cremated or incinerated tissue no longer medical or infectious waste. The commenters state that the department has no statutory authority to base regulation amendments on a desire to preserve the dignity of "unborn lives" and to do so is likely unconstitutional. The commenter looks to the federal court's decision in *Planned Parenthood of Ind. & Ky, Inc. v. Comm'r, Ind. State Dep't of Health*, No. 1:16cv-00763-TWP-DML WL 3556914 at *11 (S.D. Ind. June 30, 2016) and *Margaret S. v. Edwards*, 488 F.Supp. 181, 222 (E.D. La. 1980) and *Margaret S. v. Treen*, 597 F.Supp. 636, 671 (E.D. La. 1984). The commenter states that courts have upheld the limits of state interest in the disposition of fetal tissue to those that ensure the sanitary disposal of fetal tissue. The commenter expresses concern over the apparent requirement that fetal death certificates be issued for every miscarriage, abortion or ectopic pregnancy in the state, leading to private medical histories becoming part of Texas public record. The publication of the names and other identifying information of individual women is of grave concern. The commenter disagrees with the fiscal impact statement made by the department and states that the department did not provide details as to how it determined that the costs incurred will be offset and quotes the TMA/THA comment of a cost between \$1,500 and \$4,000 for cremation and from \$7,000 to \$10,000 for a traditional funeral. The commenter states that the department's statement that private parties offered to bury fetal remains without charge is wishful at best and specious at worst. The commenter expresses concern over being required to contract with such parties and that in doing so they would have to break patient privacy.

Response: The commission respectfully disagrees. The department has statutory authority to amend the rules to protect the public from the spread of communicable disease pursuant to numerous chapters of the Texas Health and Safety Code and other Texas laws, as cited in the Background and Justification Section above and the Statutory Authority Section below. These rules are necessary to maintain the protection of the health and safety of the public by ensuring that the disposition methods specified in the rules continue to be limited to methods that prevent the spread of disease. The department undertook the review of outdated rules in conjunction with this authority and with the goal of balancing cost considerations, public benefit and the Legislature's policy objective of ensuring the dignity for the unborn, which is articulated in a number of Texas laws. The proposed rules do not restrict access to abortion, but impose requirements on health care-related facilities regulated by the department. The department has reviewed the proposed rules with the above goals in mind. The rule does not require a funeral, it simply limits how fetal tissue may ultimately be disposed to exclude methods of disposition, such as grinding and placement in a landfill, that are contrary to demonstrating dignity for the unborn. Based on this and other comments regarding incinera-

tion versus cremation, the department has amended at adoption the proposed rules to clarify this matter and allow disposition in a manner that preserves the public health while affording dignity to the unborn. Cremation is a method of disposition under current rules and continues to be available under the adopted rules. The term was included under current rules as a form of interment under §1.132(31), which relates to the definition of "interment" stated as "The disposition of pathological waste by *cremation*, entombment, burial or placement in a niche." (emphasis added). The department did not modify that definition in the proposed rules. The department did separate out the term "cremation" in the proposed rules under proposed changes to §1.136(a)(4)(A)(v) and (B)(i) but in response to public comments that read this to give "cremation" more emphasis than "incineration," which was not intended, the department determined a revision to the rules was warranted. As a result, the department has amended these provisions in the adopted rules and deleted the stand alone reference to "cremation." Cremation will continue to exist as a form of interment, as it did in the previous rules. Additionally, in response to these public comments the department has added the term "incineration" to the forms of cremation that can occur for waste disposition by including it in the definition of "cremation" under adopted §1.132(18):

"(18) Cremation--The irreversible process of reducing tissue or remains to ashes or bone fragments through extreme heat and evaporation. Under this subchapter, this term includes the process of incineration."

The department disagrees that it does not have a statutory basis to propose rules based on preserving the dignity of the unborn. The Legislature has expressed its intent and policy to protect the unborn in several chapters of the Health and Safety Code, including Chapter 170 (regarding third-trimester abortions), Chapter 171 (requiring informed consent for abortions), Chapter 241, §241.010 (requiring hospitals to release to a parent remains of an unborn child who dies as a result of an unintended intrauterine death), and Chapter 245 (regulating abortion facilities). The rules are consistent with that expression of intent in the legislative history. The commenter cites the federal court injunction against Indiana's House Enrolled Act 1337 in *Planned Parenthood of Ind. & Ky, Inc. v. Comm'r, Ind. State Dep't of Health*. The State of Indiana passed House Enrolled Act 1337, which would require that a miscarried or aborted fetus be interred or cremated by a facility having possession of the remains and would exclude the final disposition of a miscarried or aborted fetus from the law governing the treatment of infectious or pathological waste. Although the Indiana law has been preliminarily enjoined by a federal court from taking effect, it is different from the department's adopted rules, which explicitly encompass treatment and disposition of material that includes fetal tissue. The federal court also determined that Indiana had no interest in treating the unborn with dignity. Here, however, the Texas Legislature has enacted numerous statutes demonstrating its interest in the dignity of the unborn. The rule provides many options for disposition, many of which are already in use, that do not increase the cost of disposition of fetal tissue but still protect the dignity of the unborn. The other cases the commenter cites, *Margaret S. v. Edwards* and *Margaret S. v. Treen*, overturned laws requiring a woman to decide on the disposal method for the fetal tissue. The proposed rules, on the other hand, leave that decision to the facility. The department stresses that the proposed rules will not require that fetal death certificates be issued for every miscarriage, abortion or ectopic pregnancy in the state and do not require or authorize an individual's private information to become part of the state's

public record. A certificate of fetal death (fetal death certificate) is only required for a fetus weighing 350 grams or more, or if the weight is unknown, a fetus aged 20 weeks or more as calculated from the start date of the last normal menstrual period. See 25 TAC §181.7(a). Based on an exemption that was contained in the previous rules, fetal deaths subject to the fetal death certificate requirement are exempt from the adopted rules pursuant to §1.133(a)(2)(F). In response to public comments, to make the applicability of the exemption more evident to the reader, the department has added a cross reference to the exemption section of the rules in three places: (1) §1.132(42)(B) regarding the definition of "pathological waste;" (2) §1.136(a)(4)(A)(v) regarding "fetal tissue, regardless of the period of gestation;" and (3) §1.136(a)(4)(B)(i) regarding "fetal tissue, regardless of the period of gestation{.}" Regarding costs, the department received cost data from waste disposal companies, private and public landfills, FCAT (comments as noted above), the Funeral Service Commission, TCEQ and the University of Texas System and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. For those health care-related facilities not already disposing of fetal tissue through cremation and burial, the cost of any of the new available methods would be offset by the elimination of the cost of landfill disposition. The department believes this cost to be minimal and absorbable by health care-related facilities. The department further notes that it would be facilities that would contract for disposition, not individuals, and patient privacy is not implicated by the proposed rules. To further safeguard patient privacy, the department added the following language to rule §1.134. Application: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue." Additionally, in response to public comments which stated that the department had not specified what disposition follows cremation as it had for other methods of disposition, the department has clarified the definition of interment to include disposition of ashes resulting from cremation (and incineration) as authorized by current law, excluding placement of ashes in a landfill. The adopted language includes the process of scattering ashes as part of that particular method of disposition (which now includes incineration) as well as other disposition of ashes authorized by law. The scattering of ashes is permitted under certain circumstances, to be done at specified settings in other law (see Texas Health and Safety Code, Chapter 716). The adopted rules no longer allow disposition of fetal tissue in a sanitary landfill and thus would not allow scattering of ashes that result from cremation or incineration of fetal tissue on land, if that land was also a landfill, even if the scattering of ashes was otherwise permitted by law. As a result, the department has added the following amended definition of "interment" under §1.132(33) in the adopted rules:

"(33) Interment--The disposition of pathological waste using the process of cremation, entombment, burial, or placement in a niche or by using the process of cremation followed by placement of the ashes in a niche, grave, or scattering of ashes as authorized by law, unless prohibited by this subchapter."

Comment: The American Congress of Obstetricians and Gynecologists commented that there is no evidence that the current disposition methods are unsafe or disrespectful of fetal tissue and that limiting fetal tissue disposal to only interment by burial or cremation does nothing to improve the health and safety of Texans. The commenter stated that "the department has bypassed the normal rule-making process even though there was no existing emergency." The commenter states that the current laws and professional standards already require safe and respectful disposition of medical waste. The commenter indicates that in some situations, fetal tissue is sent to a laboratory for pathological testing and that this material may not be returned and poses the question of how the rules would apply in this situation. The commenter states that the rules interfere with the patient/doctor relationship, especially in the case of miscarriage, ectopic or molar pregnancies when, frequently, there is little to no discernable tissue found. The commenter states that 15% to 20% of pregnancies result in miscarriage which may occur at home, at work or at a physician's office and that mandating that fetal tissue be collected for cremation or interment could become a cruel mandate on a woman who lost a very wanted pregnancy. The commenter states that requiring a death certificate for every cremation or interment of fetal tissue could skew vital statistics data used to improve health and well-being of women and children in Texas. The commenter states that fetal deaths registered with the Vital Statistics Unit are public record and raises concerns over making public very private medical histories of women. The data collected in fetal death registrations provide valuable data when collected for the purpose of improving patient health and the advancement of medical and scientific progress. These rules do not further these goals. The commenter states that the rules appear to be conflict with HB 635, which allows parents to request the remains of a miscarried fetus from hospitals or other health care-related facilities.

Response: The commission respectfully disagrees. The department complied with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code. The department gave at least 30 days' notice of its intent to adopt the proposed rules; it twice filed notice of the proposed rules with the Office of the Secretary of State for publication in the *Texas Register* as required by Chapter 2001 of the Texas Government Code, giving the public two 30-day periods for comment. The first set of proposed rules was filed on June 20, 2016 and the second on September 19, 2016. The same rules were proposed each time. Both notices for the proposed rules included the information required by Texas Government Code, §2001.024; and the department gave all interested persons an opportunity to submit oral and written comments as required by Texas Government Code, §2001.029. Two public hearings were held on August 4, 2016, and November 9, 2016, in compliance with Texas Government Code, §2001.029, in which the department received oral and written public comments. The department received more than 35,000 comments on the proposed rules. The department, on behalf of the commission, voluntarily considered and is responding in this Adoption Preamble to 20,000 comments from the first publication, public comment period and public hearing regarding the proposed rules. There is no legal requirement to consider and respond to the first set of comments, but the department felt it important to include the initial comments. The department has fully considered both the first and second set of public comments and includes its responses, and additional required elements set forth in Texas Government Code, §2001.033, in its adoption of the rules.

The department notes that the current rules already apply to clinical, diagnostic, and pathological laboratories, and these facilities would still be responsible for treatment and disposition of all materials under the proposed rules. The department stresses that the rules do not apply to a patient who miscarries outside a health care-related facility and notes that the facility, not the patient, is responsible for treatment and disposition of fetal tissue. The department is not expanding its authority to include any new topic or regulated entity or person. The proposed rules do not interfere with the doctor-patient relationship, and no changes have been made to the rules requiring notice or other changes to the physician's care of the patient. Additionally, the rules do not apply to individual patients, and the disposition of fetal tissue is the responsibility of the health care-related facility. Additionally, the rules have not included previously, and do not now impose, a requirement that a woman be informed of the method of disposition or choose that method of disposition. The proposed rules do not require that fetal death certificates be issued for every miscarriage, abortion or ectopic pregnancy in the state-meaning vital statistics reporting results will not be affected. The adopted rules do not require or authorize a patient's private information to become part of the state's public record. Under current law, a certificate of fetal death (fetal death certificate) is only required for a fetus weighing 350 grams or more, or if the weight is unknown, a fetus aged 20 weeks or more as calculated from the start date of the last normal menstrual period. See 25 TAC §181.7(a). Based on an exemption that was contained in the previous rules, fetal deaths subject to the fetal death certificate requirement are exempt from the adopted rules pursuant to §1.133(a)(2)(F). The department retained that exemption in these rules, and has not modified it in the proposed or adopted rules. As a result, vital statistics data collection and reporting results will not be affected. This rule does not create a new requirement for a birth or death certificate and thus there is no additional privacy concerns created by the rule. Because hospitals are currently responsible for disposition of fetal tissue, it is very likely that many are already using methods authorized by this rule. To further safeguard patient privacy, and clarify the issues relating to death certificates, the department added the following language to rule §1.134. Application: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health-care related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue."

The department agrees that the impact of HB 635, needs to be clarified. HB 635 added Texas Health and Safety Code, §241.010, requiring a hospital to release fetal remains to a parent upon request. In response to public comments and to conform with the impact of HB 635, the department has added subsection (a)(2)(H) to §1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services, which states that the rules do not apply to "fetal remains required to be released to the parent of an unborn child pursuant to Texas Health and Safety Code, §241.010{.}" Also, in response to comments, the department has added a cross-reference to the exemption in §1.133 to §1.136(a)(4)(A)(v) and (B)(i) regarding "fetal tissue, regardless of the period of gestation."

Comment: The National Abortion Federation submitted comments stating that the rules are not medically necessary and lack any health or safety benefit and do not adequately protect the privacy of patients, but rather create a significant burden on healthcare providers. Adding onerous disposal requirements while lacking a public health and safety benefit clearly show that these rules are a means for the State of Texas to continue its attack on access to abortion care. The requirement for facilities to obtain fetal death certificates raises serious concerns for patient privacy. The intrusive nature of the questions that must be answered to obtain a fetal death certificate are of concern as the rules provide no privacy protection to ensure this identifying information remains private, rather all of this information is presumably available as an open record under the Texas Public Information Act. Patients are targeted for harassment and there is a history of anti-abortion extremists seeking patient information in order to deter women from seeking abortion care and shame those that do. Likewise, abortion providers are often the targets of violence. If the rules do not require fetal death certificates, the commenter asks how the department will circumvent this requirement.

Response: The commission respectfully disagrees. The rule amendments, like the rules currently in effect for treatment and disposition, are targeted to prevent the spread of communicable disease. There are a variety of methods by which public health objectives can be furthered. The amendments to the rules eliminate unused or rarely used methods and also prohibit disposition of fetal tissue in a landfill, which is in line with the Legislature's policy objective of ensuring the dignity for the unborn articulated in a number of Texas laws. To further clarify, the rules do not impinge on the privacy of patients because the rules apply to health care-related facilities and not to individuals. To further safeguard patient privacy, the department added the following language to rule §1.134. Application: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue." The department also disputes that the proposed rules are onerous or create a significant burden on healthcare providers, which are already subject to regulation in this area. Many health care-related facilities are already in compliance with the rules as adopted. The proposed rules discontinue certain methods of treatment and disposition while allowing additional methods to remain part of the rules. The department received cost data from waste disposal companies, private and public landfills, FCAT (comments as noted above), the Funeral Services Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of some current methods of disposition. The department believes this cost to be minimal and absorbable by each health care-related facility. The current and proposed rules are not meant to, and do not, create a substantial obstacle to a woman seeking an abortion. Instead, the rules govern the treatment and disposition of special waste, including fetal tissue, from health care-related facilities.

Comment: The National Latina Institute for Reproductive Health submitted comments and states that rules create medically unnecessary burdens which can disproportionately impact the Texas "Latinx" community and perpetuate the stigma surrounding abortion care by regulating a private matter that should be left to patients. The commenter states that the rules institute unneeded procedures and complications for healthcare providers without contributing to the health and safety of Texans. The commenter states that the department does not provide information on who is to bear the additional cost burden or how women who miscarry at home are expected to properly dispose of fetal waste. The commenters asks the department to withdraw the rules and avoid the costs of unnecessary litigation.

Response: The commission respectfully disagrees and notes that the health care-related facilities are responsible for the costs of compliance. However, the department received cost data from waste disposal companies, private and public landfills, FCAT (comments as noted above), the Funeral Services Commission, TCEQ and the University of Texas System and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of some current methods of disposition. The department believes this cost to be minimal and absorbable by each healthcare facility. The proposed rules are necessary to protect the health and safety of the public in a manner that preserves the dignity of the unborn. As noted elsewhere, the proposed rules do not apply to women who miscarry outside of health care-related facilities, but to the facilities themselves. To further address this concern, the department has added subsection (a)(2)(G) to §1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services, which states that the rules do not apply to "human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a health care-related facility{.}" The commission declines to withdraw the proposed rules and believes they will withstand legal scrutiny.

Comment: Physicians for Reproductive Health submitted comments stating that current procedures are safe, sanitary and in line with standard medical practice and the proposed rules are medically unnecessary. The commenter states that, from a medical perspective, there is no basis to single out fetal tissue for special disposition. The commenter states that the rules take away the right of patients to determine the manner of disposition, and that in doing so the department is being intrusive and stigmatizing to patients. The commenter also stated that the state is interfering with patient care, engaging in shaming women and possibly breaching their privacy in order to complete forms necessary to cremate or inter fetal tissue. The commenter completes the comments with a concern that the rules substantially burden women and are similar in nature to the rules in *Whole Woman's Health* which were invalidated by the U.S. Supreme Court.

Response: The commission respectfully disagrees and contends the rules balance protecting the public health with comporting with the state's policy of recognizing the dignity of the unborn. The commission notes these rules have always required that the health care-related facility be responsible for the manner of disposition, not individual patients. However, there is no requirement contained in the rules that requires the disclosure or collection or private or sensitive personal

information. To address that concern and to further protect patient privacy, the following provision has been added to the rules as adopted in §1.134. Application: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue." The rules do not contain a notice requirement for a patient to be notified of the disposition methods. The proposed rules do not create a substantial obstacle to an individual seeking an abortion because they place responsibility for compliance upon health care-related facilities. Furthermore, the proposed rules, regulating treatment and disposition of fetal tissue, are different from the rules regarding admitting privileges and ambulatory surgical center standards that the Supreme Court overturned in *Whole Woman's Health*. The adopted rules relate to the disposition of fetal tissue from health care-related facilities that results from an induced or spontaneous abortion. It applies to multiple types of health care-related facilities, not just induced abortion facilities. The rules that were the subject of *Whole Woman's Health* related to the care and treatment and the treatment environment of patients undergoing induced abortions in licensed abortion facilities and ambulatory surgical centers.

Comment: The Teaching Hospitals of Texas asked several questions about the proposed rules: (1) The commenter noted that for fetal remains massing less than 350 grams, separating fetal remains from other tissue may not be possible, and asked if all tissue may be treated consistently with the requirements or if fetal remains must be separated from other tissue; (2) The commenter also asked if a family chose not to receive remains, would individual cremation or interment be required, and what interment would be required following cremation and whether it would be under the purview of funeral homes or determined by regulations; and (3) The commenter asked if, under the proposed rules, would all methods of disposal require hospitals to engage with a funeral home or similar service for cremation or interment. The commenter also stated that the economic impact analysis should account for the costs of individual cremation, interment, pathology time, storage, transportation to a funeral home, and disposition by the funeral home. The commenter requested a clearer definition of fetal tissue, interment, and the cremation process to aid health care-related providers in implementing the proposed rules. They also ask that the department allow providers up to November 1, 2016 to comply with the proposed rules.

Response: The commission appreciates the commenter's questions and responds as follows: (1) Fetal tissue need not be separated from other tissue as long as all the tissue is treated and disposed of in a manner consistent with the requirements for fetal tissue and other tissue. (2) If parents do not request the release of remains under Texas Health and Safety Code, §241.010, then the facility is responsible for treatment and disposition in compliance with the proposed rules. (3) The proposed rules do not require any health care-related facility subject to the rules to engage the services of a funeral director or crematory; instead, facilities will be responsible for disposition of fetal tissue by one of the methods specified by the rules. The commission also notes regarding economic impact that the department received cost data from waste disposal companies, private and public landfills,

FCAT (comments as noted above), the Funeral Service Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. The department found that based upon the lowest stated costs of each entity able to provide cost estimates, the annual cost per facility would be approximately \$450. For those health care-related facilities not already disposing of fetal tissue through cremation and burial, the cost of any of the new available methods would be offset by the elimination of the cost of landfill disposition. The department believes this cost to be minimal and absorbable by health care-related facilities. In response to this and other comments, the department has clarified the definitions of cremation and interment in the proposed rules and declines to make any further changes to definitions. The commission does not see a need to delay implementation of the rules as they were initially published on July 1, 2016, and were unchanged in the subsequent publication on September 30, 2016. Once filed in the *Texas Register* as adopted, an additional 20 days will be given before the rules go into effect. As a result, there has been ample time to prepare to comply with the rules. The commission declines to delay the implementation date of the rules.

Comment: The American Civil Liberties Union submitted comments stating that the rules place unnecessary regulations upon abortion providers not imposed upon other health care-related facilities. The commenter states that the rules do not advance public health and create precisely the sort of impediments to accessing abortion care rejected by the Supreme Court in *Whole Woman's Health*. The commenter states that the proposed regulations eliminate current safe and sanitary disposal methods, imposing burial and cremation as the only permissible options for abortion providers. The commenter states that there is no evidence that the current disposition methods pose any risk to public health or that cremation would improve public health, nor is there a basis for treating fetal tissue different from other human tissue. The commenter states that while the department has authority to promulgate rules related to public health, it has no legal authority to regulate in the interest of dignity. The commenter refers to the Indiana federal court that rejected similar regulations. The commenter identified the requirement to cremate and inter fetal tissue as making it more difficult for women to access abortion care by increasing the cost. The commenter states that nearly half of abortion patients in the United States are poor and another 26% are low-income, therefore even a modest increase in the cost can pose an insurmountable hurdle. Abortion providers unable to find a crematorium or cemetery willing to accept fetal tissue may have to close their doors. The closure of even one more clinic means access to abortion care would be substantially eroded.

Response: The commission respectfully disagrees. The proposed rules apply to twenty-four other types of health care-related facilities-including ambulatory surgical centers, hospitals, and clinical and research laboratories-in addition to abortion clinics. The proposed rules are intended to safeguard public health by providing for the safe treatment and disposition of fetal tissue in a manner that preserves the dignity of the unborn. They do not place a substantial obstacle to an individual seeking abortion because the proposed rules apply to health care-related facilities. These options provide for the safe disposal of fetal tissue while conforming with the state's policy of preserving the dignity of the unborn. The commission maintains that statutory authority to preserve the dignity of the unborn exists within the Texas Health and Safety Code, including §241.010 (requiring a hospital to release to a parent remains of an unborn child who died

from an unintended, intrauterine death), §170.002 (prohibiting, with certain exceptions, third-trimester abortions), and §171.012 (requiring sonograms prior to abortion). The department notes that the Indiana statute enjoined by the federal court in *Planned Parenthood of Ind. & Ky, Inc. v. Comm'r, Ind. State Dep't of Health* is different from the proposed rules. The State of Indiana passed House Enrolled Act 1337, which would require that a miscarried or aborted fetus be interred or cremated by a facility having possession of the remains and would exclude the final disposition of a miscarried or aborted fetus from the law governing the treatment of infectious or pathological waste. Although the Indiana law has been preliminarily enjoined by a federal court from taking effect, it is different from the department's adopted rules, which explicitly encompass treatment and disposition of material that includes fetal tissue. The federal court also determined that Indiana had no interest in treating the unborn with dignity. Here, however, the Texas Legislature has enacted numerous statutes demonstrating its interest in the dignity of the unborn. The rule provides many options for disposition, many of which are already in use, that do not increase the cost of disposition of fetal tissue but still protect the dignity of the unborn. The department disagrees that the proposed rules will make it more difficult for a woman to access abortion services. The department has determined that the annual cost per facility would be approximately \$450, which would be offset by the elimination of a current disposition method. The department believes this cost to be minimal and absorbable by each health care-related facility.

Comment: Our Lady of the Rosary Cemetery and Prayer Gardens submitted a comment stating that it is in support of the rules which reflect the dignity of human life by requiring humane burial. The commenter stated its willingness to provide a reverent place of burial for fetal tissue and is open to all faiths. The commenter states that it has been providing quarterly services for babies who died before birth at St. David's Hospital in Round Rock and in Georgetown.

Response: The commission appreciates the comment, which illustrates the support for protecting the dignity of the unborn that exists among Texans and demonstrates that various options authorized by the rule are currently utilized.

Comment: Texas Right to Life submitted comments applauding the department for its work to improve the disposal procedures for fetal tissue. The proposed changes will improve upon existing disposition rules to ensure a more sanitary treatment but also afford dignity to deceased preborn children. The commenter asks for a change to existing language specifically clarifying that the rules do not apply to miscarriages that occur in homes, whether they be induced or spontaneous.

Response: The commission appreciates the comment and agrees with the need for the suggested amendment. To address concerns raised by this and other comments, the department has added subsection (a)(2)(G) to §1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services, which states that the rules do not apply to "human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a health care-related facility{.}"

Comment: The Texas House Republican Caucus submitted comments expressing its full support of the proposed rule change to allow for the humane disposal of aborted babies' remains. The commenter states that the changes follow

thousands of years of societal tradition in ensuring dignified treatment. The commenter specifically agrees with the elimination of grinding and discharging as a method of disposal. The commenter states that grinding is an abhorrent practice contrary to fundamental human dignity and how we value human life, regardless of its developmental stage. The commenter notes that opponents will claim a limitation on access but disputes this assertion and states that many abortion providers already use medical waste disposal companies and every hospital has a facility for cremation of human body parts with whom abortion facilities could enter into affordable agreements. The commenter also states that almost every state in the nation requires a more sensitive handling of these human remains and that Texas needs to update its standard of practice to rightfully ensure every sacred human life is treated with the utmost care and respect.

Response: The commission appreciates the comment and agrees that facilities that are not already in compliance with the rules will be able to absorb any additional costs of compliance with the proposed rules. The commission appreciates the support for the rules and information on the current practices relating to this issue, which are consistent with the information available to the department.

Comment: The Texas Catholic Conference stated the rule changes are long overdue and provide a more appropriate method for the disposal of human remains than current rules by affording the same dignity and respect as any other human body. The commenter notes that cadavers donated to science are afforded respect and honor including cremation ceremonies to memorialize their donation. The commenter states that the same respect should be shown for those lives that end before taking a breath. The proposed rules allow for disposition procedures that are practiced worldwide and are known as "sensitive disposal." These rules honor a universal respect, beyond religious, cultural or societal norms, for the sacred nature of the human person. The written testimony further provides that the bodies of unborn humans should be afforded the same dignity and respect as humans who have progressed in age. This respect conforms to the principles of Christians and people of good will across the world, who treat the dead with respect and charity.

Response: The commission appreciates the comment and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: The Texans for Life Committee submitted comments applauding the department for righting an old wrong. The commenter states that it has worked hard to foster greater respect for human life at all stages and recognize fetal remains as human remains. The commenter notes that the Texas Legislature has passed legislation in recent years to increase respect and protection for the unborn. The commenter states that Planned Parenthood already contracts with companies that cremate the remains and it is only independent providers who object, based on cost; however, any additional cost, measured by weight, is negligible. As confirmed by the peer-reviewed Christchurch Health and Development Study, many women regret their abortion decisions and experience depression, anxiety, suicidal behaviors and substance use. The commenter states that trauma should not be increased by the haunting possibility that the remains of their babies were ground beyond recognition in a commercial

garbage disposal. The commenter states that fetal remains deserve no less respect than bodies donated for medical research.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: The Texas Alliance for Life submitted a comment strongly supporting the proposed rules as a very good first step to require abortion facilities to treat the remains of the victims of abortion in a humane manner through cremation and burial and by banning the "grinding and discharging into a sanitary sewer system."

Response: The commission appreciates the comment and notes that the proposed rules will continue to protect the public health while providing for the disposition of fetal tissue in a dignified manner.

Comment: The Diocese of San Angelo submitted comments supporting the proposed rules to prevent facilities from using garbage disposals and flushing remains into municipal sewer systems. The commenter states that current law allows abortion providers to dispose of the bodies of the precious unborn in that very inhumane manner. The commenter states that each abortion is a tragedy and the state should not allow the victims to be treated like medicinal waste.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: NARAL Pro-Choice Texas submitted comments and stated that burial or cremation of fetal tissue is unnecessary and intended to restrict access to abortion care. The commenter states that healthcare facilities already follow standards for the sanitary disposal of medical waste, including embryonic tissue. The commenter states that the politically motivated attacks on Texans' access to reproductive health care must stop and that the department should not interfere with the doctor-patient relationship.

Response: The commission respectfully disagrees. The proposed rules do not interfere with the doctor-patient relationship, because they do not apply to individuals. Instead, the proposed rules regulate the treatment and disposition of material, including fetal tissue, generated by health care-related facilities. The department is not expanding its authority to include any new topic or regulated entity or person. Additionally, the proposed rules do not interfere with the doctor-patient relationship, because they do not apply to individual patients and the disposition of fetal tissue the responsibility of the health-care-related facility. The rules have not included previously, and do not now impose a requirement that a patient be informed of the method of disposition or choose that method of disposition. The proposed rules are not intended to restrict access to abortion, but to protect the public health while affording dignity to the unborn. The proposed rules address the treatment and disposition of fetal tissue from health care-related facilities, which are already subject to rules regarding the disposition of fetal tissue. These rules eliminate methods not currently in use and retain some of the existing methods. Final disposition no longer includes depositing disinfected fetal tissue in landfills, but rather allows other methods. The department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Services Commission, TCEQ, the University of Texas System, and oth-

ers to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of the current method of disposition. The department believes this cost to be minimal and absorbable by each health-care facility. Because the department has determined that healthcare facilities can absorb any additional costs associated with these rules, it anticipates no change in access to abortion services.

Comment: The Justice Foundation submitted comments supporting the proposed regulations as in accordance with the treatment given to other human remains. The commenter states that they have collected statements from over 4,500 women hurt by abortion and that 600-700 of these women were Texas residents or had their abortions in Texas. The commenter states that many women have complaints of severe trauma after taking RU 486, the medical abortion pill, when they see the remains of the human fetus in their hands or in their toilets after the dead child is expelled from the womb. The commenter states that women have stated, "They lied to me, they said it wasn't a baby, but it is." The commenter states that women have asked if they can bury their baby in the back yard to give it more dignity than being flushed down a toilet.

Response: The commission appreciates the comment and notes that the proposed rules do not apply to fetal tissue that is expelled or removed from the human body once the person is outside of a health care-related facility. To address concerns raised by this and other comments, the department has added subsection (a)(2)(G) to §1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services, which states that the rules do not apply to "human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a health care-related facility{.}"

Comment: The Liliith Fund submitted comments in opposition to the proposed rules. The commenter states that they provide financial assistance to primarily low-income women of color who already have children, working multiple jobs to make ends meet while caring for their families. The commenter states that abortion coverage is out of their reach due to lack of insurance, underinsurance, or due to the Medicaid ban under the Hyde Amendment. The commenter states that these barriers to coverage have pushed women who contact them into dire health care gaps that are both unacceptable and ethically unjust. The commenter states that the proposed rules requiring cremation or burial will further stigmatize women and increase costs, potentially by thousands of dollars, further burdening low-income Texans. The commenter states that this cost increase could effectively prevent them from accessing safe, legal abortion care altogether. The commenter states there is no discernible public health reason for these rules but rather the rules are an attempt to interfere with a patient's reproductive autonomy and further disenfranchise marginalized communities. The commenter states that if public health and "respect for life" are true motivators there should be more access to comprehensive reproductive health care for low-income communities. The commenter states that the department should focus on ensuring all people have the power, resources and community support to make their reproductive decision a reality and that individuals seeking abortion services should be treated with respect, dignity and compassion. The commenter states that these rules do nothing to im-

prove reproductive healthcare and only serve to further burden, and possibly prevent, access to safe and legal abortion.

Response: The commission respectfully disagrees that the proposed rules will place a burden on women or reduce access to abortion. As noted elsewhere, the department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Service Commission, TCEQ and the University of Texas System and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be less than \$450. The department also believes a number of regulated facilities are already in compliance with these rules, and thus would experience no additional cost. Any additional cost would be offset by the elimination of a current method of disposition. The department therefore believes this cost to be minimal and absorbable by health care-related facilities. The proposed rules do not interfere with a patient, as the rules apply to health care-related facilities and not to individuals.

Comment: Choose Life Midland submitted comments in support of the removal of grinding and discharge into a sanitary sewer system as a method of disposition. Birth Choice Dallas submitted a comment in support of removing grinding and discharge into a municipal sewer system as a method of disposition, and states that victims should not be treated like medical waste. Woman to Woman Pregnancy Resource Center submitted comments in support of the removal of grinding as a disposition method and urges the department to adopt the proposed rules.

Response: The commission appreciates the comments and notes that the proposed rules eliminate methods not currently in use and retain some of the existing methods in a manner consistent with the state's policy of preserving the dignity of the unborn.

Comment: St. Ignatius Martyr Catholic Parish submitted comments in support of the rule changes. The commenter states that the body of the deceased is in Christ a temple of the Holy Spirit. The commenter states that the Church's call is to respect and promote the dignity of the human person created in the image of God. The commenter supports the rules based upon their knowledge by the light of faith, the guidance of reason, and the tool of science, that at conception, a distinctly new member of the human family has been formed. This person has the dignity of being created in the image and likeness of God and the possibility for his or her life to be created new in Christ's life, death and resurrection. The commenter states that the life rightly deserves our utmost respect and reverence because it is destined for the future glory at the resurrection. The commenter supports the proposed changes to more properly give due reverence and respect to the bodies of our aborted brothers and sisters who are far more than mere medical waste to be ground up and discharged. The changes, while imperfect, are preferred over current procedure. A human corpse, though dead, is still a semblance of an image of the living God. The commenter continues by stating that the corpses of human embryos and fetuses, whether they have been deliberately aborted or not, must be respected just as the remains of other human beings. In particular, they cannot be subjected to mutilation. The commenter states that, at this moment, they cannot yet legally prevent the sanctity of our pre-born brothers and sisters' lives from being violated by abortion, we can do our utmost to ensure that their remains are at least treated with the common dignity and respect that is

only deserving of human beings created in the image and likeness of God. The commenter, on behalf of the Parish and her 9,200 members, and in agreement with sacred scripture and the teaching of the Holy Catholic Church, they express their support for the proposed changes.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Concerned Women for America of Texas submitted comments in support of the rule changes. The commenter states that human beings should not be treated like medical waste and that life is sacred. The commenter states that Texas needs to align our treatment of the remains of the born and unborn with the belief of the majority of Texans which is to treat remains with dignity and respect. The commenter says the practice of treating these remains equivalent to clinical waste products, rubbish or trash cannot continue.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: The American Academy of Fertility Care Professionals, Houston Coalition for Life submitted comments calling for humane disposition and dignity in death. The commenter relates an incident where in the case of a miscarriage, the parents couldn't obtain the body for burial. The hospital wouldn't return the babies remains. These rules would bring peace and closure for dead children. The commenter states that there is a gravesite in Houston where 500 babies have been named and buried and September 10th is the day of remembrance. The commenter states that these babies have been torn to pieces and targeted as undesirable. The commenter supports the rule amendments as it is humane and shows love and respect. The commenter states that in 2005, pieces of bodies clogged the sewer in Houston. These rules have nothing to do with women's health; there is nothing healthy about abortion. There is so little respect for human life. Another commenter with the Houston Coalition for Life relayed her personal story and speaks for her unborn child ripped from her womb against her will; she is horrified that he was thrown away. Burial brings dignity and respect. The commenter states there is blood money from selling body parts. Victims of abortion are tiny and defenseless. They can't speak for themselves so we speak for them: they were denied the right. The commenter states that if there is an additional cost, abortion clinics should pay and that abortion harms women.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: The Roman Catholic Diocese of Austin submitted comments stating that medical students are lectured on treating cadavers with honor and respect. Their sacrifice is memorialized through cremation and a ceremony. The commenter stated that this method of disposal is practiced worldwide and honors and respects the sacred nature of human person.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Young Women for America and Concerned Women for America Legislative Action Committee submitted comments stating that the disposition of unborn as trash in our cities where baby body parts are ground or deposited in a landfill is inhumane and absurd. The commenter supports higher ethical and health standards and common sense. The commenter states that there should be legislation in the future.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn. The members of the Texas Legislature will determine whether legislation regarding this matter will be considered in the future.

Comment: Life Choices Medical Clinic in San Antonio submitted comments and asked: How will we as a society be remembered - as respectful or with contempt? The commenter states that the proposed rules will eliminate health hazards of a contaminated water supply. The commenter stated that women in the clinic where she works became physically ill when they heard about a child being ground up.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Texas Values submitted comments stating that the victims of abortion should be treated with respect. The human dignity should be afforded to children as image bearers of God. The commenter states that anti-life, pro-abortion commenters are fighting because of costs. Abortion profits are being put ahead of human life. The commenter states that victims of abortion should be treated with dignity and we should stop abortion facilities from selling baby body parts.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Southern Baptist Convention of Texas, Concerned Women of Texas stated that these rules support God-given morality and validate sacred life. Aborted fetuses are not the equivalent of trash. The commenter stated that medical biology textbooks show the development of humans from conception and that tiny parts develop. The commenter states that the information provided in 1973 was a lie when it was stated that these were clumps of cells. The commenter states that God created the soul and that human beings should be provided dignity. The commenter stated that babies should be provided a proper burial and not abandoned in the garbage.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Operation Outcry submitted comments through its representative regarding her personal experience when she hesitantly agreed to an abortion but didn't understand her options. The commenter states that she was convinced there was only one choice. The commenter stated that she heard the baby scream in pain. The commenter stated that the baby was torn to pieces while she couldn't move because of the drugs. She had no control over her body but she was aware of everything. The commenter states that the baby was thrown into a garbage can.

The commenter stated that she hid and was in denial and that destructive grief comes out in unhealthy ways.

Response: The commission acknowledges the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Students for Life submitted comments stating that tiny children should rest in peace and that their beautiful soul should be treated with humanity and not sold. The commenter stated that abortion is cruel and a waste that is unredeemable. Aborted babies should be laid to rest.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: Office of Life Charity and Justice of Roman Catholic Church submitted comments stating that women often ask about the remains of their lost child. Under the current rules, remains are not handled properly and with dignity. The commenter stated that people believe remains are treated with dignity and respect. The commenter related a time when a father asked for the remains of the miscarriage, and was told the facility wouldn't release the remains because it was medical waste.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn. The commission appreciates the comment and notes that it has further amended the proposed rules so they now conform with Texas Health and Safety Code, §241.010, which requires a hospital to release the remains of an unintended, intrauterine fetal death on the request of a parent.

Comment: Pro-Life Organization for Grimes and Waller Counties stated that depositing aborted fetuses like waste in a landfill or in our water system exposes the public to risk. The commenter stated that Houston babies were sold piece by piece and in Conroe, remains were dispersed into the air that we breathe and water we drink. The commenter supports burial and a funeral for miscarriage. The commenter stated that the enormous cost can be defrayed by Catholic charities who will help bury the baby. The cost of a funeral and burial for a baby is \$500.

Response: The commission appreciates the comments but notes that the proposed rules remove outdated methods of disposition while still ensuring dignified treatment of fetal tissue consistent with the state laws and the Legislature's intent to protect the dignity of the unborn.

Comment: Medical Students for Choice stated that the proposed rules make it harder for physicians to do their jobs and have a relationship with patients and the proposed rules increase the involvement of lawmakers in what should be a decision between a woman and her doctor. The commenter stated that the authors of the rules don't understand the issues. The commenter stated that lots of pregnancies end in miscarriage and the commenter is unclear how the rules apply to miscarriage.

Response: The commission respectfully disagrees. The proposed rules apply only to health care-related facilities; they do not govern individual patients. The department is not expanding its authority to include any new topic or regulated entity or person. The proposed rules do not interfere with the doctor-patient relationship, because they do not apply to individual patients and the disposition of fetal tissue is the responsibility of

the health-care-related facility. Additionally, the rules have not included previously, and do not now impose, a requirement that a woman be informed of the method of disposition or choose that method of disposition. To further clarify that the rules do not apply to fetal tissue that is the result of a miscarriage at home, the department has added subsection (a)(2)(G) to §1.133 stating that the rules do not apply to "human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a health care-related facility{.}"

Comment: Unite Women Texas submitted comments through its representative relating to her experience of a fetal death occurring after a car wreck. The commenter stated that the fetus was removed and it would have been a burden to have had to make decisions about burial and cremation and would have been horrifying. The commenter stated that forcing women to make decisions about cremation and funerals would only add to the trauma of losing a pregnancy.

Response: The commission sympathizes with the commenter and notes that the proposed rules will not require patients to make decisions about burial, and cremation of fetal tissue. Instead, they require health care-related facilities to conduct the treatment and disposition of fetal tissue in a manner consistent with upholding the dignity of the unborn while protecting the public health.

Comment: Planned Parenthood of Texas Votes stated that the proposed rules were published with little or no public announcement, only four days after the Supreme Court struck down HB 2. The commenter states that abortion is a deeply personal decision made in consultation with health care providers. The commenter stated that the disposition of medical tissue is already safe and respectful with no evidence of any health or safety risk. The commenter stated that the proposed rules are motivated by politics. The commenter stated that the requirement for a fetal death certificate will negatively affect the privacy of patients by making their personal medical histories available to the public. The only purpose for this is to shame women away from safe, legal abortion services. The commenter completed their comments by stating that the proposed rules exceed the statutory authority of the department.

Response: The commission respectfully disagrees and notes that the rules were filed with the *Texas Register* on June 20, 2016, prior to the Supreme Court ruling in *Whole Woman's Health*, which was issued on June 27, 2016. The filing and publication met the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the public has been given the opportunity to submit comments in writing during two 30-day periods and at two public hearings. The department has statutory authority under Texas Health and Safety Code, Chapters 12 and 81 to enact rules to protect the public from the spread of communicable disease and under Chapters 241, 243, 244, 245, 251, 254, and 773 to regulate health care-related facilities. The proposed rules regulate abortion providers only to the extent that they dispose of fetal tissue and other special waste. The proposed rules are intended to maintain the health and safety of the public while safeguarding the dignity of the unborn in accordance with the state's policies. The department also has added language to §1.134 clarifying that the proposed rules do not require the issuance of a death certificate for the disposition of fetal tissue from health care-related facilities. The commission further notes that the rules apply only to facilities, not to individuals, and are not intended to shame women or to restrict access to abortion.

Comment: Austin National Organization for Women stated that the decision to get an abortion is hard enough, especially after rape and having to pay for a burial would be rubbing the victim's face in the trauma of rape.

Response: The commission notes that the proposed rules do not require an individual to pay for burial or other disposition of fetal tissue. Instead, the proposed rules require health care-related facilities to treat and dispose of fetal tissue in a manner that preserves the dignity of the unborn while also protecting the public health and preventing the spread of communicable disease.

Comment: Texas Equal Access Fund stated the impact of the proposed rules on low income and marginalized women amounts to an undue burden. The commenter stated that the rules will result in increased cost and reduced access. The commenter stated that abortion is healthcare, which is already regulated. The commenter stated that the new regulations are medically unnecessary and are intended to shame women and interfere with private healthcare decisions. The commenter stated that the rules would limit a woman's legal right to a vital and common procedure. The commenter calls on the State of Texas to increase other social benefits, wages, and access to healthcare.

Response: The commission respectfully disagrees that the proposed rules impose an undue burden on women seeking abortions. They are not intended to shame patients and do not limit a patient's right to any procedure. The proposed rules do not impinge on the doctor-patient relationship. Rather, the rules regulate the treatment and disposition of material, including fetal tissue, from health care-related facilities. The commission further disagrees that the proposed rules will result in increased costs to patients. The department estimates that the costs for health care-related facilities to comply with the proposed rules will be sufficiently low such that the costs can be absorbed by facilities as part of their operating costs while still providing a public health benefit by ensuring the proper disposal of fetal tissue. The commission also disputes that the proposed rules are unnecessary and contends that they balance protecting the public health and comporting with the state's policy of protecting the dignity of the unborn.

Comment: Public Leadership Institute/Fund Texas Choice stated that the proposed rules pose an undue burden intended to shame and stigmatize women. The commenter stated that taxpayers' money should be spent more efficiently and effectively and that the fiscal note is implausible. The commenter stated that the state has already spent \$1.6 million on two special sessions and additional money defending their anti-abortion agenda. The commenter stated that Texas should spend money on healthcare, child protective services and to fund foster care instead of this ruse to stigmatize abortion.

Response: The commission respectfully disagrees that the proposed rules create an undue burden on women seeking abortions because any additional costs associated with complying with these rules can be absorbed by the health care-related facility. The sources for the department's small and micro-business impact analysis include waste disposal companies, private and public landfills, FCAT, the Funeral Service Commission, TCEQ, the University of Texas System, and others. The department notes that the cost of compliance with the proposed rules would be offset by the elimination of current disposition methods. The department also notes that the proposed rules are not intended to shame or stigmatize women. They apply to health care-related facilities and not to individual patients.

Comment: Trinity Legal Center supports the proposed rules. The commenter stated that a human being is sacred and the unborn should be treated with dignity and respect and not like medical waste.

Response: The commission appreciates the comment. The proposed rules are intended to balance the desire to treat the unborn with dignity and the need to protect the public health.

Comment: Cathedral of Our Lady of Walsingham Catholic Church and Shrine stated that it is appalling that the bodies of children are disposed of like common waste, instead of buried with dignity. The commenter also stated that if we are legally murdering them, we can at least honor their passing with a caring burial.

Response: The commission appreciates the comment and agrees that the proposed rules should comport with the state's policy of ensuring the dignity of the unborn.

Comment: The Southern Baptists of Texas Convention strongly supports the proposed rules so that unborn human beings will not be treated like medical waste. The commenter stated that medical, biological, and scientific writings agree that the development of a human being begins with fertilization, marking the beginning of a unique individual. With the science and technology of today, we know that it is not "just a clump of cells." The commenter would be horrified to find the body of an abandoned baby in the garbage or elsewhere and would never consider turning a blind eye, stating that we should not turn a blind eye to the unborn now or ever, but do the right thing by giving them a proper burial.

Response: The commission appreciates the comment and agrees that the proposed rules should comport with the state's policy of ensuring the dignity of the unborn.

Comment: The Mercy Ministry of the Prince of Peace Catholic Community stated that they are appalled and sickened that fetal tissue may be disposed of by grinding and discharging into a sanitary sewer system and deposition in a sanitary landfill and support ending these methods.

Response: The commission appreciates the comments. The proposed rules would eliminate these disposition methods and preserve the dignity of the unborn.

Comment: The Catholic Pro-Life Committee of North Texas supports the proposed rules. The commenter noted that women who have abortions face many consequences, and the knowledge that their child's body was not thrown away as trash but treated with respect and buried will only ease their suffering. There is a common-law right to a decent burial. The trauma of abortion affects the mother's ability to make a rational choice in relation to her aborted child, even though she has a vested interest in the remains. The general public also has a vested interest that the fetal remains be treated with respect. The aborted child is entitled to a burial.

Response: The commission appreciates the comment. The proposed rules address the concerns raised by this commenter.

Comment: Catholic Healthcare Professionals of Houston stated it supports the comments submitted by the Texas Catholic Conference.

Response: The commission appreciates this comment.

Comment: SA Pregnancy Care Center stated it supports the proposed rules. The commenter stated that Texas needs to align

treatment of the remains of the born and unborn with the belief of the majority of Texans that they should be treated with dignity and respect. Our state cannot allow them to be equivalent to clinical waste or trash.

Response: The commission appreciates the comments and remains committed to balancing the need to protect the public health with the state's policy of preserving the dignity of the unborn.

Comment: 3d Houston stated that the rules should contain provisions for these deceased children to be claimed for burial. The commenter would like to see records of family lineage and date of death, and independent autopsy to verify they were not murdered, a chance to be named, a proper funeral service, and burial where their family can find them. The commenter noted that a gravesite provides healing for the living and dignity for the deceased. We do not treat executed criminals with the contempt and dishonor that the unborn receive. Let churches, funeral homes, and charitable organizations care for the dead, not abortion clinics.

Response: The commission notes that the proposed rules do not require or prohibit any funeral service and may not be used to require the disclosure of any personally identifiable or personally sensitive information. While the commission agrees that the dignity of the unborn should be protected, it declines to enact any of the additional requirements suggested by this commenter.

Comment: St. Clair of Assisi Catholic Church requested a decent burial for the unborn.

Response: The commission believes the proposed rules allow for the respectful disposition of fetal tissue in a manner that preserves privacy and protects public health.

Comment: The League of Women Voters of Texas submitted a comment in opposition of the fetal tissue rules.

Response: The commission respectfully disagrees but offers no further response as the basis for the commenter's opposition is not specified.

Comment: The National Association of Social Workers stated that it serves Texas residents across the state and reproductive health services, including abortion services, must be legally, economically and geographically accessible. The commenter states that denying people with low income access to contraception and abortion perpetuates poverty and dependence upon welfare programs, resulting in a status quo of class stratification. Fetal burial services can cost between \$250 and \$3,000: that equates to one week to two months of salary for a minimum-wage worker. The commenter states that the proposed policy change would create additional financial barriers, effectively making abortion inaccessible for some low-income Texans. The commenter goes on to state that healthcare providers follow medical standards for sanitary disposal of fetal tissue which is handled respectfully and safely. The commenter stated that they promote the right of clients to self-determination and non-medical ritual interferes with the doctor-patient relationship. The commenter closed by stating that we should value patients' dignity and worth by supporting and respecting their decision.

Response: The commission respectfully disagrees that the proposed rules would create any significant financial obstacles. The department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Services Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon

the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. For those health care-related facilities now already disposing of fetal tissue through cremation and burial, the cost of any of the new available methods would be offset by the elimination of the cost of landfill disposition. The commission believes any cost of compliance with the proposed rules to be minimal and absorbable by health care-related facilities. The commission disagrees that current rules are sufficiently respectful of the dignity of the unborn; which is why it has proposed these amended rules. The commission also disagrees that the rules interfere with the doctor-patient relationship. The proposed rules apply to health care-related facilities, not to individual patients.

Comments by Individuals.

Numerous comments were also received from interested individuals. The department received comments on topics concerning the substance of the rules, other comments relating to legal issues and issues concerning the preamble to the proposed rules. The responses to the comments appear by topic below.

Some comments received included matters that were outside the scope of the proposed rules. The department offers responses to clarify some of the most common misconceptions about the amended rules and their application, but otherwise offers no response regarding comments that are irrelevant to the rule amendments or outside of the scope of the proposed rules. For example, the department does clarify that the rule changes do not affect the use of tissue donated for medical research as this use is exempt from the application of the rules pursuant to §1.133(a)(2)(B) and that the rules do not create a requirement for ceremonial funeral services, but does not respond to comments relating to the patient booklet or laws relating to Woman's Right to Know, as the rules do not relate to these laws or booklet.

Other comments included vituperative language and political statements; for those comments the department offers no response.

The comments related to 24 general topics contained in the following categories: (1) Dignity in the treatment of the remains of the unborn; (2) Impact on miscarriages and other procedures, other tissue and body parts; (3) Concerns about criminal prosecution; (4) Woman's constitutional right to terminate a pregnancy; constitutionality of rules after the Supreme Court's ruling in *Whole Woman's Health*; potential lawsuits; (5) Access to abortion services; (6) Donation, research and testing; (7) Death certificates; (8) Funerals; (9) Burial sites at risk; (10) Religious considerations; separation of church and state; (11) Privacy concerns; (12) Removal of grinding and disposition in sewer system and landfill; (13) Water and air quality; (14) Costs; (15) Impact on low-income women and women who live in rural areas; (16) Rulemaking procedure; (17) Health and safety and public health impact; (18) Other legislation that impacts rules; (19) Existing laws sufficient for disposal of tissue; (20) Use of public funds; (21) Other states' laws; (22) Authority to adopt rules; (23) Expansion of government; (24) Enforcement of rules.

1. Dignity in the Treatment of the Remains of the Unborn.

Commenters generally approved of the new disposition requirements. They stated that fetuses are human beings and their remains should be treated with the same dignity as all other human remains. One commenter noted that even terrorists receive

a proper burial. Others noted that the proposed rules may help women who have questions or regrets after an abortion or help them process grief.

Response: The commission appreciates the comments. The department has approached these rules such that its exercise of authority to protect public health be done in conformity with the view expressed in state law that similar dignity should be afforded unborn children. The adopted rules are the means by which the department is able to meet that objective, while balancing the need to address considerations regarding public health, public benefit and costs, through amendments to the rules, and inclusion of new provisions in the rules that afford the protection and dignity to unborn children consistent with the Legislature's expression of its intent.

2. Impact on Miscarriages and Other Procedures, Other Tissue and Body Parts.

Commenters generally did not want the rules to apply to miscarriages, especially those occurring outside a health care-related facility. Some stated the proposed rules infringe on patient autonomy or will have a chilling effect that might keep a woman who miscarried from attempting another pregnancy. Others noted that in an early-pregnancy miscarriage, fetal tissue may not be easily identifiable. Other commenters questioned the effect of the proposed rules on in vitro fertilization.

Response: The commission appreciates the comments. In response to these concerns, the department added subsection (a)(2)(G) to §1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services, which states that the rules do not apply to "human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a health care-related facility{.}" A miscarriage that occurs outside of a health care-related facility is not subject to these rules and thus is not subject to the disposition requirements in the rules. Miscarriages, referenced as "spontaneous abortions" are included in the rules as these procedures result in fetal tissue. The inclusion of the procedure and methods do not adversely impact the balance of considerations the department was trying to achieve in the rules relating to the dignity of the unborn with the public health protections and cost. The department believes the methods allowed by the rules will protect the public by preventing the spread of disease while preserving the dignity of the unborn in a manner consistent with Texas laws.

The amendments to the rules do not change the impact of the rules for in vitro fertilization. Pursuant to §1.132(28), the term "Fetal Tissue" is defined as "a fetus, body parts, organs or other tissue from a pregnancy" and does not include "the umbilical cord, placenta, gestational sac, blood or body fluids." This term was added in the proposed rules and has not been amended at adoption. The rule amendments relating to fetal tissue do not apply prior to pregnancy. Once a pregnancy occurs, the rules application is the same to both the in vitro fertilized pregnancy and an unassisted natural pregnancy, if there is an induced or spontaneous abortion of the pregnancy.

3. Concerns About Criminal Prosecution.

Commenters were concerned about women being prosecuted for inappropriately dealing with a miscarriage at home, and questioned why requirements for disposition of fetal tissue differ from requirements for disposition of other pathological waste.

Response: The commission respectfully disagrees with the comments and responds to the question posed as follows. The proposed rules are not criminal in nature but instead are administrative rules for the regulation of the treatment and disposition of material from certain health care-related facilities that may only be enforced by appropriate health care-related facility regulatory programs. The rules do not apply to individual patients and do not apply to miscarriages that occur outside of a healthcare facility, as stated in §1.133(a)(2)(G). The proposed rules are intended to ensure that fetal tissue that is the product of spontaneous or induced human abortion, and is subject to the rule, is disposed of in a proper manner by the facility. The disposition methods for fetal tissue differ from other pathological waste to ensure the dignified treatment of fetuses consistent with other laws in Texas. The department's intent is to balance considerations of cost, public health and providing dignity to the unborn.

4. Woman's Constitutional Right to Terminate a Pregnancy; Constitutionality of Rules After the Supreme Court's Ruling in Whole Woman's Health; Potential Lawsuits.

Commenters felt that the proposed rules would violate a woman's constitutional right or would be an infringement upon that right, or would place an undue burden on an individual seeking an abortion. Commenters also stated that the proposed rules were in conflict with the court's decision or that the "state hadn't learned its lesson" and was promulgating more unnecessary regulations after losing at the Supreme Court. Commenters also voiced concerns that the rules would result in additional lawsuits as either being contrary to the ruling in *Whole Woman's Health* or as serving no public health purpose. Rather than unnecessarily plunge the department into yet another legal challenge, the department should immediately withdraw consideration of the new rules.

Response: The commission respectfully disagrees. The proposed rule amendments pertain to the disposition of fetal tissue from health care-related facilities and are intended to ensure fetal tissue is disposed of in a proper manner, without presenting a substantial obstacle to women seeking abortions. The rules do not apply to individuals, but only to health care-related facilities, which are already subject to specified methods of disinfection and disposition of fetal tissue. The department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Services Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of the current method of disposition. The department believes this cost to be minimal and absorbable by each health-care facility.

Because the department has determined that any additional costs associated with complying with these rules can be absorbed by the health care-related facility, there should be no undue burden placed on women in terms of increased costs of abortion or lack of access to a facility. Absent an undue burden on the ability to obtain an abortion, the State may act to provide dignity to the unborn. The Supreme Court ruling in *Whole Woman's Health* is unrelated to whether the department has statutory authority to issue rules for the treatment and disposition of fetal tissue from health care-related facilities. Texas Health and Safety Code, §12.001 gives the Executive Commissioner of the commission, which oversees the department, general supervision and control over all matters relating

to the health of the citizens of this state, including enforcement authority over health care-related facilities.

5. Access to Abortion Services.

Commenters expressed concern that these rules were politically motivated and proposed for no other reason than to limit, and eventually eliminate, access to abortion in Texas. Commenters also stated the proposed rules would impact the poor, minors, the disabled, and "genderqueer with uteruses." Other commenters remarked that the rules will increase emotional trauma and are intended to shame or punish women seeking abortions. A commenter noted restrictions under HB 2 already mean that women must travel out of state for abortions and have longer wait times, and that there has been an increase in second trimester abortions. Another commenter noted the proposed rules bear a noticeable similarity to model legislation being pushed by Americans United for Life, a group which describes itself as the "legal architect of the pro-life movement."

Response: The commission respectfully disagrees that the rules are intended to shame or punish women or limit access to abortion. The proposed rules address the treatment and disposition of fetal tissue from health care-related facilities, which are already subject to rules regarding the disposition of fetal tissue. These rules eliminate methods not currently in use and retain some of the existing methods. Final disposition no longer includes depositing disinfected fetal tissue in landfills, but rather allows other methods. The department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Services Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of the current method of disposition. The department believes this cost to be minimal and absorbable by each health care-related facility. Because the department has determined that health care-related facilities can absorb any additional costs associated with these rules, it anticipates no change in access to abortion services.

6. Donation, Research and Testing.

Commenters were split between allowing donation for medical and scientific research as one positive outcome of a difficult choice, and others who felt that no human remains should be treated in any way other than funeral/burial. Other commenters were concerned about how the proposed rules would affect pathological or genetic testing of fetal tissue from miscarriages.

Response: The commission appreciates the comments. Neither the current nor the proposed rules prohibit donation for research. Human tissue, including fetal tissue, that is donated for research or teaching purposes is exempt from the treatment and disposition requirements under both the current and proposed versions of §1.133. There is no requirement, nor prohibition, in the rules for a funeral service. The proposed rules are not intended to prevent or otherwise have an adverse impact genetic or pathological testing. The previous rules have not adversely affected testing in the past, and no language was added in the proposed or adopted amendments that would change that impact or effect.

7. Death Certificates.

Commenters questioned whether a cremation or burial facility would accept fetal tissue without a death certificate and whether this requirement would require a coroner on duty to issue a death

certificate. Commenters also expressed concern that this would increase expense to the woman or that the funeral services industry would need to alter their processes. One commenter noted the open nature of death records would make public a woman's failure to carry a pregnancy to term. Another commenter stated that the collection of data from fetal death certificates issued for purposes of the rules would render the data useless, creating a barrier to the advancement of medical and scientific progress, and may very well impede our understanding of the state's recent uptick in the rate of maternal mortality and morbidity and obstruct the ability to correct it.

Response: The commission appreciates the comments. Chapter 651 of the Texas Occupations Code applies to disposition of a human body for which a birth and death certificate is required. A certificate of fetal death (fetal death certificate) is only required for a fetus weighing 350 grams or more, or if the weight is unknown, a fetus aged 20 weeks or more as calculated from the start date of the last normal menstrual period. See 25 TAC §181.7(a). Based on an exemption that was contained in the previous rules, fetal deaths subject to the fetal death certificate requirement are exempt from the adopted rules pursuant to §1.133(a)(2)(F). Also in response to public comments, to make the applicability of the exemption more evident to the reader, the department has added a cross reference to the exemption in three places in the rules: (1) §1.132(42)(B) regarding the definition of "pathological waste;" (2) §1.136(a)(4)(A)(v) regarding "fetal tissue, regardless of the period of gestation;" and (3) §1.136(a)(4)(B)(i) regarding "fetal tissue, regardless of the period of gestation." The department retained that exemption in these rules, and has not modified it in the proposed or adopted rules. As a result, vital statistics data collection and reporting results will not be affected nor does it impact maternal mortality and morbidity data. Furthermore, the adopted rules do not require or authorize a patient's private information to become part of the state's public record. This rule does not create a new requirement for a birth or death certificate, and thus there is no additional privacy concerns created by the rule nor is there a requirement for a ceremonial burial or application of the cremation requirements in Texas Occupations Code, Chapter 651 or rules that implement that chapter. A crematory requires a death certificate or other death record under 22 TAC, §205.11 in order to perform a cremation of "deceased human remains." The rule retains many options currently used for disposition of fetal tissue. To help clarify these issues, the department has added language to §1.134 of the rules, which states: "(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health-care related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue."

8. Funerals.

Some commenters stated that the proposed rule amendments would require funerals for the disposition of fetal tissue.

Response: The commission respectfully disagrees. Funeral services are not required under these rules or other laws in Texas, nor are they prohibited under these rules. None of the amendments adopted in the rules are intended to invoke a requirement

for funeral services to be performed by health care-related facilities to be able to properly dispose of fetal tissue in compliance with the rules.

9. Burial Sites at Risk.

Commenters are worried that the proposed rules will create new physical sites of social unrest as the burial places for these fetuses become grounds for protests and counter-protests. Others are worried that health care-related facilities would be unable to locate a crematory or cemetery willing to accept fetal tissue.

Response: The commission appreciates the comments. The rules do not designate any particular type or location for interment of fetal tissue or other applicable material.

10. Religious Considerations; Separation of Church and State.

Commenters stated that forcing women to take part in a religious ritual in the form of a funeral is a violation of their rights. Commenters voiced concerns at the attempt to legislate values and rituals regarding loss, in that there is a need for separation of church and state. Still others were in support of the proposed rules as consistent with their Christian beliefs in the dignity of life.

Response: The commission respectfully disagrees. The department notes that the proposed rules do not require regulated facilities or individuals to take part in a funeral or any other religious ritual for the health care-related facility to be able to properly dispose of fetal tissue in compliance with the rules. Additionally, the rules have not included previously, and do not now impose a requirement that a patient be informed of the method of disposition or choose that method of disposition. The health care-related facility that is subject to the rules must determine where and how it will arrange for disposition of the fetal tissue, including choosing an authorized method of interment. Facilities may already use a disposition method involving burial with a religious organization, but that is not now, nor will it be under the rules, either required or proscribed by the regulations. Nothing in the adopted rules dictate the nature or form of disposition that must be chosen (secular or non-secular) in relation to interment, including burial or cremation, in conjunction with a disposition method authorized by the rules.

11. Privacy Concerns.

Commenters were concerned that if women had to commission funeral services or obtain death certificates, their information would be required and therefore, their privacy would be compromised and that the rules are "a violation of HIPAA."

Response: The commission respectfully disagrees. The rules do not require individuals to commission funeral services. Nothing in the rules requires the release of patient identifying information or other personally sensitive information. The current rules do not require the issuance of a death certificate for the disposition of medical waste. The adopted amendments did not add any language that was intended to invoke any requirement that would result in the need for a death certificate. To help clarify these issues, the department has added language to §1.134 of the rules, which states: "This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety

Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue."

12. Removal of Grinding and Disposition in Sewer System and Landfill.

Some commenters approved of the removal of grinding as a disposition option. Commenters were split on the issue of landfill disposition. Many felt that it reduced the dignity of a human life as trash, others noted that this is the method commonly used for all other types of medical waste and this was no different. One commenter noted that rather than eliminating the use of the grinding process entirely, the proposed rules subjectively delete it for one type of tissue while continuing to codify its use for other tissues.

Response: The commission appreciates the comments. The rule removes outdated methods, methods rarely used such as "grinding" and "chlorine disinfection/maceration" and ensures the proper and dignified treatment and disposition of fetal tissue, including prohibiting the disposal of fetal tissue in a landfill, which affords the protection and dignity to unborn children consistent with many state laws and the Legislature's expression of its intent to respect life and protect the dignity of the unborn. The adopted rules are the means by which the department is able to conform its rules to that expression of intent, while accommodating the need to address considerations regarding public health, public benefit and costs.

13. Water and Air Quality.

Commenters were concerned about disposition via the sewer system and that it would negatively impact water quality and would possibly expose the public to HIV/AIDS and other infectious disease.

Response: The commission respectfully disagrees. The disposition of certain special waste into the sanitary sewer system has been in rule for decades. It is not possible to transmit HIV/AIDS through these means. These rules eliminate the option of disposition of fetal tissue via the sanitary sewer system.

14. Costs.

Commenters expressed concern that these rules would increase the cost of an abortion for women and/or that these rules would result in more litigation which would cost taxpayers money to defend. Another commenter stated that the small and micro-business impact analysis and economic costs to persons statement is wholly insufficient. Other commenters stated that abortion providers should absorb the costs and noted that low-cost burials and group burials are available and that home burial or burial through counties' indigent burial programs are other available alternatives.

Response: The commission respectfully disagrees with the first set of comments and supports the assertions of the second set of comments. The department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Service Commission, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. The department believes there are a number of regulated facilities that are already in compliance with these rules. For those health care-related facilities not already disposing of fetal tissue through cremation and burial, the cost of any of the new available methods would be offset by the elimination of the cost of landfill dis-

position. The department believes this cost to be minimal and absorbable by each health care-related facility.

15. Impact on Low-Income Women and Women Who Live in Rural Areas.

Commenters argued that the increased cost would disproportionately affect low-income women and women who lived in rural areas.

Response: The commission respectfully disagrees. The department's cost estimate indicates that the annual increased cost to health care-related facilities will be minimal and absorbable, thereby eliminating the need to pass on any additional cost to patients. The department received cost data from waste disposal companies, private and public landfills, FCAT, the Funeral Service Commission, TCEQ, and University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. For those health care-related facilities not already disposing of fetal tissue through cremation and burial, the cost of any of the new available methods would be off-set by the elimination of the cost of landfill disposition. The department believes this cost to be minimal and absorbable by each health care-related facility, whether in an urban or rural area.

16. Rulemaking Procedure.

Commenters stated that the department circumvented the standard rule-making process and tried to sneak this rule set by the public or ask if the rules are being shepherded through using an emergency or expedited process and felt that some remarks from the initial comment period were taken into account, while others were not. Other commenters questioned whether the department would take into account all comments received. At least one commenter stated that they submitted comments in response to the first proposed set of rules but the comments were disregarded, seemingly without consideration, along with a reported 12,000 other comments submitted.

Response: The commission respectfully disagrees. The department complied with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code. The department gave at least 30 days' notice of its intent to adopt the proposed rules: It twice filed notice of the proposed rules with the secretary of state for publication in the *Texas Register* as required by Chapter 2001, giving the public two 30-day periods for comment. The first set of proposed rules was filed on June 20, 2016 and the second on September 19, 2016. The same rules were proposed each time. Both notices for the proposed rules included the information required by Texas Government Code, §2001.024, and the department gave all interested persons an opportunity to submit oral and written comments as required by Texas Government Code, §2001.029. Two public hearings were held on August 4, 2016, and November 9, 2016, in compliance with Texas Government Code, §2001.029 in which the department received oral and written public comments. The department received more than 35,000 comments on the proposed rules. Therefore, the department, on behalf of the commission, voluntarily considered and is responding in this adoption preamble to 20,000 comments from the first publication, public comment period and public hearing regarding the proposed rules. There is no legal requirement to consider and respond to the first set of comments, but the department felt it important to include the initial comments. The department has fully considered

both the first and second set of public comments and includes its responses, and additional required elements set forth in Texas Government Code, §2001.033, in its adoption of the rules.

17. Health and Safety and Public Health Impact.

Commenters were split. Some felt that the rules were necessary to protect the health and safety of women. Others commented that the rules were an ill-advised crusade that did nothing to improve public health outcomes and actively worked against the public interest, served no public health purpose or had no medical benefit, or there is no indication that public health has been jeopardized by the rules as they exist today.

Response: The commission appreciates the comments. The proposed rules protect the health and safety of the public and serve a public health purpose by ensuring the proper treatment and disposition of fetal tissue from health care-related facilities. The rules carry out the department's duty to protect public health in a manner that is consonant with the state's respect for life and the dignity of the unborn. The adopted rules are the means by which the department is able to meet that objective, while balancing the need to address considerations regarding public health, public benefit, and costs through amendments to the rules and inclusion of new provisions in the rules that afford the protection and dignity to unborn children consistent with the Legislature's expression of its intent.

18. Other Legislation that Impacts Rules.

Commenters stated that the rules would impact other rules that touch on the issue including the placenta legislation from last session and that the quandary is made more apparent when recognizing the Legislature's recent passage of HB 635.

Response: The commission appreciates the comments. House Bill 1670 (Acts 2015, 84th Legislature, Regular Session, Chapter 740) added Chapter 172 to the Texas Health and Safety Code. This legislation requires a hospital or birthing center to allow a woman who gave birth in the facility to take the placenta from the facility in certain circumstances. Language was added under §1.133(a)(2)(l) at adoption which creates an exemption from the rules applicability when a placenta is removed from a hospital or birthing center pursuant to Texas Health and Safety Code, Chapter 172. Also in response to comments, the department has added a cross-reference to the exemption in §1.133(a)(2)(l) to §1.136(a)(4)(A)(v) and (B)(i) regarding "fetal tissue, regardless of the period of gestation."

House Bill 635 (Acts 2015, 84th Legislature, Regular Session, Chapter 342) added §241.010 to the Texas Health and Safety Code. This statute requires a hospital to release the remains of an unintended, intrauterine fetal death, including remains that weigh less than 350 grams, on the request of a parent, in a manner appropriate under law and the hospital's policy. In response to public comments and to conform with the impact of HB 635, the department has added subsection (a)(2)(H) to §1.133, which states that the rules do not apply to "fetal remains required to be released to the parent of an unborn child pursuant to Texas Health and Safety Code, §241.010{.}" Also in response to comments, the department has added a cross-reference to the exemption in §1.133 to §1.136(a)(4)(A)(v) and (B)(i) regarding "fetal tissue, regardless of the period of gestation."

19. Existing Laws Sufficient for Disposal of Tissue.

Commenters were against the proposed rules stating that current law is sufficient that there is no valid reason to amend the rules, that a patient already has the right to control the disposi-

tion of fetal tissue, or that facilities are already following sanitary methods of waste disposal. Some commenters stated that it is hypocritical to have a separate set of rules just for the disposition of fetal tissue.

Response: The commission respectfully disagrees. Under Texas Government Code, §2001.039, each state agency must review and consider for readoption each of its rules. The department has done so in this case in accordance with Texas Government Code, §2001.039 and determined that amendment to the rules is necessary to remove outdated methods, methods rarely used such as "grinding" and "chlorine disinfection/maceration" and ensure the proper and dignified treatment and disposition of fetal tissue, including prohibiting the disposal of fetal remains in a landfill, which affords the protection and dignity to unborn children consistent with the Legislature's expression of its intent. The adopted rules are the means by which the department is able to conform its rules to that expression of intent, while accommodating the need to address considerations regarding public health, public benefit and costs. The proposed rules are intended to ensure that fetal tissue that is the product of spontaneous or induced human abortion, and is subject to the rule, is disposed of in a proper manner. The disposition methods for fetal tissue differ from other pathological waste to ensure the dignified treatment of fetuses consistent with other laws in Texas. The department's intent is to balance considerations of cost, public health and providing dignity to the unborn. The rules do not now, nor have they ever, imposed a requirement that a patient be informed of the method of disposition.

20. Use of Public Funds.

Commenters wanted the funds being expended to change the rules, enforce the new rules, and/or on anticipated litigation resulting from the new rules to be redirected to more direct public health impacts such as Zika prevention, education, caring for special needs children, protecting abused children, treating the uninsured, and public health and sanitation. Commenters stated that funds would be better utilized for birth control and sex education. At least one commenter complained of a waste of staff time regarding the new rules.

Response: The commission respectfully disagrees. The department has made fighting the spread of the Zika virus a priority. The department's actions in relation to this rule set will not impact its focus or budgeting related to Zika control and elimination efforts or other public health, or women's health services. These rules also have no relation to or impact on the state's focus on children's protective services. Any funding or resources needed for the enforcement or defense of these rules, if parties choose to challenge these rules, does not adversely impact the availability of funding for other public health and sanitation programs that the department oversees. Other areas, such as education, special needs services, care for the uninsured, and protection of abused children, fall outside of the department's authority. The rules address the treatment and disposition of fetal tissue from health care-related facilities, which are already subject to rules regarding the disposition of fetal tissue. These rules eliminate methods not currently in use and retain some of the existing methods. Final disposition no longer includes depositing disinfected fetal tissue in landfills, but rather requires it to be interred. The department received cost data from waste disposal companies, private and public landfills, the Funeral Consumers Alliance, FCAT, TCEQ, the University of Texas System, and others to determine the minimum cost in complying with the rules. Based upon the lowest stated costs of each entity able

to provide cost estimates, the department has determined that the annual cost per facility would be approximately \$450. This cost would be offset by the elimination of the current method of disposition. The department believes this cost to be minimal and absorbable by each health-care facility. Because the department has determined that health care-related facilities can absorb any additional costs associated with these rules, there should be no change in access to abortion services.

21. Other States' Laws.

Commenters cited other states' laws similar to the proposed rules and how they have been struck down or enjoined, and asked why the decision was made to move ahead with these rules now, rather than waiting to see the outcome of the federal court case against an Indiana law with similar subject matter.

Response: The commission appreciates the comments. The department notes that measures in other states are distinguishable from the proposed rules.

The State of Indiana passed House Enrolled Act 1337, which would require that a miscarried or aborted fetus be interred or cremated by a facility having possession of the remains and would exclude the final disposition of a miscarried or aborted fetus from the law governing the treatment of infectious or pathological waste. Although the Indiana law has been preliminarily enjoined by a federal court from taking effect, it is different from the department's adopted rules, which explicitly encompass treatment and disposition of special waste, including pathological waste. The federal court also determined that Indiana had no interest in treating the unborn with dignity. Here, however, the Texas Legislature has enacted numerous statutes demonstrating its interest in the dignity of the unborn. The rule provides many options for disposition, many of which are already in use, that do not increase the cost of disposition of fetal remains, but still protect the dignity of the unborn.

The State of Louisiana passed HB 815, which would require burial or cremation of remains resulting from abortion. This provision is being challenged in federal court, where a request for preliminary injunction alleged that its requirements would constitute an effective ban on first trimester medication abortion. However, unlike the Louisiana statute, the department's rules do not apply to individuals; they apply only to health care-related facilities and are therefore the rules do not affect access, and there is no undue burden.

The State of Michigan enacted Public Health Code, §333.2836, which requires fetal remains from abortions to be disposed of by interment or cremation or by incineration by a person other than a cemetery. This provision has not been challenged in court. The department's rules are less restrictive than the Michigan law and as the rules allow for disposition by interment, incineration followed by interment, or steam disinfection followed by interment.

22. Authority to Adopt Rules.

Commenters questioned the department's authority to adopt rules beyond those necessary for public health and infectious disease control. Others noted that they are asking legislators to codify the proposed rules in statute. One commenter observed that the proposal takes a new policy direction, but does not result from a directive of the Texas Legislature as a whole.

Response: The commission appreciates the comments. The department has regulated special waste generated by health care-related facilities since 1989. These rules are necessary to ensure protection of the health and safety of the public by ensur-

ing that the disposition methods specified in the rules continue to be limited to methods that prevent the spread of disease. The commission disagrees that the proposed rules do not result from a directive of the entire Legislature. Through these amendments to the rule, as set out in the reasoned justification and statutory authority sections, the department is exercising its policy discretion in a manner that more closely conforms to the many state laws that already protect the dignity of the unborn. The department has the statutory authority to promulgate rules to protect the public from the spread of communicable disease pursuant to Texas Health and Safety Code, Chapters 12 and 81. In doing so, the department undertook the review of outdated rules in conjunction with this authority while trying to balance cost considerations, public benefit and legislative intent and history of the protection of the unborn. These considerations resulted in the amended rules.

23. Expansion of Government.

Commenters were concerned about government expansion into areas they shouldn't be and stated that the government should leave women alone. Other commenters said the proposed rules would interfere with the doctor-patient relationship.

Response: The commission respectfully disagrees. The department notes that these rules apply to health care-related facilities already subject to these rules. The department is not expanding its authority to include any new topic or regulated entity or person. The proposed rules do not interfere with the doctor-patient relationship, because they do not apply to individual patients and the disposition of fetal tissue remains the responsibility of the health-care-related facility. Additionally, the rules have not included previously, and do not now impose a requirement that a patient be informed of the method of disposition or choose that method of disposition. Instead, the proposed rules regulate the treatment and disposition of special waste, including fetal tissue, generated by health care-related facilities. The proposed rules are not intended to restrict access to abortion, but to protect the public health while affording dignity to the unborn. While the rules eliminate certain outdated methods or methods of disposition that are clearly incompatible with demonstrating dignity for the unborn, the rules do not create a new type of regulation or regulate additional entities. Many health care-related facilities will be unaffected by these rules because those facilities' current disposition practices are already in compliance with the rules. These rules are necessary to ensure protection of the health and safety of the public by ensuring that the disposition methods specified in the rules continue to be limited to methods that prevent the spread of disease while providing dignity to the unborn. The department has the statutory authority to promulgate rules to protect the public from the spread of communicable disease pursuant to Texas Health and Safety Code, Chapters 12 and 81. In doing so, the department undertook the review of outdated rules in conjunction with this authority while trying to balance cost considerations, public benefit and legislative intent and history of the protection of the unborn. These considerations resulted in the amended rules.

24. Enforcement of Rules.

Comment: Some commenters asked how the department will enforce the new rules and asked whether there will be penalties for noncompliance.

Response: The department currently inspects health care-related facilities subject to the rules, which are within its jurisdiction, for compliance by reviewing documentation, practices, and pro-

cedures used by the facility for the disposition of medical waste. This may include the review of contracts with third-party waste companies to determine what methods of disposition are being utilized. The rules do not adopt additional enforcement actions, and the department intends to continue its current practice for the purposes of enforcing these rules. Any issues of noncompliance identified as part of this continuing practice of enforcement, and any proposed penalties or sanctions resulting from noncompliance, will be handled the same as any previous issues of noncompliance with these rules, or other applicable rules or statutes, including affording facilities due process in the assessment of penalties or other non-monetary sanctions.

PUBLIC BENEFIT

Ms. Sims has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adopting and enforcing these rules will be the continued protection of the health and safety of the public by ensuring that the disposition methods specified in the rules continue to be limited to methods that prevent the spread of disease. Additional public benefit will be realized in bringing up-to-date the department's rules to reflect the Legislature's articulated policy objectives of respect for life and protecting the dignity of the unborn. This will be accomplished by enforcing these rules in health care-related settings subject to the rules that handle special waste to ensure the rules are applied and followed consistently, which protects patients and staff of the facility, as well as the public.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The rule review and amendments are authorized by Texas Government Code, §2001.039, requiring that each agency periodically review its rules to determine that the reason for the rules continue to exist; Texas Health and Safety Code, §12.001; Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001. The rule review and amendments are also authorized by Texas Health and Safety Code, §81.004, which authorizes the Executive Commissioner to adopt rules necessary for the effective administration of Texas Health and Safety Code, Chapter 81, concerning the control of communicable disease to ensure the health and safety of the public through, among many things, the proper disposition of tissue from health care-related facilities. The regulation of these health care-related facilities subject to the rules is governed by Texas Health and Safety Code, Chapter 241, concerning the licensing of hospitals; by Chapter 243, concerning the licensing of ambulatory surgical centers; by Chapter 244, concerning the licensing of birthing centers; by Chapter 245, concerning the licensing of abortion facilities; by Chapter 251, concerning the licensing of end stage renal disease facilities; by Chapter 254, concerning the licensing of freestanding emergency medical care facilities; and by Chapter 773, concerning the licensing of emergency medical services.

The rule review and amendments implement Texas Government Code, Chapter 531 and §2001.039; and Texas Health and Safety Code, Chapters 12, 81, 241, 243, 244, 245, 251, 254 and 773.

In conjunction with its review, the department also considered and gave great weight to the Legislature's policy objective of ensuring dignity for the unborn, which is articulated in a number of Texas laws. In undertaking this review, the department took into consideration a variety of statutes that express the Legislature's will to afford the level of protection and dignity to unborn children as state law affords to adults and children. Additional provisions considered in ensuring the department's exercise of its authority was consistent with other state laws, include: Texas Penal Code, §1.07(26) relating to criminal penalties for harm to unborn persons; Texas Civil Practice and Remedies Code, §71.001(4) relating to civil liability for killing unborn persons; Texas Estates Code, §1054.007 relating to guardianship representation for unborn persons in a guardianship proceeding; Texas Estates Code, §1002.002 regarding the definition of "attorney ad litem" which includes representation of an "unborn person;" Texas Property Code, §115.014 relating to authority of a court to appoint a guardian ad litem to represent the interest of an unborn person; Texas Health and Safety Code §241.010 relating to requirement that hospitals release to a parent remains of an unborn child who dies as a result of an unintended, intrauterine death; Preamble of HB 2, 83rd Legislature, Second Called Session, 2013, effective October 29, 2013, relating to the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; Texas Health and Safety Code, §170.002 relating to the prohibition against a person intentionally or knowingly performing an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy; and Texas Health and Safety Code, §171.012 relating to requirement for sonograms of pre-viable unborn children before abortion.

§1.132. Definitions.

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

- (1) Anatomical remains--The remains of a human body donated for the purposes of teaching or research to a medical school, a teaching hospital, or a medical research facility, after the completion of the activities for which the body was donated.
- (2) Animal waste--Animal waste includes:
 - (A) carcasses of animals intentionally exposed to pathogens;
 - (B) body parts of animals intentionally exposed to pathogens;
 - (C) whole bulk blood and blood products, serum, plasma, and other blood components from animals intentionally exposed to pathogens; and
 - (D) bedding of animals intentionally exposed to pathogens.
- (3) Approved alternate treatment process--A process for waste treatment which has been approved by the department in accordance with §1.135 of this title (relating to Performance Standards

for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(4) Biological indicators--Commercially-available microorganisms (e.g., United States Food and Drug Administration-approved strips or vials of *Bacillus* species endospores) which can be used to verify the performance of waste treatment equipment and/or processes.

(5) Blood and blood products--All waste bulk human blood, serum, plasma, and other blood components.

(6) Body fluids--Those free-flowing body substances other than blood, plasma, or serum identified under universal precautions as recommended by the United States Centers for Disease Control and Prevention, and includes, but are not limited to:

- (A) semen;
- (B) vaginal secretions;
- (C) any body fluid containing visible blood;
- (D) saliva in dental settings;
- (E) amniotic fluid;
- (F) cerebrospinal fluid;
- (G) peritoneal fluid;
- (H) pleural fluid;
- (I) pericardial fluid; and
- (J) synovial fluid.

(7) Bulk--A containerized, aggregate volume of 100 milliliters (mL) or more.

(8) Bulk human blood, bulk human blood products, and bulk human body fluids--All free-flowing waste: human blood; serum; plasma; other blood components; and body fluids; including disposable items saturated with blood or body fluids.

(9) Burial--The act of depositing a pathological waste in a grave, a crypt, vault, or tomb, or at sea.

(10) Burial park--A tract of land that is used or intended to be used for the interment of pathological waste in graves.

(11) Cemetery--A tract of land that is used or intended to be used for the permanent interment of pathological waste, and includes:

- (A) a burial park for earth interments;
- (B) a mausoleum for crypt or vault interments;
- (C) a columbarium for cinerary interments; or
- (D) a combination of one or more thereof.

(12) Challenge waste load--A surrogate waste load assembled for use during waste treatment protocols to evaluate the efficacy of microbial inactivation processes. The composition of the challenge waste load will vary depending on the technology being evaluated.

(13) Chemical disinfection--The use of a chemical agent to reduce significantly the numbers of active microorganisms, but not necessarily their endospores, from the surfaces of inanimate objects.

(14) Chlorine disinfection/maceration--The process of shredding waste in the presence of a chlorine solution under negative pressure.

(15) Columbarium--A structure or room or other space in a building or structure of most durable and lasting fireproof construction;

or a plot of earth, containing niches, used, or intended to be used, to contain cremated pathological waste.

(16) Contagious--Capable of transmission from human or animal to human.

(17) Contaminated--The presence or the reasonably anticipated presence of blood or those body fluids as defined elsewhere in this section.

(18) Cremation--The irreversible process of reducing tissue or remains to ashes or bone fragments through extreme heat and evaporation. Under this subchapter, this term includes the process of incineration.

(19) Crematory--A building or structure containing one or more furnaces used, or intended to be used, for the reduction (by burning) of pathological waste to cremated remains.

(20) Crypt or vault--The chamber in a mausoleum of sufficient size to inter the uncremated pathological waste.

(21) Department--The Texas Department of State Health Services.

(22) Deposition in a sanitary landfill--Deposition in a sanitary landfill in accordance with 30 TAC Chapter 330.

(23) Discharge to sanitary sewer system--A discharge or flushing of waste into a sanitary sewer system which is done in accordance with provisions of local sewage discharge ordinances.

(24) Disinfection--A somewhat less lethal process compared to sterilization which destroys or inactivates viruses, fungi, and bacteria (but not necessarily their endospores) on inanimate surfaces.

(25) Encapsulation--The treatment of waste using materials which, when fully reacted, will encase such waste in a solid protective matrix.

(26) Entombment--The permanent interment of pathological waste in a crypt or vault.

(27) Executive Commissioner--In this title, Executive Commissioner means the Executive Commissioner of the Health and Human Services Commission.

(28) Fetal Tissue--A fetus, body parts, organs or other tissue from a pregnancy. This term does not include the umbilical cord, placenta, gestational sac, blood or body fluids.

(29) Grave--A space of ground in a burial park that is used, or intended to be used for the permanent interment in the ground of pathological waste.

(30) Grinding--That physical process which pulverizes materials, thereby rendering them as unrecognizable, and for sharps, reduces the potential for the material to cause injuries such as puncture wounds.

(31) Immersed--A process in which waste is submerged fully into a liquid chemical agent in a container, or that a sufficient volume of liquid chemical agent is poured over a containerized waste, such that the liquid completely surrounds and covers the waste item(s) in the container.

(32) Incineration--That process of burning SWFHCRF in an incinerator as defined in 30 TAC Chapter 101 under conditions in conformance with standards prescribed in 30 TAC Chapter 111 by the Texas Commission on Environmental Quality.

(33) Interment--The disposition of pathological waste using the process of cremation, entombment, burial, or placement in a

niche or by using the process of cremation followed by placement of the ashes in a niche, grave, or scattering of ashes as authorized by law, unless prohibited by this subchapter.

(34) Log₁₀--Logarithm to the base ten.

(35) Log₁₀ reduction--A mathematically defined unit used in reference to level or degree of microbial inactivation. A 4 log₁₀ reduction represents a 99.99% reduction in the numbers of active microorganisms, while a 6 log₁₀ reduction represents a 99.9999% reduction in the numbers of active microorganisms.

(36) Mausoleum--A structure or building of most durable and lasting fireproof construction used, or intended to be used, for the entombment pathological waste.

(37) Microbial inactivation--Inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 6 log₁₀ reduction or greater; and inactivation of *Bacillus subtilis* endospores or *Bacillus stearothermophilus* endospores at a 4 log₁₀ reduction or greater.

(38) Microbiological waste--Microbiological waste includes:

(A) discarded cultures and stocks of infectious agents and associated biologicals;

(B) discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;

(C) discarded live and attenuated vaccines, but excluding the empty containers thereof;

(D) discarded, used disposable culture dishes; and

(E) discarded, used disposable devices used to transfer, inoculate or mix cultures.

(39) Moist heat disinfection--The subjecting of:

(A) internally shredded waste to moist heat, assisted by microwave radiation under those conditions which effect disinfection; or

(B) unshredded waste in sealed containers to moist heat, assisted by low-frequency radiowaves under those conditions which effect disinfection, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(40) Niche--A recess or space in a columbarium used, or intended to be used, for the permanent interment of the cremated remains of pathological waste.

(41) Parametric controls--Measurable standards of equipment operation appropriate to the treatment equipment including, but not limited to pressure, cycle time, temperature, irradiation dosage, pH, chemical concentrations, or feed rates.

(42) Pathological waste--Pathological waste includes but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, regardless of the period of gestation, except as provided by §1.133 of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services) including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(43) Saturated--Thoroughly wet such that liquid or fluid flows freely from an item or surface without compression.

(44) Sharps--Sharps include, but are not limited to the following materials:

(A) when contaminated:

(i) hypodermic needles;

(ii) hypodermic syringes with attached needles;

(iii) scalpel blades;

(iv) razor blades, disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures;

(v) intravenous stylets and rigid introducers (e.g., J wires);

(vi) glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides;

(vii) broken glass from laboratories; and

(viii) tattoo needles, acupuncture needles, and electrolysis needles;

(B) regardless of contamination:

(i) hypodermic needles; and

(ii) hypodermic syringes with attached needles.

(45) Shredding--That physical process which cuts, slices, or tears materials into small pieces.

(46) Special waste from health care-related facilities--A solid waste which if improperly treated or handled may serve to transmit an infectious disease(s) and which is comprised of the following:

(A) animal waste;

(B) bulk blood, bulk human blood products, and bulk human body fluids;

(C) microbiological waste;

(D) pathological waste; and

(E) sharps.

(47) Steam disinfection--The act of subjecting waste to steam under pressure under those conditions which effect disinfection. This was previously called steam sterilization.

(48) Thermal inactivation--The act of subjecting waste to dry heat under those conditions which effect disinfection.

(49) Unrecognizable--The original appearance of the waste item has been altered such that neither the waste nor its source can be identified.

§1.133. *Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services.*

(a) Exemptions.

(1) Unless an item is specifically exempted, all special waste from health care-related facilities must be treated as provided in these sections.

(2) These sections do not apply to:

(A) teeth;

(B) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affiliated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Code 289;

(C) placentas designated for sale and obtained from a licensed hospital or a licensed birthing center;

(D) in vitro tissue cultures that have not been intentionally exposed to pathogens;

(E) any material included in the definition of special waste from health care-related facilities which has been sold, donated, or in any way transferred from one health care-related facility to a subsequent facility(s) and other entities specified in subparagraph (B) of this paragraph for research or teaching purposes until it is discarded;

(F) disposition of fetal remains of a single pregnancy, body parts, or tissue (including bulk blood), transferred for disposition to a licensed funeral director in accordance with the Health and Safety Code, Chapter 711, and Chapter 181 of this title (relating to Vital Statistics) with the consent of the person or persons authorized to consent to the disposition of the fetal remains, body parts, or tissue (including bulk blood). All subcategories of pathological waste, unless otherwise exempted, must be treated and disposed of in accordance with §1.136 of this title (relating to Approved Methods of Treatment and Disposition);

(G) human tissue, including fetal tissue, that is expelled or removed from the human body once the person is outside of a health-care facility;

(H) fetal remains required to be released to the parent of an unborn child pursuant to Texas Health and Safety Code, §241.010; and

(I) a placenta removed from a hospital or birthing center pursuant to Texas Health and Safety Code, Chapter 172.

(b) Minimum parametric standards for waste treatment technologies previously approved by the department.

(1) Chemical disinfection.

(A) Waste treatment via direct contact with chemical agents only shall utilize a registered chemical agent or an approved unregistered chemical agent as follows.

(i) Registered chemical agents.

(I) The chemical agent used shall be registered with the United States Environmental Protection Agency and the Texas Department of Agriculture.

(II) The chemical agent shall be used according to the manufacturer's instructions.

(ii) Unregistered chemical agents.

(I) Those unregistered chemical agents previously approved are:

(-a-) a freshly prepared solution of household chlorine bleach diluted 1:10 (volume/volume) with water; or

(-b-) a solution of 70% by volume 2-propanol (isopropyl alcohol).

(II) The containerized waste items shall be totally immersed in either solution for a period of time not less than three minutes.

(B) If a chemical agent has been included by a manufacturer of a commercially-available waste treatment technology as the principle step in the treatment process, then:

(i) the chemical agent (or its precursor(s)) or the microbial inactivating process must be registered with the United States Environmental Protection Agency for the purpose of waste treatment; or

(ii) the manufacturer must provide evidence that the technology utilizing said chemical agent (or its precursor(s)) or the microbial inactivating process has been approved for use in another state; or

(iii) the manufacturer must obtain approval for the process in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(C) Waste immersed in a liquid chemical agent must be thoroughly drained before disposal.

(2) Chlorine disinfection/maceration.

(A) The waste must be shredded prior to or during treatment and made unrecognizable as to source.

(B) The chlorine solution must have a free available chlorine concentration of at least 1,100 parts per million (ppm) when applied to the waste.

(C) The chlorine solution must be drained from the waste prior to disposal.

(3) Moist heat disinfection. Moist heat disinfection shall utilize either of the following processes.

(A) When subjecting internally shredded waste to moist heat assisted by microwave radiation, the temperature of the waste must reach at least 95 degrees Celsius under atmospheric pressure for at least 30 minutes.

(B) When subjecting unshredded waste in sealed containers to moist heat assisted by low-frequency radiowaves, the temperature of the waste must reach at least 90 degrees Celsius under atmospheric pressure for at least two hours, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(4) Steam disinfection. Steam disinfection shall meet all of the following requirements.

(A) To allow for sufficient steam access to or penetration of the waste, the waste shall be:

(i) packaged according to the recommendations provided by the manufacturer; and

(ii) loaded into the chamber so as to not exceed the capacity limits as set by the manufacturer.

(B) When subjecting waste to steam under pressure, the temperature in the chamber of the autoclave must reach at least 121 degrees Celsius and there must be at least 15 pounds per square inch gauge pressure for at least 30 minutes.

(C) The autoclave must be operated according to the manufacturer's instructions.

(5) Thermal inactivation. Thermal inactivation shall meet all of the following requirements.

(A) To allow for sufficient dry heat access to or penetration of the waste, the waste shall be:

(i) packaged according to the recommendations provided by the manufacturer; and

(ii) loaded into the chamber so as to not exceed the capacity limits as set by the manufacturer.

(B) Waste shall be subjected to dry heat of at least 160 degrees Celsius under atmospheric pressure for at least two hours.

(C) Waste shall be subjected to dry heat according to the manufacturer's instructions.

§1.134. Application.

(a) This subchapter may not be used to require or authorize disclosure of confidential information, including personally identifiable or personally sensitive information, not permitted to be disclosed by state or federal privacy or confidentiality laws. This subchapter does not require the issuance of a birth or death certificate for the proper disposition of special waste from health care-related facilities. This subchapter does not extend or modify requirements of Texas Health and Safety Code, Chapters 711 and 716 or Texas Occupations Code, Chapter 651 to disposition of fetal tissue.

(b) These sections apply to special waste from health care-related facilities generated by the operation of the following publicly or privately owned or operated health care-related facilities, including but not limited to:

- (1) ambulatory surgical centers;
- (2) abortion clinics;
- (3) birthing centers;
- (4) blood banks and blood drawing centers;
- (5) clinics, including but not limited to medical, dental, veterinary;
- (6) clinical, diagnostic, pathological or biomedical research laboratories;
- (7) educational institution health centers;
- (8) educational institution research laboratories;
- (9) electrolysis facilities;
- (10) emergency medical services;
- (11) end stage renal dialysis facilities;
- (12) freestanding emergency medical care facilities;
- (13) funeral establishments;
- (14) home and community support services agencies;
- (15) hospitals;

(16) long term care facilities;

(17) facilities providing mental health and intellectual disability services, including but not limited to hospitals, schools, and community centers;

(18) minor emergency centers;

(19) occupational health clinics and clinical laboratories;

(20) pharmacies;

(21) pharmaceutical manufacturing plants and research laboratories;

(22) professional offices, including but not limited to the offices of physicians, dentists, and acupuncturists;

(23) special residential care facilities;

(24) tattoo studios; and

(25) veterinary clinical and research laboratories.

§1.136. Approved Methods of Treatment and Disposition.

(a) Introduction. The following treatment and disposition methods for special waste from health care-related facilities are approved by the department for the waste specified. Where a special waste from a health care-related facility is also subject to the sections in Chapter 289 of this title (relating to Radiation Control), the sections in Chapter 289 shall prevail over the sections in this subchapter. Disposal of special waste from health care-related facilities in sanitary landfills or otherwise is under the jurisdiction of the Texas Commission on Environmental Quality and is governed by its rules found in 30 TAC Chapter 326 (relating to Medical Waste Management) and Chapter 330 (relating to Municipal Solid Waste).

(1) Animal waste. Animal waste shall be subjected to one of the following methods of treatment and disposal.

(A) Carcasses of animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) incineration followed by deposition of the residue in a sanitary landfill;

(iii) carcasses of animals intentionally exposed to pathogens which are not contagious may be buried on site under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Texas;

(iv) carcasses of animals intentionally exposed to pathogens which are not contagious may be sent to a rendering plant;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/macération followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(B) Body parts of animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iii) incineration followed by deposition of the residue in a sanitary landfill;

(iv) body parts of animals intentionally exposed to pathogens which are not contagious may be buried on site under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Texas;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(C) Bulk whole blood, serum, plasma, and/or other blood components from animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iii) incineration followed by deposition of the residue in a sanitary landfill;

(iv) thermal inactivation followed by deposition in a sanitary landfill;

(v) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(vi) chemical disinfection followed by deposition in a sanitary landfill;

(vii) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(viii) bulk blood, serum, plasma, and/or other blood components of animals intentionally exposed to pathogens which are not contagious may be buried on site under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Texas;

(ix) moist heat disinfection followed by deposition in a sanitary landfill;

(x) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(xi) an approved alternate treatment process followed by deposition in a sanitary landfill.

(D) Bedding of animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) incineration followed by deposition of the residue in a sanitary landfill;

(iii) bedding of animals intentionally exposed to pathogens which are not contagious may be buried on site under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Texas;

(iv) moist heat disinfection followed by deposition in a sanitary landfill;

(v) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vi) an approved alternate treatment process followed by deposition in a sanitary landfill.

(2) Bulk human blood, bulk human blood products, and bulk human body fluids. Bulk human blood, blood products, and body fluids shall be subjected to one of the following methods of treatment and disposal:

(A) discharging into a sanitary sewer system;

(B) steam disinfection followed by deposition in a sanitary landfill;

(C) incineration followed by deposition of the residue in a sanitary landfill;

(D) chemical disinfection followed by deposition in a sanitary landfill;

(E) chemical disinfection followed by grinding and flushing into a sanitary sewer system;

(F) thermal inactivation, followed by deposition in a sanitary landfill;

(G) thermal inactivation, followed by grinding and discharging into a sanitary sewer system;

(H) moist heat disinfection followed by deposition in a sanitary landfill;

(I) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(J) an approved alternate treatment process followed by deposition in a sanitary landfill.

(3) Microbiological waste. Microbiological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Discarded cultures and stocks of infectious agents and associated biologicals shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) incineration followed by deposition of the residue in a sanitary landfill;

(iii) thermal inactivation followed by deposition in a sanitary landfill;

(iv) chemical disinfection followed by deposition in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(B) Discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, industrial and veterinary laboratories shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) incineration followed by deposition of the residue in a sanitary landfill;

(iii) thermal inactivation followed by deposition in a sanitary landfill;

(iv) chemical disinfection followed by deposition in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(C) Discarded live and attenuated vaccines, but excluding the empty containers thereof, shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) incineration followed by deposition of the residue in a sanitary landfill;

(iii) thermal inactivation followed by deposition in a sanitary landfill;

(iv) chemical disinfection followed by deposition in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(D) Discarded disposable culture dishes shall be subjected to one of the following methods of treatment and disposal.

(i) All discarded, unused disposable culture dishes shall be disposed of in accordance with 30 TAC Chapters 326 and 330.

(ii) Discarded, used disposable culture dishes shall be subjected to the following methods of treatment and disposal:

(I) steam disinfection followed by deposition in a sanitary landfill;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) thermal inactivation followed by deposition in a sanitary landfill;

(IV) chemical disinfection followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process followed by deposition in a sanitary landfill.

(E) Discarded disposable devices used to transfer, inoculate or mix cultures shall be subjected to one of the following methods of treatment and disposal:

(i) steam disinfection followed by deposition in a sanitary landfill;

(ii) incineration followed by deposition of the residue in a sanitary landfill;

(iii) thermal inactivation followed by deposition in a sanitary landfill;

(iv) chemical disinfection followed by deposition in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(4) Pathological waste. Pathological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy shall be subjected to one of the following methods of treatment and disposal:

(i) body parts, other than fetal tissue:

(I) interment;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) moist heat disinfection, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(V) chlorine disinfection/maceration, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill; or

(VI) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) tissues, other than fetal tissue:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) organs, other than fetal tissue:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iv) bulk human blood and bulk human body fluids removed during surgery, labor and delivery, autopsy, embalming, or biopsy:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(v) fetal tissue, regardless of the period of gestation, except as provided by §1.133 of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services):

(I) interment;

(II) incineration followed by interment; or

(III) steam disinfection followed by interment.

(B) The products of spontaneous or induced human abortion shall be subjected to one of the following methods of treatment and disposal:

(i) fetal tissue, regardless of the period of gestation, except as provided by §1.133 of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services):

(I) incineration followed by interment;

(II) steam disinfection followed by interment; or

(III) interment;

(ii) blood and body fluids:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) any other tissues, including placenta, umbilical cord and gestational sac:

(I) grinding and discharging to a sanitary sewer system;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(C) Discarded laboratory specimens of blood and/or tissues shall be subjected to one of the following methods of treatment and disposal:

(i) grinding and discharging into a sanitary sewer system;

(ii) steam disinfection followed by deposition in a sanitary landfill;

(iii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iv) incineration followed by deposition of the residue in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(D) Anatomical remains shall be disposed of in a manner specified by §479.4 of this title (relating to Final Disposition of the Body and Disposition of Remains).

(5) Sharps.

(A) All discarded unused sharps shall be disposed of in accordance with 30 TAC Chapters 326 and 330.

(B) Contaminated sharps shall be subjected to one of the following methods of treatment and disposal.

(i) Hypodermic needles, and hypodermic syringes with attached needles, shall be subjected to one of the following methods of treatment and disposal:

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by deposition in a sanitary landfill;

(III) incineration, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and can no longer cause puncture wounds, followed by deposition in a sanitary landfill.

(ii) Razor blades, disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures; and scalpel blades shall be subjected to one of the following methods of treatment and disposal:

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by deposition in a sanitary landfill;

(III) incineration, and if item can cause puncture wounds, placement in a puncture-resistant container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and can no longer cause puncture wounds, followed by deposition in a sanitary landfill.

(iii) Intravenous stylets and rigid introducers (e.g., J wires) shall be subjected to one of the following methods of treatment and disposal:

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(III) incineration, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds, followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and can no longer cause puncture wounds, followed by deposition in a sanitary landfill.

(iv) Glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides, and broken glass from laboratories shall be subjected to one of the following methods of treatment and disposal:

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by deposition in a sanitary landfill;

(III) incineration, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and can no longer cause puncture wounds, followed by deposition in a sanitary landfill.

(v) Tattoo needles, acupuncture needles, and electrolysis needles shall be subjected to one of the following methods of treatment and disposal:

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(III) incineration, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds, followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and can no longer cause puncture wounds, followed by deposition in a sanitary landfill.

(b) Records. The facility treating the wastes shall maintain records to document the treatment of the special waste from health care-related facilities processed at the facility as to method and conditions of treatment in accordance with 30 TAC Chapter 326.

(c) Facility responsibility. The facility treating the wastes shall be responsible for establishing the conditions necessary for operation of each method used at the facility to insure the reduction of microbial activity of any waste treated according to the manufacturer's specifications and according to any approval granted by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 28, 2016.

TRD-201606073

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: December 18, 2016

Proposal publication date: September 30, 2016

For further information, please call: (512) 776-6933



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 3. SUPPORT SERVICES

34 TAC §1.73

The Comptroller of Public Accounts adopts new §1.73, concerning exemption from vehicle inscription requirement, without changes to the proposed text as published in the October 7, 2016, issue of the *Texas Register* (41 TexReg 8059). The new section will be under Chapter 1, Central Administration, Subchapter A, Practice and Procedures, Division 3, Support Services.

New §1.73 exempts certain motor vehicles that are under the control and custody of the comptroller's office from the inscription requirements of Transportation Code, §721.002. The purpose of this rule is to facilitate secure transportation and civil and criminal investigations or enforcement.

No comments were received regarding adoption of this section.

The new section is adopted under Transportation Code, §721.003, which authorizes the comptroller to adopt a rule to exempt a motor vehicle that is under the comptroller's custody and control.

The new section implements Transportation Code, §721.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 21, 2016

TRD-201606038

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: December 11, 2016

Proposal publication date: October 7, 2016

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 804. JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

The Commission adopts amendments to the following sections of Chapter 804, relating to Jobs and Education for Texans (JET) Grant Program, *without* changes, as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 7006):

Subchapter A. Definitions, §804.1

Subchapter B. Advisory Board Composition, Meeting Guidelines, §§804.11 - 804.13

Subchapter C. Grant Program, §§804.21 - 804.25

Subchapter D. Grants to Educational Institutions for Career and Technical Education Programs, §804.41

The Commission adopts the repeal of the following section of Chapter 804, relating to the Jobs and Education for Texans (JET) Grant Program, *without* changes, as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 7006):

Subchapter B. Advisory Board Composition, Meeting Guidelines, §804.14

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 804 rules is to comply with the requirements of House Bill (HB) 3062, enacted by the 84th Texas Legislature, Regular Session (2015), which transferred the administration of the Jobs and Education for Texans (JET) Grant Program from the Texas Comptroller of Public Accounts (Comptroller) to the Texas Workforce Commission (Agency) effective September 1, 2015. Per §8(a)(2) of HB 3062, the Comptroller's rules were transferred to the Agency and have been placed in 40 Texas Administrative Code, Chapter 804.

HB 3062 changed the makeup of the JET advisory board by removing a member of the public designated by the Comptroller and by designating the Chairman of the Agency's three-member Commission as presiding officer of the advisory board. The bill's primary purpose was to include independent school districts (ISDs) as eligible grantees.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. DEFINITIONS

The Commission adopts the following amendments to Subchapter A:

§804.1. Definitions

Section 804.1(1) defines "Act." Based on a review of the JET rules transferred from the Comptroller, the Agency updates "Act" to properly reference HB 3062.

The previous §804.1(5) definition of "Comptroller" has been removed, as it is no longer applicable to this chapter.

New §804.1(5) defines "Developmental education." Based on a review of the JET rules transferred from the Comptroller, the Agency retains this definition and renumbers accordingly.

New §804.1(6) defines "Emerging industry." Based on a review of the JET rules transferred from the Comptroller, the Agency retains this definition and renumbers accordingly.

New §804.1(7) defines "High-demand occupation." Based on a review of the JET rules transferred from the Comptroller, the Agency retains this definition and renumbers accordingly, with slight modifications. The Agency amends this definition to state that the Agency may use specific factors to determine whether there is a substantial need for a particular profession, trade, or skill in occupations identified by the 28 Local Workforce Development Boards (Boards), i.e., Board-Area Target Occupations Lists and/or the Agency's labor market projections.

New §804.1(8) adds a new definition for "ISD" as an independent school district, per HB 3062, and is renumbered accordingly.

The definition in §804.1(9) of "in-kind contribution" is removed, as it no longer applies to this chapter.

New §804.1(9) retains the definition for "JET" and is renumbered accordingly.

New §804.1(10) defines "Notice of Availability or NOA." Based on a review of the JET rules transferred from the Comptroller, the Agency retains this definition, updating it to replace "Comptroller" with "Agency" pursuant to HB 3062, and renumbers accordingly.

New §804.1(11) defines "Public junior college." Based on a review of the JET rules transferred from the Comptroller, the Agency retains this definition, with a minor addition of the word "Texas" in reference to the "Education Code," and renumbers accordingly.

New §804.1(12) defines "Public technical institute." Based on a review of the JET rules transferred from the Comptroller, the Agency retains this definition, with a minor addition of the word "Texas" in reference to the "Education Code," and renumbers accordingly.

SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

The Commission adopts the following amendments to Subchapter B:

§804.11. Advisory Board Purpose and Composition

Section 804.11(a) establishes the purpose of the advisory board. The Agency amends §804.11(a) to remove references to "Comptroller" and replace with "Agency."

Previous §804.11(b) designates the presiding officer of the JET advisory board as the Comptroller. The Agency replaces with new §804.11(b)(1) - (6), adding the composition of the advisory board and modifying this section to reflect statutory language by replacing "Comptroller" with "Commission chair," consistent with HB 3062.

§804.12. Meetings Required

Section 804.12(a) explains that the advisory board is required to meet at least once each quarter to review received applications and recommend awarding grants to public junior colleges and public technical institutes. The Agency amends this subsection to reflect the changes enacted by HB 3062, including allowing the advisory board to meet "as needed," and adding ISDs as eligible grantees.

§804.13. General Advisory Board Responsibilities

Section 804.13 states that the advisory board is responsible for providing advice and recommendations to the Comptroller. The Agency adopts amendments to reflect changes in statutory language, including changing "Comptroller" to "Agency" in §804.13 and §804.13(2) and adding ISDs to §804.13(1).

§804.14. General Comptroller Responsibilities to the Advisory Board

Section 804.14 is repealed because its provisions are duplicated in §804.11(b) and it now serves no substantive purpose.

SUBCHAPTER C. GRANT PROGRAM

The Commission adopts the following amendments to Subchapter C:

§804.21. General Statement of Purpose

Section 804.21 sets forth the purpose for the JET program as awarding grants from the JET fund for the development of career and technical education programs at public junior colleges and public technical institutes that meet the requirements of Texas Education Code §134.006. The Agency amends §804.21 to add ISDs as eligible grantees and to include §134.007 of the Texas

Education Code pertaining to ISDs in alignment with the statutory language in HB 3062.

§804.22. Notice of Grant Availability and Application

Section 804.22 of the rules transferred from the Comptroller contains an outdated reference to the "Comptroller." The Agency replaces "Comptroller" with "Agency" to comply with §302.002 of the Texas Labor Code.

§804.23. Grant Award and Acceptance

Section 804.23 of the rules transferred from the Comptroller contains an outdated reference to the "Comptroller." The Agency replaces "Comptroller" with "Agency" to comply with §302.002 of the Texas Labor Code.

§804.24. Reporting Requirements

Section 804.24 of the rules transferred from the Comptroller provides that a public junior college and public technical institute receiving a grant under this chapter must comply with all reporting requirements of the contract in a frequency and format determined by the Comptroller in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the entity being ineligible for future grants under this chapter. The Agency amends §804.24 to add ISDs to the list of eligible grantees and to reference "Agency" instead of "Comptroller."

§804.25. Enforcement

Section 804.25(a) of the rules transferred from the Comptroller sets forth the requirement that grant funds must be used in compliance with the terms of the contract for the purposes designated in the contract or they will be subject to refund by the grantee, disqualification from receiving further funds under this chapter, or any other available legal remedies. If deemed appropriate, the grantee may also be referred to another department or agency including, but not limited to, the Attorney General's Office, the Comptroller's Criminal Investigation Division, or the Comptroller's Internal Audit Department. The Agency amends §804.25(a) to remove outdated references to "Comptroller" divisions and departments, and to reflect the Agency's oversight staff, including the State Auditor's Office and the Agency's Office of Investigations to align with the statutory language provided in HB 3062.

Section 804.25(b) of the rules transferred from the Comptroller states that the Comptroller or its designee may audit the use of funds. The Agency replaces "Comptroller or the comptroller's designee" with "Agency" to comply with §302.002 of the Texas Labor Code.

SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

The Commission adopts the following amendments to Subchapter D:

§804.41. Grants for Career and Technical Education Programs

Section 804.41(a) of the rules transferred from the Comptroller sets forth the guidelines for JET grants awarded to public junior colleges and public technical institutes for the development of career and technical education programs that meet the requirements of Texas Education Code §134.006 and Texas Government Code §403.356. The Agency adds ISDs to the list of eligible grantees and to include a cross-reference to Texas Education

Code §134.007 pertaining to ISDs to align with the statutory language in HB 3062.

Section 804.41(c) of the rules transferred from the Comptroller states that in awarding a grant under this subchapter, the Comptroller shall primarily consider the potential economic returns to the state from the development of the career and technical education course or program. The Comptroller may also consider whether the course or program:

- (1) is part of a new, emerging industry or high-demand occupation;
- (2) offers new or expanded dual credit career and technical educational opportunities in public high schools; or
- (3) is provided in cooperation with other public junior colleges or public technical institutes across existing service areas.

The Agency amends this subsection by replacing references to "Comptroller" with "Agency."

Section 804.41(d) of the rules transferred from the Comptroller states that a grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the college, including industry consortia, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

- (A) cash;
- (B) equipment, equipment use, materials, or supplies;
- {(B) in-kind contributions or equipment use;}
- (C) personnel or curriculum development cost; and/or
- (D) administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the comptroller.

The Agency amends this section to align with the statutory language provided in HB 3062 by removing "in-kind contributions or equipment use" from the list of allowable matching contributions, relettering this section, and replacing references to "Comptroller" with "Agency."

SUBCHAPTER A. DEFINITIONS

40 TAC §804.1

The amendment is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606046
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: December 12, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-0829

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**SUBCHAPTER B. ADVISORY BOARD
COMPOSITION, MEETING GUIDELINES**

40 TAC §§804.11 - 804.13

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606047
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: December 12, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-0829

◆ ◆ ◆
40 TAC §804.14

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606048
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: December 12, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-0829

◆ ◆ ◆
SUBCHAPTER C. GRANT PROGRAM

40 TAC §§804.21 - 804.25

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606049
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: December 12, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-0829

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**SUBCHAPTER D. GRANTS TO
EDUCATIONAL INSTITUTIONS FOR
CAREER AND TECHNICAL EDUCATION
PROGRAMS**

40 TAC §804.41

The amendment is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2016.

TRD-201606050
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: December 12, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-0829

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

In accordance with Texas Government Code §2001.039, the Texas Department of Agriculture (Department) files this notice of intent to review its rules under Title 4, Part 1 of the Texas Administrative Code.

The Department will conduct a review of its rules on a chapter-by-chapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register*. Assessment of the rules by the Department will determine whether the reasons for adoption of the rules continue to exist. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

The Department will initiate the rule review within each of the following chapters that have not already been reviewed in accordance with §2001.039 of the Government Code. The review will begin December 9, 2016 and be concluded no later than December 9, 2016.

Texas Administrative Code, Title 4, Part 1.

Chapter 1. General Procedures.

Chapter 2. Licensing.

Chapter 3. Boll Weevil Eradication Program.

Chapter 4. Prescribed Burning Board Enforcement Program.

Chapter 5. Fuel Quality.

Chapter 6. Seed Arbitration.

Chapter 7. Pesticides.

Chapter 8. Agriculture Hazard Communication Regulations.

Chapter 9. Seed Quality.

Chapter 10. Seed Certification Standards.

Chapter 12. Weights and Measures.

Chapter 13. Grain Warehouse.

Chapter 14. Perishable Commodities Handling and Marketing Program.

Chapter 15. Egg Law.

Chapter 16. Aquaculture.

Chapter 17. Marketing and Promotion.

Chapter 18. Organic Standards and Certification.

Chapter 19. Quarantines and Noxious and Invasive Plants.

Chapter 20. Cotton Pest Control.

Chapter 21. Citrus.

Chapter 22. Nursery Products and Floral Items.

Chapter 24. Food Distribution and Processing.

Chapter 25. Special Nutrition Processing.

Chapter 26. Food and Nutrition Division.

Chapter 29. Economic Development.

Chapter 30. Community Development.

Comments and questions should be directed to Jessica Escobar, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-4075, or by email to Jessica.Escobar@TexasAgriculture.gov.

TRD-201606087

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Filed: November 29, 2016



Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 30, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter AA, Commissioner of Education: General Provisions, and Subchapter BB, Commissioner of Education: Purchasing and Contracts.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 30, Subchapters AA and BB, continue to exist.

The public comment period on the review of 19 TAC Chapter 30, Subchapters AA and BB, begins December 9, 2016, and ends January 9, 2017. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494. Comments may also be submitted electronically to rules@tea.texas.gov.

TRD-201606071

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 28, 2016



The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 30, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter A, State Board of Education: General Provisions, and Subchapter B, State Board of Education: Purchasing and Contracts.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 30, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494. Comments may also be submitted electronically to rules@tea.texas.gov.

TRD-201606072
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 28, 2016



Texas Grain Producer Indemnity Board

Title 4, Part 6

In accordance with Texas Government Code §2001.039, the Texas Grain Producer Indemnity Board (Board), files this notice of intent to review its rules under Title 4, Part 6 of the Texas Administrative Code.

The Board will conduct a review of its rules on a chapter-by-chapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register*. Assessment of the rules by the Board will determine whether the reasons for adoption of the rules continue to exist. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

The Board will initiate the rule review within the following chapter which has not already been reviewed in accordance with §2001.039 of the Government Code. The review will begin December 9, 2016 and be concluded no later than December 9, 2016.

Chapter 90. Texas Grain Producer Indemnity Fund Program Rules.

Comments and questions should be directed to Jessica Escobar, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-4075, or by email to Jessica.Escobar@TexasAgriculture.gov.

TRD-201606088
Jessica Escobar
Assistant General Counsel
Texas Grain Producer Indemnity Board
Filed: November 29, 2016



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 59, Continuing Education Requirements. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Neta Lamas, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

- §59.1 Authority.
- §59.3 Purpose and Applicability.
- §59.10 Definitions.
- §59.20 Provider Registration.
- §59.21 Provider Registration Renewals.
- §59.30 Continuing Education Courses.
- §59.51 Responsibilities of Providers.
- §59.80 Fees.
- §59.90 Sanctions--Administrative Sanctions and Penalties.

TRD-201606096
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: November 30, 2016



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 §101.3041(b)(1)

State of Texas Assessments of Academic Readiness Grades 3-8 Assessments Performance Standards

English Assessments	Approaches Grade Level Performance	Meets Grade Level Performance	Masters Grade Level Performance
Grade 3 Mathematics	1360	1486	1596
Grade 4 Mathematics	1467	1589	1670
Grade 5 Mathematics	1500	1625	1724
Grade 6 Mathematics	1536	1653	1772
Grade 7 Mathematics	1575	1688	1798
Grade 8 Mathematics	1595	1700	1854
Grade 3 Reading	1345	1468	1555
Grade 4 Reading	1434	1550	1633
Grade 5 Reading	1470	1582	1667
Grade 6 Reading	1517	1629	1718
Grade 7 Reading	1567	1674	1753
Grade 8 Reading	1587	1700	1783
Grade 4 Writing	3550	4000	4612
Grade 7 Writing	3550	4000	4602
Grade 5 Science	3550	4000	4402
Grade 8 Science	3550	4000	4406
Grade 8 Social Studies	3550	4000	4268

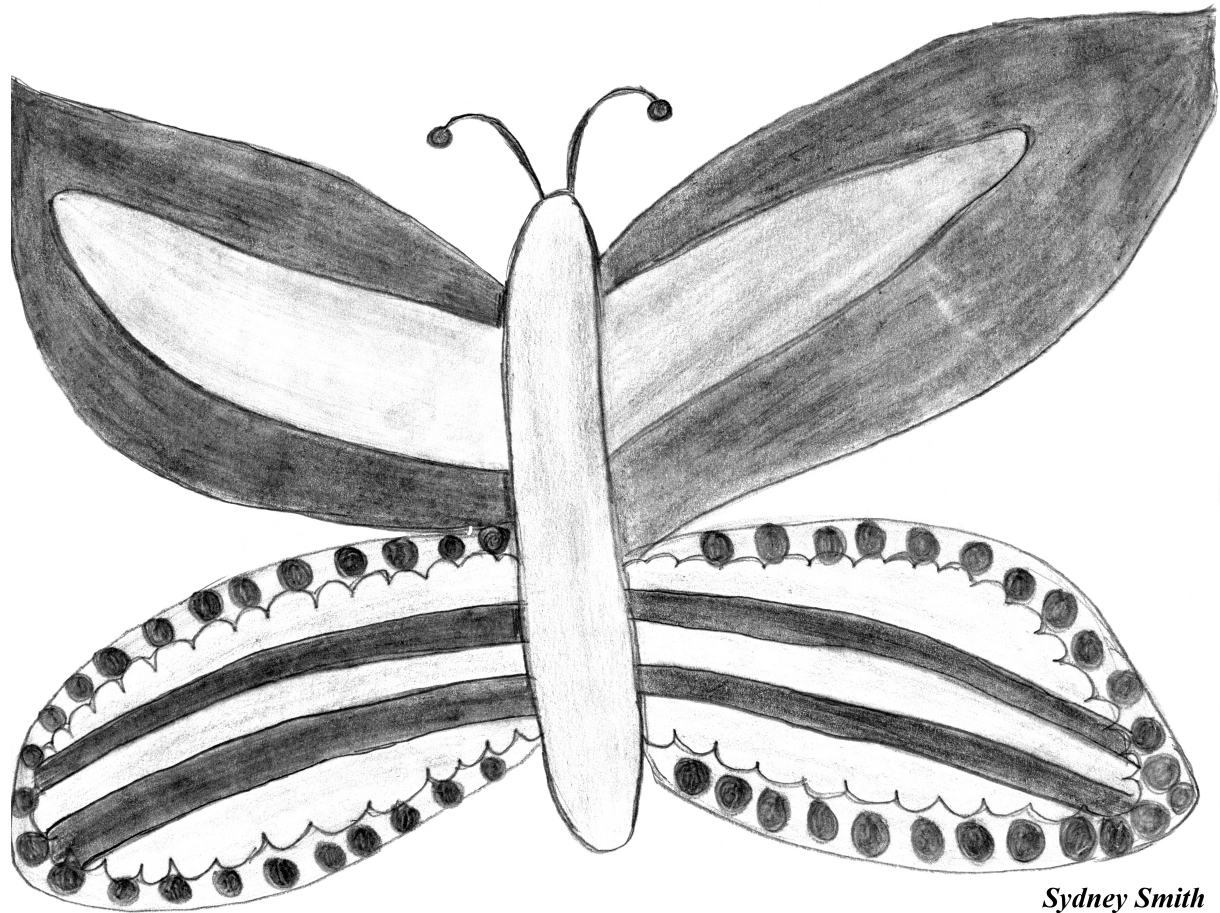
Spanish Assessments	Approaches Grade Level Performance	Meets Grade Level Performance	Masters Grade Level Performance
Grade 3 Mathematics	1360	1486	1596
Grade 4 Mathematics	1467	1589	1670
Grade 5 Mathematics	1500	1625	1724
Grade 3 Reading	1318	1444	1532
Grade 4 Reading	1413	1539	1636
Grade 5 Reading	1461	1582	1701
Grade 4 Writing	3550	4000	4543
Grade 5 Science	3550	4000	4402

Figure: 19 TAC §101.3041(c)(1)

State of Texas Assessments of Academic Readiness End-of-Course Assessments Performance Standards*

Assessment	2012-2015 Satisfactory Performance	Approaches Grade Level Performance	Meets Grade Level Performance	Masters Grade Level Performance
Algebra I	3500	3550	4000	4333
Algebra II		3550	4000	4411
Biology	3500	3550	4000	4576
English I	3750	3775	4000	4691
English II	3750	3775	4000	4831
English III		3775	4000	4546
U.S. History	3500	3550	4000	4440

* The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career. Standards apply beginning with students first enrolled in Grade 9 or below in 2011-2012.



Sydney Smith
9th Grade

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health & Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that include that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *State of Texas v. South Texas Roll-Offs, LLC, Wesley C. Barfield, John C. Barfield, Jr., and John "Neal" C. Barfield, III*; Cause No. D-1-GN-15-002987, in the 419th Judicial District Court, Travis County, Texas.

Nature of the Defendants' Operations: John C. Barfield, Jr. owns real property outside Gonzales in Gonzales County (the "Site"). South Texas Roll-Offs, LLC disposed of various types of municipal solid waste at the Site, including construction and demolition debris as well as household trash and electronics. Some of the waste had been burned at the Site. None of the Defendants have authority from the Texas Commission on Environmental Quality ("TCEQ") to dispose, store, process, or burn waste at the Site. On October 9, 2013, the TCEQ entered an administrative order against South Texas Roll-Offs, LLC, which ordered South Texas Roll-Offs, LLC to cease disposal of waste and complete removal of waste from the Site. The administrative order also assessed a penalty against South Texas Roll-Offs, LLC. Investigations of the Site revealed that none of the Defendants complied with the terms of the administrative order.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction orders the Defendants to stop burning waste at the Site and stop disposing, storing or accepting additional waste at the Site. The Defendants are further ordered to remove and properly dispose of the waste at a facility authorized to accept waste by the TCEQ. The Judgment awards the State of Texas civil penalties in the amount of \$36,000, \$7,500 in attorney's fees, and \$16,841 in unpaid administrative penalties.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201606075
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: November 28, 2016

Comptroller of Public Accounts

Notice of Contract Award

The Texas Comptroller of Public Accounts ("Comptroller") announces the award of an outside collection services contract (Tier I) to Collecto, Inc, d/b/a EOS CCA, 700 Longwater Drive, Norwell, Massachusetts 02061-1674, under Request for Proposals No. 218e ("RFP"). The total amount of the contract is a percentage of the total amounts collected by Comptroller on referred accounts during the referral period. The term of the contract is November 18, 2016 through December 31, 2018, with option to renew for two (2) additional one (1) year periods, one (1) year at a time.

The notice of the RFP was published in the July 15, 2016, issue of the *Texas Register* (41 TexReg 5265).

TRD-201606041
Joseph Madden
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 22, 2016

Notice of Contract Award

The Texas Comptroller of Public Accounts ("Comptroller") announces the award of an outside collection services contract (Tier II) to Account Control Technology, Inc., 21700 Oxnard Street, Suite 1400, Woodland Hills, California 91367, under Request for Proposals No. 218f ("RFP"). The total amount of the contract is a percentage of the total amounts collected by Comptroller on referred accounts during the referral period. The term of the contract is November 18, 2016 through December 31, 2018, with option to renew for two (2) additional one (1) year periods, one (1) year at a time.

The notice of the RFP was published in the July 15, 2016 issue of the *Texas Register* (41 TexReg 5265).

TRD-201606042
Cindy Stapper
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 22, 2016

Notice of Legal Banking Holidays

Texas Tax Code Annotated §111.053(b) requires that, before January 1 of each year, the Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. Below is the Bank Holiday Schedule for 2017. Federal Reserve Banks and branches will not be open on the dates indicated below:

January 2, New Year's Day
January 16, Martin Luther King, Jr., Day
February 20, Presidents Day

May 29, Memorial Day
July 4, Independence Day
September 4, Labor Day
October 9, Columbus Day
November 11, Veterans Day*
November 23, Thanksgiving Day
December 25, Christmas Day

*For holidays falling on Saturday, Federal Reserve Banks and Branches will be open the preceding Friday. For holidays falling on Sunday, all Federal Reserve Banks and Branches will be closed the following Monday.

TRD-201606043
Jason Frizzell
Interim Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 22, 2016

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Office of the Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/28/16 - 12/04/16 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/28/16 - 12/04/16 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/16 - 12/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/16 - 12/31/16 is 5.00% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201606040
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 22, 2016

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/05/16 - 12/11/16 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/05/16 - 12/11/16 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 11/01/16 - 11/30/16 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/16 - 11/30/16 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/17 - 03/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/17 - 03/31/17 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/17 - 03/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101¹ for the period of 01/01/17 - 03/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/17 - 03/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/17 - 03/31/17 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/17 - 03/31/17 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/16 - 12/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/16 - 12/31/16 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201606085
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 29, 2016

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a place of business change was received from Texans Credit Union, Richardson, Texas. The credit union is proposing to change its domicile to 777 E. Campbell Road, Richardson, Texas.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in

evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201606078
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 29, 2016

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 January 13, 2017. 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 January 13, 2017. 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: AGRA Properties, LLC dba Jimbos Food Mart; DOCKET NUMBER: 2016-1262-PST-E; IDENTIFIER: RN102398195; LOCATION: Kenedy, Karnes 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: \$3,375; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Akzo Nobel Chemicals LLC; DOCKET NUMBER: 2016-1118-AIR-E; IDENTIFIER: RN102177391; LOCATION: La-Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Number 33000, Special Conditions (SC) Number

2B, NSR Permit Number 7700, SC Number 5B, and Federal Operating Permit Number O3331, Special Terms and Conditions Number 13, by failing to maintain records to demonstrate continuous compliance of the flare; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: \$37,038; Supplemental Environmental Project offset amount of \$14,815; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Avenue UltraCon, Incorporated dba Avenue Drive In; DOCKET NUMBER: 2016-1152-PST-E; IDENTIFIER: RN100745595; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Buddies Kwik Stop, LLC dba Buchanan Dam Food Mart; DOCKET NUMBER: 2016-1542-PST-E; IDENTIFIER: RN102428802; LOCATION: Buchanan Dam, Llano 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: \$4,255; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: City of Athens; DOCKET NUMBER: 2016-1396-PWS-E; IDENTIFIER: RN101215309; LOCATION: Athens, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on a locational running annual average; PENALTY: \$714; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Lawn; DOCKET NUMBER: 2016-1187-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §§290.272, 290.273, and 290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report for the 2014 calendar year; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect lead and copper tap samples for the January 1, 2014 - December 31, 2014, monitoring period; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to meet the inactivation requirements of the disinfection process used by the facility for a period longer than four consecutive hours on September 30, 2015; PENALTY: \$550; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Three Rivers; DOCKET NUMBER: 2016-1174-MWD-E; IDENTIFIER: RN105482699; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2016-1588-AIR-E; IDENTIFIER: RN102414273; LOCATION: Foran, Howard County; TYPE OF FACILITY: oil and gas tank battery; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C), Federal Operating Permit Number O3599, General Operating Permit Number 514, Site-wide Requirements (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to submit a semi-annual deviation report within 30 days after the end of the reporting period; PENALTY: \$4,162; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(9) COMPANY: Country Club Retirement Community L.P.; DOCKET NUMBER: 2016-0598-MWD-E; IDENTIFIER: RN105460646; LOCATION: Whitney, Hill 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 WQ0014871001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$7,012; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: EAS Oil, LLC dba Stage Coach Stop; DOCKET NUMBER: 2016-0689-PWS-E; IDENTIFIER: RN101776540; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be located during emergencies; and 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well; PENALTY: \$1,300; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Flo-Mart, LLC; DOCKET NUMBER: 2016-1574-PST-E; IDENTIFIER: RN101674810; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the under-

ground storage tanks (USTs) 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: \$4,630; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Georgetown Independent School District; DOCKET NUMBER: 2016-1645-EAQ-E; IDENTIFIER: RN109179424; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: educational campus; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$813; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: HIGHLAND LAKES, INCORPORATED dba Highland Lakes Chevron; DOCKET NUMBER: 2016-1347-PST-E; IDENTIFIER: RN101534220; LOCATION: Lewisville, Denton 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 §334.605(a), by failing to ensure that a certified Class A and B Operator was re-trained within three years of their last training date; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,175; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: INDEPENDENT OIL COMPANY dba Fuel Mart; DOCKET NUMBER: 2016-1319-PST-E; IDENTIFIER: RN101671709; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tanks (USTs); and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: \$8,659; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: K.L. COMFORT PARK, Limited; DOCKET NUMBER: 2016-1525-PWS-E; IDENTIFIER: RN101223600; LOCATION: Temple, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$205; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Maharaj Enterprise, LLC dba SA Randolph Express; DOCKET NUMBER: 2016-1334-PST-E; IDENTIFIER: RN104568753; LOCATION: Cibolo, 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 tanks for releases at a frequency of at least once every month; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: MUNSON POINT PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2016-0489-PWS-E; IDENTIFIER: RN103128161; LOCATION: Denison, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h) and (i)(3) and §290.122(c)(2)(A) and (f), and 40 Code of Federal Regulations (CFR) §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample site(s) for the two consecutive six-month periods (January 1, 2015 - June 30, 2015, and July 1, 2015 - December 31, 2015) following the July 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(d)(2)(A), (h) and (i)(2) and §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the July 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the July 1, 2014 - December 31, 2014, monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the July 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the July 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §291.76 and TWC, §5.702, by failing to pay adequate regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 13016 for calendar years 2002, 2009, and 2010; PENALTY: \$825; Supplemental Environmental Project offset amount of \$330; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: N AND D MEKHAIL ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2016-1230-PST-E; IDENTIFIER: RN102917937; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: R and W Convenience Stores, LLC; DOCKET NUMBER: 2016-1507-PST-E; IDENTIFIER: RN101894731; LOCA-

TION: Texarkana, Bowie 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: \$3,688; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: ROCHELLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1385-PWS-E; IDENTIFIER: RN101188290; LOCATION: Brady, McCulloch County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 15 picoCuries per liter for gross alpha particle activity, based on the running annual average; and 30 TAC §290.122(b)(3)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for combined radium 226 and 228; PENALTY: \$298; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(21) COMPANY: Royal Kirkwood Investments, Incorporated; DOCKET NUMBER: 2016-1107-PST-E; IDENTIFIER: RN101870947; LOCATION: Stafford, Fort Bend 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 §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$14,358; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: SAI SUMU INCORPORATED dba Andys Food Store; DOCKET NUMBER: 2016-1510-PST-E; IDENTIFIER: RN101632081; LOCATION: Fort Worth, Tarrant 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 system; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Tristream East Texas, LLC; DOCKET NUMBER: 2016-1528-AIR-E; IDENTIFIER: RN102176377; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: gas processing plant; RULES VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code, §382.085(b), by failing to submit an Annual Emissions Inventory Update for calendar year 2015; PENALTY: \$4,013; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Victor Beer and Wine LLC; DOCKET NUMBER: 2016-1383-PST-E; IDENTIFIER: RN102784642; LOCATION: Commerce, 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 for releases at a frequency of at least once every month; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Katy Mont-

gomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Western Refining Company, L.P.; DOCKET NUMBER: 2016-1364-AIR-E; IDENTIFIER: RN100213016; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1348, Special Terms and Conditions Number 26, and New Source Review Permit Number 18897, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$5,775; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(26) COMPANY: Z and H Business Venture, Incorporated dba Circle A; DOCKET NUMBER: 2016-1342-PST-E; IDENTIFIER: RN101541829; LOCATION: Grand Prairie, Dallas 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; and 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Anthony Rios, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201606083

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2016



Enforcement Orders

An agreed order was adopted regarding LKQ Auto Parts of North Texas, L.P. d/b/a LKQ Auto Parts of Central Texas, Docket No. 2016-0151-MSW-E on November 29, 2016 assessing \$3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KAS INVESTMENTS, LTD. d/b/a CONVENIENCE PLUS, Docket No. 2016-0331-PST-E on November 29, 2016 assessing \$5,325 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201606101

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 30, 2016



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 143385

APPLICATION. James Construction Group, L.L.C., 5880 West U.S. Highway 190, Belton, Texas 76513-8149 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air

Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 143385 to authorize the operation of a concrete batch plant. The facility is proposed to be located at the following driving directions: from the intersection of Northwest HK Dodgen Loop and Pegasus Drive, travel approximately 0.25 mile north on Pegasus Drive and site is on the west side, Temple, Bell County, Texas 76501. 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=31.143111&lng=-97.332192&zoom=13&type=r>. This application was submitted to the TCEQ on October 7, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 20, 2016.

PUBLIC COMMENT/PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Thursday, January 5, 2017, at 6:00 p.m.

Trinity Jr. Ballroom, Hilton Garden Inn - Temple

1749 Scott Boulevard

Temple, Texas 76504

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Waco Regional Office, located at 6801 Sanger Ave, Suite 2500, Waco,

Texas 76710-7826, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from James Construction Group, L.L.C., 5880 West U.S. Highway 190, Belton, Texas 76513-8149, or by calling Mr. David S. Knollhoff, Industrial Meteorologist, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: November 18, 2016

TRD-201606060

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 23, 2016



Notice of Correction to Agreed Order Number 22

In the July 29, 2016, issue of the *Texas Register* (41 TexReg 5600), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 22 for Trinity River Authority of Texas. The reference to penalty should be corrected to read: PENALTY: "\$6,000"

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201606082

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2016



Notice of Correction to Shutdown/Default Order Number 1

In the November 18, 2016, issue of the *Texas Register* (41 TexReg 9182), the Texas Commission on Environmental Quality published notice of Shutdown/Default Order, specifically item Number 1 for ALI HEMANI CORPORATION dba 7-Eleven.

The reference to company should be corrected to read: COMPANY: ALI HEMANI CORPORATION dba 7-Eleven 39047.

For questions concerning this error, please contact Lena Roberts at (512) 239-0019.

TRD-201606079

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2016



Notice of Hearing Popek & Son

SOAH Docket No. 582-17-1123

TCEQ Docket No. 2015-1645-WR

Application No. 12496

APPLICATION.

Popek and Son, 2501 Marguerite Street, Bay City, Texas 77414, Applicant, seeks a Water Use Permit pursuant to Texas Water Code §§ 11.121 and 11.042 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §295.1, *et seq.*

Popek and Son has applied for a water use permit to use the bed and banks of an unnamed drainage ditch, tributary of Hardeman Slough, tributary of Caney Creek, Brazos-Colorado Coastal Basin, to convey 200 acre-feet of groundwater per year for subsequent diversion for agricultural purposes in Matagorda County.

Applicant seeks authorization to maintain an existing dam and reservoir on an unnamed drainage ditch, tributary of Hardeman Slough, tributary of Caney Creek, Brazos-Colorado Coastal Basin, for agricultural purposes, and to use the bed and banks of the reservoir to convey 200 acre-feet of groundwater for subsequent diversion for agricultural purposes to irrigate 60 acres out 123.08 acre tract in Matagorda County.

The reservoir has a capacity of 4.2 acre-feet and a surface area of 1.38 acres. A point on the centerline of the dam is N 36.1875°E, bearing N 70°E, 2,230 feet from the southwest corner of the I & G N RR Co. Original Survey No. 3, Lot 10, Abstract No. 252, in Matagorda County, Texas, also being at Latitude 29.065805°N, Longitude 95.942797°W. Applicant indicates the reservoir is located in zip code 77414.

The Applicant proposes to use groundwater from the Chicot Aquifer to maintain the reservoir at a constant elevation in order to pass inflows of state water.

Groundwater will be discharged into the on-channel reservoir. The Discharge Point is at Latitude 29.073903°N and Longitude 95.951802°W, bearing N 8°W, 3,465 feet from the southwest corner of the I & G N RR Co. Original Survey No. 3 approximately 5.91 miles northeast of Bay City, in Matagorda County, Texas. Applicant indicates the discharge point is located in zip code 77414.

The diversion point from the on-channel reservoir is located at Latitude 29.068542°N, Longitude 95.945918°W, bearing N 30°E, 2,081 feet from the southwest corner property marker of the I & G N RR Co. Original Survey No. 3, approximately 5.91 miles northeast of Bay City, in Matagorda County. Water will be diverted at a maximum rate of 1.3368 cfs (600 gpm).

Ownership of the lands to be inundated and irrigated is evidenced in a Warranty Deed with Vendor's Lien, Document No. 080671, as recorded in the Official Public Records of Matagorda County, Texas.

The application was received on September 3, 2009. Additional information and fees were received on November 24, December 4, December 15, 2009, February 18, 2010, and March 17, 2010. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 8, 2010.

The Executive Director has prepared a draft permit, which, if approved, would include special conditions including, but not limited to maintenance of an alternate source of water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78711-3087.

CONTESTED CASE HEARING.

SOAH will conduct a preliminary hearing on this application at:

10:00 a.m. - January 9, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 11, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

The applicant is automatically a party in this hearing. If anyone else wishes to be a party to the hearing, he or she must attend the hearing and show how he or she would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and any person may request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

TRD-201606061

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 23, 2016



Notice of Meeting on January 12, 2017, in Pearland, Brazoria County, Texas Concerning the Camtraco Enterprises, Inc. Proposed State Superfund Site

The purpose of the meeting is to obtain additional information regarding the facility and the identification of additional potentially responsible parties as well as public input concerning the proposed remedy for the site.

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a proposed selection of remedy for the Camtraco Enterprises, Inc. proposed state Superfund site (the Site). In accordance with 30 Texas Administrative Code §335.349(a) concerning requirements for the remedial activities, and Texas Health and Safety Code, §361.187, concerning proposed remedial action, a public meeting regarding the commission's selection of a proposed remedy for the Site will be held. The statute requires that the commission publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *Pearland Reporter News* on December 7, 2016.

The public meeting is scheduled to be held on January 12, 2017, at 7:00 p.m., at the Pearland Junior High South cafeteria, located at 4719 Bailey Road, Pearland, Texas. The public meeting is not a contested case hearing under the Texas Government Code, Chapter 2001.

The Site was proposed for listing on the Texas Superfund Registry in the February 6, 2009, issue of the *Texas Register* (34 TexReg 873). The Site, including all land, structures, appurtenances, and other improve-

ments, is located at 18823 Amoco Drive, Pearland, Brazoria County, Texas. The Site consists of approximately 3.5 acres of vacant land and is bounded on all sides by a seven-foot security fence.

The Site was utilized as a fuel storage, blending, and distillation facility from approximately 1978 until 1992. The Site has been inactive since 1992.

Before Camtraco Enterprises, Inc. purchased the Site in 1989, environmental releases were documented at the Site by the TCEQ. During 1988 and 1989, the TCEQ conducted numerous investigations of odor releases, chemical spills, and buried drums. Soil samples collected by the TCEQ in 1988 detected several chemicals of concern, including chlorinated compounds. From 1988 to 2005, the TCEQ and Office of Attorney General pursued enforcement and judgement proceedings against the Site owners to remediate the site. However, these efforts were unsuccessful and the enforcement case was closed.

In 2005, the TCEQ performed a removal action at the Site that consisted of securing the site with fencing, removal and disposal of storage tanks and process equipment, and excavation and disposal of 50 buried drums and 3,212 cubic-yards of non-hazardous waste. Remedial investigation and feasibility study activities were conducted from 2011 through 2016, to investigate the remaining contamination at the Site.

A Detailed Analysis Technical Memorandum/Feasibility Study (FS), dated August 2016, screened and evaluated remedial alternatives which could be used to remediate the soil and groundwater at the site. The FS developed four alternatives for remediation of soil and groundwater according to the Texas Risk Reduction Program rules and regulations. The TCEQ prepared the Proposed Remedial Action Document (PRAD) in November 2016. The PRAD presents the proposed remedy and describes the evaluation process that was used to choose the proposed remedy. The TCEQ proposed remedy is as follows:

Proposed Soil Remedial Action: Excavation of on-site surface soil that poses an unacceptable risk to commercial/industrial workers and excavation of subsurface soil to a maximum depth of 15 feet that may continue to act as a source to groundwater contamination. The excavated soil would then be disposed of at an appropriate off-site disposal facility.

Proposed Groundwater Remedial Action: Implementation of an on-site Plume Management Zone (PMZ) established by institutional controls with monitored natural attenuation. The institutional controls would remain in place until it is demonstrated that concentrations of contaminants in groundwater no longer posed an unacceptable risk to potential receptors. The proposed implementation of a PMZ would include the collection and analysis of groundwater samples to confirm that the groundwater plume remains stable and does not expand beyond the boundaries of the PMZ.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., on January 11, 2017 **and should be sent in writing** to Lam Tran, P.E., Project Manager, TCEQ, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087, or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on January 12, 2017.

A portion of the record for the Site, including documents pertinent to the proposed remedy is available for review during regular business hours at the Pearland Library, located at 3522 Liberty Drive, Pearland, Texas 77581. Copies of the complete public record file may be obtained during business hours at the commission's Central File Room, Building E, First Floor, Room 103, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2900. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is

available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at <https://www.tceq.texas.gov/remediation/superfund/state/camtraco.html>.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5906. Requests should be made as far in advance as possible.

For further information about the Site or the public meeting, please call Crystal Taylor, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-201606081

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2016



Notice of Water Quality Application

The following notice was issued on November 16, 2016.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

SENNA HILLS MUNICIPAL UTILITY DISTRICT and SENNA HILLS, LTD. has applied for a minor amendment to the TCEQ permit to authorize a new phase (Interim II) for the disposal of treated domestic wastewater at a daily average flow not to exceed 0.100 million gallons per day via surface irrigation of 39.59 acres of public access land. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.157 MGD via surface irrigation of 70.3 acres of public access land. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located at 10500 Farm-to-Market Road 2244, approximately 700 feet north of Farm-to-Market Road 2244 and approximately two miles east of the intersection of Farm-to-Market Road 2244 and State Highway 71, in Travis County, Texas 78733.

TRD-201606097

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 30, 2016



Office of the Governor

Notice of Available Funding Opportunities

Office of the Governor, Criminal Justice Division (CJD)

The Criminal Justice Division (CJD) is announcing the following funding opportunities for Fiscal year 2017. Please access CJD's egrants system at <https://egrants.gov.texas.gov> to view the funding announcements and application due dates for all available grant programs:

- Edward Byrne Memorial Justice Assistance Grant Program (JAG)
- General Victim Assistance Direct Services Program (VOCA)

- Violence Against Women Justice and Training Program (VAWA)
- Juvenile Justice Local Grant Program
- Juvenile Justice Statewide Grant Program
- Truancy Prevention Program
- Coverdell Forensic Sciences Improvement Program
- Residential Substance Abuse Treatment Program (RSAT)
- Body-Worn Camera Grant Program
- Child Sex Trafficking Grant Program
- Texas Crime Stoppers Assistance Funds
- Texas Anti-Gang (TAG) Program
- Specialty Courts Programs
- National Incident-Based Reporting System (NIBRS)
- County Essential Services Grant Program

TRD-201606032

Camille Cain

Executive Director, Criminal Justice Division

Office of the Governor

Filed: November 21, 2016



Texas Health and Human Services Commission

Public Notice - Procurement Notification

I. Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consulting services to assist HHSC in the development, implementation and continuation of Medicaid projects and related health care initiatives, including: the Texas Healthcare Transformation and Quality Improvement Program 1115 waiver (1115 waiver), the Quality Incentive Payment Program (QIPP), the Network Access Improvement Program (NAIP), and other related Medicaid health care initiatives (**RFP #529-17-0020**).

II. The RFP is located in full on the Electronic State Business Daily (ESBD) website http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=129587.

III. The successful contractor will be expected to assist HHS agencies in the development, implementation and continuation of Medicaid projects and related health care initiatives.

IV. Health and Human Services Commission's Sole Point-Of-Contact for this Procurement is:

Mahsa Azadi, CTPM

Procurement Project Manager

Health and Human Services Commission

1100 West 49th Street

Austin, Texas 78756

(512) 406-2410

Mahsa.Azadi@hhsc.state.tx.us

V. All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m., Central Time on December 8, 2016. HHSC will post all written questions received with HHSC's responses on the ESBD on December 15, 2016, or as they become available. All proposals must be received at the above-referenced address on or be-

fore 2:00 p.m., Central Time on December 28, 2016. Proposals received after this time and date will not be considered.

VI. All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-201606076

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 28, 2016



Texas Department of Insurance

Company Licensing

Application for admission to the state of Texas for EVEREST PREMIER INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application for admission to the state of Texas for EVEREST DENALI INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

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-201606063

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: November 23, 2016



Company Licensing

Application to do business in the state of Texas by ESSENCE HEALTHCARE, INC. under the assumed name ESSENCE INSURANCE, a foreign Health Maintenance Organization. The home office is in Maryland Heights, Missouri.

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-201606102

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: November 30, 2016



Notice of Public Hearing

Texas Workers' Compensation Revised Classification Relativities

The commissioner of insurance will hold a public hearing to consider revised Texas workers' compensation classification relativities to replace those adopted under Commissioner's Order No. 4337, dated March 3, 2016. The hearing will begin at 9:30 a.m., Central time, December 16, 2016, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. The notice of hearing and exhibit are on the TDI website at www.tdi.texas.gov/alert/event/index.html.

Docket No. 2794: Revised Workers' Compensation Classification Relativities

Subject and Scope

Staff proposes that the commissioner adopt revised classification relativities to replace those adopted under Commissioner's Order No. 4337, dated March 3, 2016. Exhibit A is a schedule of the revised classification relativities. Staff requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with effective dates on or after July 1, 2017, unless the insurer files an alternative classification rate basis.

Staff recommends reducing the overall level of relativities by 10 percent. In developing the relativities, staff has incorporated recent changes in the classification system from two NCCI filings (*Item B-1431* and *Item 01-TX-2016*).

Applicable Authority, Jurisdiction, Statutes, and Rules

The commissioner has jurisdiction over this hearing under Insurance Code §2053.051. Section 2053.051 requires TDI to determine hazards by class and establish classification relativities applicable to the payroll in each classification for workers' compensation insurance. It also provides that the classification system must be revised at least once every five years.

Comments and Exhibits

To comment on the matter being considered, you may submit written comments and exhibits at or before the public hearing, or you may present oral comments at the hearing. Please include the applicable docket number on any comments or exhibits. Submit two copies of any written comments no later than 5 p.m., Central time, on January 9, 2017. Send one copy by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to jne.byckovski@tdi.texas.gov.

Deadlines Subject to Change

The commissioner may change any of the deadlines in this notice, subject to the applicable statutes and rules.

EXHIBIT A

**TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2017**

Class	Relativity		Class	Relativity
0005	3.78		4828	0.65
0008	4.53		4829	0.65
0011	9.37		4902	3.33
0016	8.95		4923	1.52
0034	4.18		5022	8.74
0035	5.35		5040	13.33
0037	6.38		5041	9.51
0042	5.80		5057	5.26
0059	0.39		5070	12.33
0065	0.08		5102	6.34
0066	0.08		5160	3.10
0067	0.08		5183	4.27
0079	3.77		5190	4.83
0083	7.09		5191	1.30
0106	9.63		5192	4.35
0113	4.91		5200	5.09
0401	18.83		5203	12.15
0913	302.50		5213	5.82
0923	a		5220	5.27
1165	3.28		5348	3.19
1321	2.13		5403	6.86
1438	6.32		5437	6.14
1463	16.58		5443	2.91
1472	5.86		5462	7.07
1701	6.43		5474	5.57
1747	2.14		5479	6.25
1803	3.91		5491	2.38
1924	3.84		5506	8.81
2003	5.89		5536	4.18
2014	7.16		5538	9.77
2040	4.18		5551	12.95
2041	2.83		5606	1.11
2068	4.84		5701	4.76
2081	4.76		6003	5.74
2095	6.28		6045	4.30
2105	4.71		6202	10.53
2111	6.16		6203	2.06
2114	6.73		6204	9.81
2121	2.69		6205	0.90
2157	5.06		6206	4.18
2172	1.54		6213	2.85
2211	19.51		6216	6.70
2220	2.92		6219	6.11
2260	3.08		6229	3.77
2286	2.66		6233	3.02

EXHIBIT A

**TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2017**

Class	Relativity		Class	Relativity
2288	7.44		6237	3.51
2361	1.05		6238	11.12
2380	1.78		6306	10.56
2501	5.19		6319	5.06
2503	0.85		6400	5.97
2532	1.59		6504	4.18
2534	2.36		6823	5.80
2578	5.87		6824	10.25
2581	7.38		6843	8.79
2583	3.55		6872	8.98
2587	4.00		6874	17.38
2670	13.04		7016	2.78
2683	4.85		7024	3.10
2688	6.23		7046	5.15
2702	21.48		7047	4.76
2710	10.92		7098	5.72
2719	9.57		7099	8.80
2731	5.17		7133	4.39
2790	4.09		7134	4.89
2802	6.80		7135	7.53
2835	4.05		7219	10.14
2881	4.62		7230	12.44
2923	1.72		7309	23.05
3004	3.47		7313	6.28
3022	4.19		7317	5.49
3027	1.46		7327	5.04
3028	4.86		7350	20.60
3040	6.31		7360	7.34
3041	4.66		7380	6.36
3042	2.17		7382	8.04
3064	4.95		7390	6.34
3066	4.41		7405	2.78
3081	5.00		7418	5.37
3082	6.85		7421	0.77
3085	3.66		7422	3.11
3110	6.19		7423	6.41
3111	4.19		7502	1.85
3113	3.62		7515	1.74
3114	3.65		7520	3.85
3126	2.69		7538	12.38
3131	2.42		7539	1.57
3132	3.58		7580	3.26
3146	3.48		7590	8.48
3179	2.73		7600	4.30
3220	2.74		7602	5.78

EXHIBIT A

**TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2017**

Class	Relativity		Class	Relativity
3223	3.33		7610	0.53
3224	5.99		7704	5.18
3227	6.05		7720	3.17
3255	4.51		7855	5.96
3257	6.50		8002	2.80
3300	8.08		8006	3.64
3316	1.11		8008	2.04
3331	5.83		8013	0.94
3365	4.93		8017	2.47
3372	4.30		8018	5.26
3383	1.44		8032	4.81
3507	3.69		8033	4.39
3548	2.40		8034	5.00
3574	0.85		8039	3.38
3620	4.57		8044	5.99
3629	2.38		8045	0.75
3632	3.65		8047	1.09
3639	8.03		8058	3.43
3642	3.77		8102	9.96
3643	3.39		8103	5.32
3647	2.42		8106	7.15
3648	2.94		8107	4.16
3681	1.15		8113	5.98
3685	1.48		8209	7.36
3719	2.14		8215	4.99
3724	3.88		8227	3.76
3726	4.31		8231	7.79
3805	1.25		8234	7.90
3807	5.26		8264	6.67
3808	6.14		8265	8.36
3821	6.72		8288	6.95
3822	3.87		8292	6.12
3823	5.80		8293	14.38
3824	4.89		8304	10.87
3830	2.70		8350	8.57
3865	5.14		8385	4.30
3881	5.50		8387	3.12
4000	4.98		8391	2.93
4021	7.60		8601	0.37
4024	2.31		8606	2.47
4034	8.14		8607	2.94
4036	2.29		8709	2.65
4038	5.33		8726	1.12
4045	4.81		8742	0.37
4062	3.64		8748	0.56

EXHIBIT A

**TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2017**

Class	Relativity		Class	Relativity
4101	5.39		8752	4.11
4112	0.61		8754	1.27
4114	3.42		8755	0.35
4130	6.98		8803	0.13
4150	1.25		8809	0.28
4206	5.83		8810	0.19
4207	1.05		8820	0.16
4239	2.18		8828	3.54
4243	5.62		8829	4.31
4244	3.09		8831	1.78
4250	2.33		8832	0.40
4273	2.32		8833	0.93
4279	3.70		8837	a
4282	1.38		8838	0.78
4283	2.76		8858	0.35
4299	2.59		8868	0.76
4304	5.78		8901	0.29
4307	2.78		9014	4.70
4351	1.04		9015	4.09
4360	5.06		9016	4.07
4361	3.22		9019	3.13
4362	0.94		9032	6.23
4410	5.27		9033	3.95
4417	3.52		9040	4.46
4420	6.82		9052	3.94
4431	4.34		9058	2.69
4432	2.59		9060	2.57
4439	1.67		9061	1.90
4452	3.47		9063	1.47
4459	2.79		9079	2.04
4470	3.86		9080	1.70
4484	3.71		9089	1.05
4511	1.05		9093	1.75
4519	4.35		9101	5.19
4558	2.32		9102	4.79
4568	6.23		9154	2.50
4583	5.57		9156	2.46
4611	1.36		9170	20.44
4635	2.52		9178	13.62
4653	5.19		9179	14.61
4665	12.36		9182	3.53
4670	6.95		9186	15.08
4683	5.77		9220	11.23
4692	0.79		9402	8.28
4693	1.93		9501	3.17

EXHIBIT A

TEXAS WORKERS' COMPENSATION RELATIVITIES
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MANDATORY EFFECTIVE DATE 7/1/2017

Class	Relativity		Class	Relativity
4703	5.14		9522	7.70
4712	3.01		9529	4.30
4717	4.19		9552	9.03
4720	2.67		9586	1.33
4740	0.90		9600	2.11
4743	2.59		9620	1.58
4751	1.45		9984	a
4766	4.56		9985	a
4777	11.78			

TRD-201606064
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: November 23, 2016



Texas Lottery Commission

Scratch Ticket Game Number 1826 "\$500 Frenzy"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1826 is "\$500 FRENZY".
The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1826 shall be \$5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1826.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front and the back of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front and back of the Scratch Ticket are used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 5X SYMBOL, STAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1826 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5

STAR SYMBOL	WIN\$500
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1826), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1826-0000001-001.

H. Pack - A Pack of the "\$500 FRENZY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "\$500 FRENZY" Scratch Ticket Game No. 1826.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on each Scratch Ticket. A prize winner in the "\$500 FRENZY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "STAR" Play Symbol, the player wins \$500 instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

- Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The Scratch Ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
- The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The Scratch Ticket must not be counterfeit in whole or in part;
- The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
- The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
- The Scratch Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
- The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (fifty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to four (4) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: The "STAR" (WIN\$500) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure and will only appear with the \$500 Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$500 FRENZY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "\$500 FRENZY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$500 FRENZY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$500 FRENZY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 1826. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1826 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	911,200	8.82
\$10	670,000	12.00
\$20	214,400	37.50
\$25	67,000	120.00
\$50	53,600	150.00
\$100	7,370	1,090.91
\$500	13,400	600.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.15. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1826 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1826, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201606100
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 30, 2016

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Public Utility Commission of Texas

Announcement of Application for Amendment to a
 State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 18, 2016, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of TDS Broadband Service LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46595.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Alpine, Texas. In addition, applicant seeks to provide service under a new name: TDS Broadband Service LLC d/b/a TDS.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46595.

TRD-201606037
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 21, 2016



Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 16, 2016, for a service provider certificate of operating authority, pursuant to the Public Utility Regulatory Act. Applicant intends to provide facilities-based, data and resale telecommunications services in the service areas of all incumbent local exchange carriers within the State of Texas.

Docket Title and Number: Application of Synergem Technologies, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 46578.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than December 29, 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 46578.

TRD-201606044
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2016



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 November 17, 2016, pursuant to the Public Utility Regulatory Act, Texas Util. Code Ann. §39.158.

Docket Style and Number: Application of Capital One, N.A. Pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket Number 46589.

The Application: On November 17, 2016, Capital One, N.A. filed an application for approval of the purchase of passive equity interests (Class A) in Mariah del Norte LLC from HSBC USA Inc. After the proposed transaction, the combined direct and indirect ownership of Mariah together with its affiliates, Cap One with its affiliates, and the

other Class A interest holders will equal approximately 1435.1 MW, approximately 1.6% of the total generation capacity in the Electric Reliability Council of Texas.

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 46589.

TRD-201606045
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2016



Notice of Application to Amend a Service Provider Certificate of Operating Authority

On November 17, 2016, Neutral Tandem-Texas, LLC and Onvoy, LLC filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority number 60707, reflecting a change in ownership/control.

Docket Style and Number: Application of Neutral Tandem-Texas, LLC and Onvoy, LLC for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46587.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 16, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46587.

TRD-201606065
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2016



Notice of Application to Amend a Service Provider Certificate of Operating Authority

On November 21, 2016, Crown Castle Operating Company and NextEra FiberNet, LLC dba FPL FiberNet filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority number 60870, reflecting a change in ownership/control.

Docket Style and Number: Application of Crown Castle Operating Company and NextEra FiberNet, LLC dba FPL FiberNet for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46601.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 16, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Re-

lay Texas by dialing 7-1-1. All comments should reference Docket Number 46601.

TRD-201606066
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2016

Teacher Retirement System of Texas

Notice of Contract Award

The Teacher Retirement System of Texas has awarded K201700110 to Focus Consulting Group, 721 Hinman Ave Apt 2E, Evanston, IL 60202-2585, for executive coaching providing individual targeted development to executive staff addressing key management skills, practical application of key strengths, and assessments through measurements of behavioral and skill development affirmation. Focus Consulting will provide individualized development plans, will facilitate meetings and sessions to assess progress, and will provide an annual executive assessment each year of the contract. Monthly performance reports are to be submitted by the 15th of each month detailing work performed during the previous month. The total amount of the contract is \$324,000. The term of the contract is November 7, 2016 through August 31, 2018.

TRD-201606059
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: November 22, 2016

Notice of Informal Conference on Chapter 53 Rulemaking

Pursuant to Texas Government Code §2001.031, the Teacher Retirement System of Texas (TRS) intends to hold an informal conference to obtain the opinions and advice of interested persons about contemplated rulemaking related to Title 34, Part 3, Chapter 53 of the Texas Administrative Code.

Chapter 53 concerns certification by companies who offer voluntary 403(b) investment options through salary reduction agreements between public school employees and their local employers pursuant to Article 6228a-5 of Vernon's Civil Statutes entitled "Annuities or Investments for Certain Public Employees; Salary Reductions" ("Art. 6228a-5"). This rulemaking is authorized pursuant to §2001.039 of the Texas Government Code, which concerns the review of existing rules.

The informal conference will be held in Austin on December 12, 2016, at 10:00 a.m., in Room E345 at TRS' headquarters located at 1000 Red River Street. Persons who have special communication or other accommodation needs who are planning to attend the conference should contact Marina Salazar at TRS at (512) 542-6423. Requests should be made as far in advance as possible.

Written comments pertaining to the contemplated rulemaking may be provided at the informal conference or by mail to the Teacher Retirement System of Texas, Attn: 403(b) Program Administrator, 1000 Red River Street, Austin, Texas 78701. Electronic comments may be submitted to 403b@trs.texas.gov. The comment period closes January 13, 2017.

Please note, the purpose of the informal conference is not for TRS staff to discuss or receive individual complaints or grievances regarding individual 403(b) vendors or products. At the informal conference,

public comment or input about individual 403(b) vendors or products is generally not allowed. For information on making a complaint regarding a 403(b) product or vendor, please see the TRS web site at https://www.trs.texas.gov/Pages/403b_consumer_concerns.aspx. Consideration of these few limitations is appreciated.

The informal conference is structured for the receipt of oral or written comments to the staff of TRS and not the Board of Trustees. Specifically, TRS staff is interested in the opinions and advice of interested persons on potential improvements to the current 403(b) program, including but not limited to the following issues:

1. Under Section 5(b)(2) of Art. 6228a-5, TRS has rulemaking authority to adopt maximum fees, costs, and penalties that 403(b) certified companies may assess for annuity products. Additionally, TRS has rulemaking authority under Section 8(a) of Art. 6228a-5 to adopt rules for certification of companies selling non-annuity products, which includes rules regarding administrative costs to employees. Consistent with this rulemaking authority, TRS has adopted maximum fees, costs, and penalties in TRS Rule Section 53.3.

Are the maximum fees, costs, and penalties adopted by TRS in TRS Rule Section 53.3 appropriate and competitive in light of both the current 403(b) market and the fees, costs, and penalties charged for other defined contribution products?

Should TRS adopt rules requiring companies to institute and follow a process to ensure that fees, costs, and penalties in aggregate, do not exceed the cap set by the Board of Trustees in TRS Rule 53.3?

2. Under Section 6(c) of Art. 6228a-5, TRS has rulemaking authority to administer Section 5 of Art. 6228a-5. Subsection (f) of Section 5 of Art. 6228a-5 provides that to the greatest degree possible, employers of employees who participate in a 403(b) program shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts.

Currently, the TRS rules do not address or require specific routing of contributions made by salary reduction agreement. Should the TRS rules be expanded to address the routing of such contributions?

3. TRS is authorized under Sections 6(c) and 12 of Art. 6228a-5 to adopt rules requiring companies to affirm and demonstrate annually to TRS that each of its representatives are properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investments. Accordingly, TRS Rule Section 53.6(c) requires companies to annually affirm and demonstrate that its employees are properly licensed and qualified.

Should the annual demonstration include a requirement that companies submit records to TRS verifying the representatives' licensed status and the number of continuing education or training hours completed?

4. TRS has rulemaking authority under Section 8(a) of Art. 6228a-5 to adopt financial requirements for companies seeking certification to sell non-annuity products. TRS has adopted financial requirements for non-annuity companies in TRS Rule Section 53.5.

Are the financial requirements for non-annuity companies adopted in TRS Rule Section 53.5 sufficient and appropriate?

5. The 403(b) market in Texas has evolved since 2001 when Art. 6228a-5 was adopted. The statute, and its subsequent amendments, expressly mention certified companies, agents, brokers, custodians, platform companies, and third-party administrators. Other parties such as record keepers, broker dealers, and wholesalers- are not expressly men-

tioned in the statute but provide services in the 403(b) market or to 403(b) vendors.

To what extent, if any, should the current rules or forms be amended to recognize and address the role of other parties, such as record keepers, broker dealers, and wholesalers in the 403(b) market?

6. TRS has rulemaking authority over the suspension or revocation of a company certification or product registration under Sections 6 and 13 of Art. 6228a-5. Currently, TRS Rule Section 53.19 governs the suspension or revocation of company certification or product registration.

Are TRS' current rules governing suspension and revocation in TRS Rule Section 53.19 sufficient and appropriate?

TRD-201606104

Brian Guthrie

Executive Director

Teacher Retirement System of Texas

Filed: November 30, 2016



Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's

Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15 of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet of the retirement system as of August 31 of the preceding fiscal year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS has published the current reports in the on-line version of this issue as required by §825.108(a) and (b) of the Government Code.

Statement of Fiduciary Net Position

as of AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

Exhibit I

	Fiduciary Fund Types	
	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
ASSETS		
Cash		
Cash in State Treasury	\$ 313,880,686	\$ 496,179,205
Cash in Bank (Note 3B)	142,480,269	
Cash on Hand (Note 3B)	1,974,350	19,801
TOTAL CASH	\$ 458,335,305	\$ 496,199,006
Receivables		
Sale of Investments	\$ 943,213,488	\$
Interest and Dividends	218,746,465	404,228
Member and Retiree	1,068,010	30,811,237
Service Credit Purchases	10,311,624	
Participating Employers	272,842,305	26,667,825
Due from State's General Fund	58,916,173	18,766,094
Due from Employees Retirement System of Texas	1,812,677	
Prepaid Expenses and Deposits	69,608	
Other	306,790	204,468,000
TOTAL RECEIVABLES	\$ 1,507,287,140	\$ 281,117,384
Investments (Note 1F and 3)		
Short-Term Investment Fund	\$ 3,227,490,758	\$
Short-Term Foreign Currency Contracts	(14,948)	
Equity Investments	47,785,677,843	
Fixed Income Investments	20,483,627,614	
Alternative Investments	52,120,428,956	
Derivative Investments	41,503,506	
Pooled Investments	9,103,753,601	
TOTAL INVESTMENTS	\$ 132,762,467,330	\$ 0
Invested Securities Lending Collateral	\$ 18,128,072,568	\$ 0
Capital Assets (Note 2)		
Intangible Assets	\$ 10,727,011	\$
Less Accumulated Amortization	(9,920,670)	
Depreciable Assets	56,513,102	
Less Accumulated Depreciation	(33,114,122)	
Non-Depreciable Assets	45,279,732	
TOTAL CAPITAL ASSETS	\$ 69,485,053	\$ 0
TOTAL ASSETS	\$ 152,925,647,396	\$ 777,316,390

Fiduciary Fund Types

Total Pension and Other Employee Benefit Trust Funds		Agency Funds Child Support Employee Deductions	
2016	2015		
\$ 810,059,891	\$ 1,827,232,570	\$	6,337
142,480,269	398,825,412		
1,994,151	3,087,674		
\$ 954,534,311	\$ 2,229,145,656	\$	6,337
\$ 943,213,488	\$ 1,364,937,789	\$	
219,150,693	215,209,214		
31,879,247	48,220,592		
10,311,624	26,393,340		
299,510,130	215,680,847		
77,682,267	161,771,779		
1,812,677	1,711,632		
69,608	66,819		
204,774,790	182,522,374		
\$ 1,788,404,524	\$ 2,216,514,386	\$	0
\$ 3,227,490,758	\$ 3,373,532,192	\$	
(14,948)	86,385		
47,785,677,843	47,167,558,671		
20,483,627,614	21,563,259,009		
52,120,428,956	48,186,507,871		
41,503,506	65,340,265		
9,103,753,601	6,686,145,072		
\$ 132,762,467,330	\$ 127,042,429,465	\$	0
\$ 18,128,072,568	\$ 19,372,421,460	\$	0
\$ 10,727,011	\$ 10,569,751	\$	
(9,920,670)	(9,499,614)		
56,513,102	55,987,505		
(33,114,122)	(30,368,999)		
45,279,732	27,036,363		
\$ 69,485,053	\$ 53,725,006	\$	0
\$ 153,702,963,786	\$ 150,914,235,973	\$	6,337

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Statement of Fiduciary Net Position

as of AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

		Fiduciary Fund Types	
		Pension and Other Employee Benefit Trust Funds	
		Pension Trust Fund	TRS-Care
Exhibit 1 (Concluded)	LIABILITIES (Note 1F)		
	Accounts Payable	\$ 7,746,706	\$ 331,145
	Payroll Payable	5,054,596	257,669
	External Manager Fees Payable	17,619,651	
	Benefits Payable	138,541,977	
	Health Care Claims Payable		133,180,593
	Fees Payable		1,734,759
	Investments Purchased Payable	476,565,551	
	Securities Sold Short	139,061,759	
	Collateral Obligations	18,116,023,297	
	Due to Employees Retirement System of Texas	7,706,962	
	Employee Compensable Absences Payable (Note 4)	8,280,209	326,071
	Unrealized Lease Incentives	344,916	
	Other Liabilities	64,299	
Funds Held for Others			
TOTAL LIABILITIES	\$ 18,917,009,923	\$ 135,830,237	
NET POSITION			
Net Investment in Capital Assets	\$ 69,485,053	\$	
Restricted for Pensions/Other Post Employment Benefits	133,939,152,420	641,486,153	
NET POSITION RESTRICTED FOR PENSIONS AND OTHER POST EMPLOYMENT BENEFITS	\$ 134,008,637,473	\$ 641,486,153	

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Fiduciary Fund Types		
Total Pension and Other Employee Benefit Trust Funds		Agency Funds Child Support Employee Deductions
2016	2015	
\$ 8,077,851	\$ 7,273,168	\$
5,312,265	5,254,057	
17,619,651	23,235,445	
138,541,977	760,271,035	
133,180,593	158,604,093	
1,734,759	0	
476,565,551	865,498,021	
139,061,759	187,607,731	
18,116,023,297	19,379,483,580	
7,706,962	7,065,544	
8,606,280	8,044,352	
344,916	273,495	
64,299	0	
		6,337
\$ 19,052,840,160	\$ 21,402,610,521	\$ 6,337
\$ 69,485,053	\$ 53,725,006	\$
134,580,638,573	129,457,900,446	
\$ 134,650,123,626	\$ 129,511,625,452	\$ 0

Statement of Changes in Fiduciary Net Position

FOR THE FISCAL YEAR ENDED AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

Exhibit II

	Fiduciary Fund Types	
	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
ADDITIONS		
Contributions		
Member	\$ 2,943,669,320	\$ 208,581,990
State's General Fund - Non-Employer Contributing Entity	1,675,631,248	297,070,920
Employer		
State's General Fund	104,714,221	
Participating Employer Contributions	992,916,840	200,139,910
Surcharges		
Employment after Retirement-Employee	9,184,795	
Employment after Retirement-Employer	9,769,093	12,796,441
Non-OASDI Participating Employers	366,804,399	
Purchase of Service Credit-Refundable	18,818,999	
Purchase of Service Credit - Non-Refundable	18,570,535	
State Contributions for 415 Excess Benefit Arrangement	3,482,186	
Employees Retirement System of Texas:		
For Service Contributions	20,376,732	
For 415 Excess Benefit Arrangement	91,960	
Health Care Premiums		374,736,269
Federal Revenue (Note 6)		124,739,649
Rebate and Discount Income		218,995,436
Supplemental Appropriation from State		
TOTAL CONTRIBUTIONS AND PREMIUMS	\$ 6,164,030,328	\$ 1,437,060,615
Investment Income		
Investing Activities Income (Loss)*	\$ 9,338,243,204	5,421,446
Less: Investing Activity Expenses (Schedule 3)	(237,509,682)	
Net Income (Loss) from Investing Activities	\$ 9,100,733,522	\$ 5,421,446
From Securities Lending Activities:		
Securities Lending Income	\$ 165,668,053	
Securities Lending Expenses:		
Borrower Rebates	(62,836,239)	
Management Fees	(10,284,776)	
Net Income from Securities Lending Activities	\$ 92,547,038	\$ 0
TOTAL NET INVESTMENT INCOME	\$ 9,193,280,560	\$ 5,421,446
Other Additions		
Miscellaneous Revenue	\$ 1,993,029	\$ 89,388
TOTAL ADDITIONS	\$ 15,359,303,917	\$ 1,442,571,449

*Investing Activities Income (Loss) includes Interest from Investing Activities, Investment Dividends and Net Increase (Decrease) in Fair Value of Investments. This is a presentation change from the prior year.

Fiduciary Fund Types	
Total Pension and Other Employee Benefit Trust Funds	
2016	2015
\$ 3,152,251,310	\$ 2,774,220,584
1,972,702,168	1,872,581,346
104,714,221	93,079,033
1,193,056,750	1,115,734,063
9,184,795	7,481,714
22,565,534	19,798,438
366,804,399	344,855,875
18,818,999	23,508,475
18,570,535	26,580,631
3,482,186	2,151,359
20,376,732	18,989,008
91,960	65,227
374,736,269	369,066,459
124,739,649	126,806,652
218,995,436	231,569,472
0	768,100,754
<u>\$ 7,601,090,943</u>	<u>\$ 7,794,589,090</u>
\$ 9,343,664,650	\$ (233,932,606)
(237,509,682)	(259,203,853)
<u>\$ 9,106,154,968</u>	<u>\$ (493,136,459)</u>
\$ 165,668,053	\$ 120,970,871
(62,836,239)	(30,143,454)
(10,284,776)	(8,954,378)
<u>\$ 92,547,038</u>	<u>\$ 81,873,039</u>
<u>\$ 9,198,702,006</u>	<u>\$ (411,263,420)</u>
\$ 2,082,417	\$ 3,733,133
<u>\$ 16,801,875,366</u>	<u>\$ 7,387,058,803</u>

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Statement of Changes in Fiduciary Net Position

FOR THE FISCAL YEAR ENDED AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

Exhibit II (Concluded)

	Fiduciary Fund Types	
	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
DEDUCTIONS		
Benefits	\$ 9,379,122,730	\$
Refunds of Contributions - Active	366,039,111	
Refunds of Contributions - Death	7,379,576	
415 Excess Benefit Arrangement	3,286,875	
Benefits Paid to Employees Retirement System of Texas:		
For Service Contributions	88,854,383	
For 415 Excess Benefit Arrangement	287,271	
Health Care Claims and Insurance Premium Payments		1,720,941,708
Health Care Claims Processing		45,485,440
Patient-Centered Outcomes Research Institute Fee		347,059
Transitional Reinsurance Fee		2,528,652
Administrative Expenses, Excluding Investing Activity Expenses:		
Salaries and Wages	21,651,008	2,452,184
Payroll Related Costs	5,287,735	593,225
Professional Fees and Services	3,230,329	1,484,281
Travel	94,828	16,129
Materials and Supplies	3,298,412	33,160
Communications and Utilities	392,019	2,922
Repairs and Maintenance	5,035,767	
Rentals and Leases	754,018	55,335
Printing and Reproduction	81,888	42,841
Depreciation Expense	2,435,241	
Amortization Expense	421,057	
Gain/Loss on Capital Asset	832	
Other Expense	1,719,576	21,600
TOTAL DEDUCTIONS	\$ 9,889,372,656	\$ 1,774,004,536
Net Increase (Decrease) in Net Position	\$ 5,469,931,261	\$ (331,433,087)
NET POSITION: RESTRICTED FOR PENSIONS/OTHER POST EMPLOYMENT BENEFITS - BEGINNING OF YEAR	\$ 128,538,706,212	\$ 972,919,240
NET POSITION: RESTRICTED FOR PENSIONS/OTHER POST EMPLOYMENT BENEFITS - END OF YEAR	\$ 134,008,637,473	\$ 641,486,153

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Fiduciary Fund Types	
Total Pension and Other Employee Benefit Trust Funds	
2016	2015
\$ 9,379,122,730	\$ 8,935,111,459
366,039,111	385,866,706
7,379,576	5,474,475
3,286,875	1,929,315
88,854,383	84,059,353
287,271	287,271
1,720,941,708	1,613,181,278
45,485,440	42,872,769
347,059	337,148
2,528,652	4,170,490
24,103,192	23,378,338
5,880,960	7,348,740
4,714,610	1,101,193
110,957	101,112
3,331,572	2,297,812
394,941	134,576
5,035,767	1,988,978
809,353	241,683
124,729	82,103
2,435,241	1,641,856
421,057	530,953
832	0
1,741,176	479,315
<u>\$ 11,663,377,192</u>	<u>\$ 11,112,616,923</u>
\$ 5,138,498,174	\$ (3,725,558,120)
<u>\$ 129,511,625,452</u>	<u>\$ 133,237,183,572</u>
<u>\$ 134,650,123,626</u>	<u>\$ 129,511,625,452</u>

Statement of Net Position

PROPRIETARY FUNDS

AS OF AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

Exhibit III

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Administrative Program
ASSETS		
Current Assets		
Cash		
Cash In State Treasury	\$ 336,782,123	\$ 277,351
TOTAL CASH	\$ 336,782,123	\$ 277,351
Receivables		
Interest	\$ 288,812	\$ 194
Health Care Premiums	12,919,356	
TOTAL RECEIVABLES	\$ 13,208,168	\$ 194
TOTAL ASSETS	\$ 349,990,291	\$ 277,545
LIABILITIES (Note 1F)		
Current Liabilities		
Accounts Payable	\$ 131,402	\$
Payroll Payable	120,330	5,338
Unearned Premium Revenue		
Fees Payable	7,535,944	
Premiums Payable to HMOs	17,658,919	
Health Care Claims Payable	270,897,392	
Employee Compensable Absences Payable (Note 4)	72,420	4,564
TOTAL CURRENT LIABILITIES	\$ 296,416,407	\$ 9,902
Non-Current Liabilities		
Employee Compensable Absences Payable (Note 4)	\$ 22,990	\$ 89
TOTAL NON-CURRENT LIABILITIES	\$ 22,990	\$ 89
TOTAL LIABILITIES	\$ 296,439,397	\$ 9,991
NET POSITION		
Restricted for Health Care Programs	\$ 53,550,894	\$
Restricted for Administrative Expenses		267,554
TOTAL NET POSITION	\$ 53,550,894	\$ 267,554

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total Enterprise Funds

2016	2015
\$ 337,059,474	\$ 370,512,248
<hr/>	<hr/>
\$ 337,059,474	\$ 370,512,248
<hr/>	<hr/>
\$ 289,006	\$ 138,183
12,919,356	0
<hr/>	<hr/>
\$ 13,208,362	\$ 138,183
<hr/>	<hr/>
\$ 350,267,836	\$ 370,650,431
<hr/>	<hr/>
\$ 131,402	\$ 1,866
125,668	126,674
	714,480
7,535,944	13,508,000
17,658,919	14,669,296
270,897,392	253,374,387
76,984	101,787
<hr/>	<hr/>
\$ 296,426,309	\$ 282,496,490
<hr/>	<hr/>
\$ 23,079	\$ 39,595
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\$ 23,079	\$ 39,595
<hr/>	<hr/>
\$ 296,449,388	\$ 282,536,085
<hr/>	<hr/>
\$ 53,550,894	\$ 87,815,276
267,554	299,070
<hr/>	<hr/>
\$ 53,818,448	\$ 88,114,346
<hr/>	<hr/>

Statement of Revenues, Expenses and Changes in Net Position

PROPRIETARY FUNDS

For the Fiscal Year Ended AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

Exhibit IV

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Administrative Program
OPERATING REVENUES		
Health Care Premiums	\$ 2,073,563,707	\$
Administrative Fees	156,054	
Certification Fees		12,000
Product Registration Fees		3,000
TOTAL OPERATING REVENUES	\$ 2,073,719,761	\$ 15,000
OPERATING EXPENSES		
Health Care Claims	\$ 1,768,287,120	\$
Health Care Claims Processing	111,987,718	
Premium Payments to HMOs	214,529,160	
Patient-Centered Outcomes Research Institute Fees	683,288	
Transitional Reinsurance Fee	13,131,104	
Administrative Expenses:		
Salaries and Wages	1,170,092	41,185
Payroll Related Costs	220,837	7,453
Professional Fees and Services	1,190,957	
Travel	12,915	
Materials and Supplies	3,175	
Communications and Utilities	811	
Repairs and Maintenance		
Rentals and Leases	41,599	
Other Operating Expense	4,406	
TOTAL OPERATING EXPENSES	\$ 2,111,263,182	\$ 48,638
OPERATING INCOME (LOSS)	\$ (37,543,421)	\$ (33,638)
NON-OPERATING REVENUE		
Investment Income	\$ 3,079,039	\$ 2,122
Other Non-operating Revenue	200,000	
TOTAL NON-OPERATING REVENUES	\$ 3,279,039	\$ 2,122
Change in Net Position	\$ (34,264,382)	\$ (31,516)
TOTAL NET POSITION - BEGINNING OF YEAR	\$ 87,815,276	\$ 299,070
TOTAL NET POSITION - END OF YEAR	\$ 53,550,894	\$ 267,554

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total Enterprise Funds

2016		2015	
\$	2,073,563,707	\$	1,943,949,265
	156,054		141,534
	12,000		27,000
	3,000		21,000
\$	2,073,734,761	\$	1,944,138,799
<hr/>			
\$	1,768,287,120	\$	1,565,255,957
	111,987,718		113,032,001
	214,529,160		178,192,468
	683,288		939,522
	13,131,104		21,101,894
	1,211,277		1,233,066
	228,290		220,908
	1,190,957		782,921
	12,915		6,779
	3,175		943
	811		1,056
			250
	41,599		56,668
	4,406		1,271
\$	2,111,311,820	\$	1,880,825,704
\$	(37,577,059)	\$	63,313,095
<hr/>			
\$	3,081,161	\$	1,538,768
	200,000	\$	95,215
\$	3,281,161	\$	1,633,983
<hr/>			
\$	(34,295,898)	\$	64,947,078
\$	88,114,346	\$	23,167,268
<hr/>			
\$	53,818,448	\$	88,114,346
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Statement of Cash Flows

PROPRIETARY FUNDS

For the Fiscal Year Ended AUGUST 31, 2016 (With Comparative Data for August 31, 2015)

Exhibit V

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Administrative Program
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from Health Care Premiums	\$ 2,059,929,871	\$
Receipts from Long-Term Care Administrative Fees	156,054	
Receipts from Certification/Product Registration Fees		15,000
Payments for Administrative Expenses	(2,559,268)	(46,950)
Payments for Health Care Claims	(1,750,764,115)	
Payments for Health Care Claims Processing	(111,987,718)	
Payments for HMO Premiums	(211,539,537)	
Payments for Affordable Care Act Fees	(19,786,448)	
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	\$ (36,551,161)	\$ (31,950)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Proceeds from Other Non-operating Revenue	\$ 200,000	
NET CASH PROVIDED BY NON-CAPITAL FINANCING ACTIVITIES	\$ 200,000	\$ 0
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest Received	\$ 2,928,302	\$ 2,035
NET CASH PROVIDED BY INVESTING ACTIVITIES	\$ 2,928,302	\$ 2,035
Net Increase (Decrease) in Cash	\$ (33,422,859)	\$ (29,915)
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	\$ 370,204,982	\$ 307,266
CASH AND CASH EQUIVALENTS - AUGUST 31	\$ 336,782,123	\$ 277,351
RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	\$ (37,543,421)	\$ (33,638)
Adjustments to Reconcile Operating Income (Loss) to Net Cash Provided (Used) by Operating Activities:		
Changes in Assets & Liabilities:		
(Increase) Decrease in Health Care Premiums Receivable/Unearned Premium Revenue	\$ (13,633,836)	\$
Increase in Premiums Payable to HMOs	2,989,623	
Increase in Health Care Claims Payable	17,523,005	
(Decrease) in Affordable Care Act Fees Payable	(5,972,056)	
Increase (Decrease) in Accounts Payable	129,907	(370)
Increase (Decrease) in Payroll Payable	(176)	(830)
Increase (Decrease) in Employee Compensable Absences Payable	(44,207)	2,888
Total Adjustments	\$ 992,260	\$ 1,688
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	\$ (36,551,161)	\$ (31,950)

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total Enterprise Funds

	2016		2015
\$	2,059,929,871	\$	1,945,240,439
	156,054		141,534
	15,000		48,000
	(2,606,218)		(2,433,998)
	(1,750,764,115)		(1,487,764,675)
	(111,987,718)		(113,032,001)
	(211,539,537)		(176,256,324)
	(19,786,448)		(27,333,416)
	<hr/>		<hr/>
\$	(36,583,111)	\$	138,609,559
	<hr/>		<hr/>
\$	200,000	\$	95,215
	<hr/>		<hr/>
\$	200,000	\$	95,215
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\$	2,930,337	\$	1,475,767
	<hr/>		<hr/>
\$	2,930,337	\$	1,475,767
	<hr/>		<hr/>
\$	(33,452,774)	\$	140,180,541
	<hr/>		<hr/>
\$	370,512,248	\$	230,331,707
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\$	337,059,474	\$	370,512,248
	<hr/>		<hr/>
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\$	(37,577,059)	\$	63,313,095
	<hr/>		<hr/>
\$	(13,633,836)	\$	1,291,174
	2,989,623		1,936,144
	17,523,005		77,491,282
	(5,972,056)		(5,292,000)
	129,537		(126,471)
	(1,006)		13,055
	(41,319)		(16,720)
	<hr/>		<hr/>
\$	993,948	\$	75,296,464
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\$	(36,583,111)	\$	138,609,559
	<hr/>		<hr/>

Statement of Changes in Assets and Liabilities

AGENCY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2016

Exhibit A

	Balances September 1, 2015	Additions	Deductions	Balances August 31, 2016
Child Support Employee Deductions				
Total Assets:				
Cash in State Treasury	\$6,599	\$79,081	\$79,343	\$6,337
TOTAL ASSETS	\$6,599	\$79,081	\$79,343	\$6,337
Total Liabilities:				
Funds Held for Others	\$6,599	\$79,081	\$79,343	\$6,337
TOTAL LIABILITIES	\$6,599	\$79,081	\$79,343	\$6,337

Investment Performance Annualized Time-Weighted Total Returns

FOR THE FISCAL YEAR ENDED AUGUST 31, 2016

Exhibit B

	<u>One Year</u>	<u>Three Years</u>	<u>Five Years</u>	<u>Ten Years</u>	
Total Fund (A)	<u>7.38</u>	<u>7.78</u>	<u>7.98</u>	<u>5.98</u>	%
Total Global Equity:	<u>5.20</u>	<u>6.99</u>	<u>8.04</u>	<u>4.99</u>	%
USA	8.65	9.70	13.03	(B)	
Non-US Developed	-0.77	3.74	5.48	(B)	
Emerging Markets	12.77	1.92	0.57	(B)	
Directional Hedge Funds	-3.69	2.27	(B)	(B)	
Public Equity	<u>5.57</u>	<u>5.77</u>	<u>7.14</u>	<u>4.08</u>	
Private Equity	<u>3.43</u>	<u>12.73</u>	<u>12.08</u>	<u>11.24</u>	
Total Stable Value:	<u>14.01</u>	<u>11.00</u>	<u>7.68</u>	<u>7.40</u>	%
US Treasuries	19.23	13.14	8.79	(B)	
Absolute Return	10.30	16.21	13.67	(B)	
Stable Value Hedge Funds	3.37	4.94	3.58	2.99	
Cash (C)	2.54	2.64	2.33	2.22	
Total TRS Real Return:	<u>7.09</u>	<u>8.05</u>	<u>7.52</u>	<u>6.77</u>	%
TRS Global Inflation Linked Bonds	5.51	2.84	1.89	(B)	
TRS Real Assets	10.30	12.59	12.36	(B)	
TRS Energy and Natural Resources	-12.39	(B)	(B)	(B)	
TRS Commodities	47.96	-16.53	-17.52	(B)	

Note A: All returns were calculated by the Custodian and are net of fees.

Note B: No performance data is available because these asset classes were not established for the entire period reported.

Note C: Cash return reflects TRS-managed cash accounts.

Note D: The rate of return for other TRS funds is .82%.

November 7, 2016

Board of Trustees
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2016

We certify that the information included herein and contained in the 2016 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2016. This report was prepared at the request of the Board and is intended for use by the TRS staff and those designated or approved by the Board. This report may be provided to parties other than TRS staff only in its entirety and only with the permission of the Board.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. White and Mr. Newton are Enrolled Actuaries, members of the American Academy of Actuaries and are qualified to give a Statement of Opinion. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the statutory contribution rates through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides various summaries of the data. This report may not be appropriate for other purposes. The information required by the System in connection with Governmental Accounting Standards Board Statement No. 67 (GASB No. 67) will be provided under separate cover.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

The employee, employer, and State contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll and provide assets to cover benefits when due. The actuarially determined employer contribution rates determined in this actuarial valuation are intended

to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 30 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2016, the System's under-funded status has increased to \$35.5 billion from \$33.0 billion as of August 31, 2015. The System's UAAL was expected to increase from the prior year based on the deferral of investment losses from prior valuations and the scheduled future increased contributions not being effective for this fiscal year. For example, if the fiscal year 2017 contribution rates would have been effective during fiscal year 2016, the UAAL increase in this valuation would have been \$0.2 billion less. In addition, the UAAL increased due to a loss on the actuarial value of assets and a loss due to demographic experience.

This valuation shows a normal cost equal to 9.93% of pay plus an addition to the normal cost of 0.12% of pay to cover the annual cost of administrative expenses. The State began contributing the current contribution rate of 6.80% in fiscal year 2014 and it is assumed the rate will remain at that level. In addition, covered employers whose employees are not participating in Social Security began contributing 1.50% of salary (capped at the minimum salary schedule) in fiscal year 2015. Combined these contributions were approximately 7.70% of total payroll. The member contribution rate increased beginning in fiscal year 2015 to 6.7% of pay and will continue to increase to 7.70% of pay in fiscal year 2017. Thereafter, as a result, for FY2017 and thereafter, the System is expected to receive a total contribution rate of 15.40% of pay.

Hence, beginning in FY2017, there is expected to be 5.35% of pay available to amortize the UAAL (15.40% less normal cost of 9.93% less administrative expenses of 0.12%). If payroll grows as expected, the contributions provided by this portion of the contribution rate are sufficient to amortize the current unfunded actuarial accrued liabilities of the System over a period of 33.6 years based on the smoothed asset value as the valuation date. Therefore, the financing objectives of the System are being met. However, the 33.6 amortization period is longer than the target of less than 30 years.

The actuarial valuation report as of August 31, 2016 reveals that the funded ratio (the ratio of actuarial assets to actuarial accrued liability) is 79.7%. This is the first time the funded ratio has been less than 80% since 1986. The funded status is one of many metrics used to show trends and develop future expectations about the health of the System. The funded status measure itself is not appropriate for assessing the sufficiency of plan assets to cover the estimated cost of settling the plan's benefit obligations or assessing the need for or the amount of future contributions since it does not reflect normal cost contributions, the timing of amortization payments, or future experience other than expected.

The System earned less than the assumed rate of return during fiscal year 2016 (7.3% on market value compared to an assumed 8.0%). Because of this shortfall and the continued recognition of the

unfavorable investment performance from FY2015, the System is now deferring net investment losses of \$4.8 billion and the funded status using the market value of assets is 76.9%. If there are no significant investment gains or other actuarial gains over the next several years, the funded status of the System would be expected to decrease towards this number. This \$4.8 billion in net deferred losses compares to the last valuation when the System was deferring \$4.9 billion in net deferred losses and had a 77.2% funded ratio based on the market value of assets.

The System's UAAL increased by \$2.0 billion more than expected during the year. The continued recognition of the deferred investment losses from fiscal year 2015 and the current year's shortfall resulted in a loss on the actuarial value of assets of \$1.5 billion. Therefore, the liabilities actually increased \$0.5 billion more than expected. This \$0.5 billion represents a loss of 0.26% of total liabilities and was due to the liabilities growing faster than expected due to a combination of salary increases being slightly larger than expected and fewer than expected retiree deaths during the year.

Based on the actuarial (smoothed) value of assets, the number of years needed to amortize the UAAL will decrease annually if all assumptions are met. Please note, this annual decrease in the funding period will only occur if the currently scheduled contribution levels remain in place over the funding period. Any decrease in the contribution rates will result in higher funding periods. It should be noted that with the \$4.8 billion in deferred investment losses still to be recognized in the actuarial value of assets, future losses in the actuarial value of assets will result in an increase in the funding period in future valuations until the losses are fully recognized.

In addition, due to the current funding policy which utilizes level percentage of payroll amortization, the amortization payments will not be sufficient to cover all of the interest charges on the UAAL until the funding period reaches approximately 20 years. Table 11a provides a 10 year projection of various valuation results, including the UAAL, and that projection shows the UAAL is expected to increase to \$39.1 billion in 2026. Extending the projection further would show the UAAL starts to decrease in 2028 and is fully amortized 20 years after that.

Please note these expectations are based on the current benefit provisions, assumptions, and contribution rates. Any additional benefit enhancements (ad hoc COLAs) granted without additional funding would increase the ultimate UAAL and extend the period before the funding status begins to improve. Thus, we continue to advise against any future benefit enhancements without additional sources of funding.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. There have been no changes to the benefit and contribution provisions of the System since the prior valuation.

Gabriel Roeder Smith & Company

Disclosure of Pension Information

Beginning with fiscal year 2014, the System began reporting financial information in accordance with Governmental Accounting Standards Board (GASB) Statement No. 67. The disclosure information for GASB No. 67 is provided in a separate report and is not contained herein.

This report should not be relied on for any purpose other than the purpose described above. Determinations of the financial results associated with the benefits described in this report in a manner other than the intended purpose may produce significantly different results.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are primarily based on a study of actual experience for the four year period ending August 31, 2014 and adopted on September 24, 2015. There have been no changes in the actuarial assumptions or methods since the prior valuation.

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. Section D provides illustrative results based on future investment experience deviating from the assumptions. Based on the scope of this engagement, we have not performed analysis on the potential range of future measurements based on other factors. The actuarial calculations are intended to provide information for rational decision making.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations.

Data

Member data for retired, active and inactive members was supplied as of August 31, 2016 by the TRS staff. The staff also supplied asset information as of August 31, 2016. We did not audit this data, but we did apply a number of tests to the data and concluded that it was reasonable and consistent with the prior year's data. GRS is not responsible for the accuracy or completeness of the information provided to us by TRS.

Gabriel Roeder Smith & Company

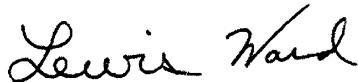
The following schedules in the Actuarial Section of the TRS CAFR were prepared by GRS:

- Actuarial Present Value of Future Benefits
- Schedule of Retirees and Beneficiaries Added to and Removed from Rolls
- Schedule of Funding Progress
- Post-Retirement Mortality
- Rates of Retirement
- Probability of Decrement due to Withdrawal
- Active Mortality

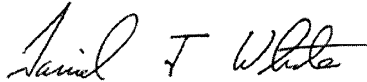
All other schedules shown in the actuarial section were prepared by TRS staff based upon our work. For further information please see the full actuarial valuation report.

This document and the PowerPoint presentation of the actuarial valuation results presented to the TRS Board on December 1, 2016 comprise the full actuarial report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company



Lewis Ward
Consultant



Daniel J. White, FSA, EA, MAAA
Senior Consultant



Joseph P. Newton, FSA, EA, MAAA
Senior Consultant

November 4, 2016

Board of Trustees
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: GASB 43 Actuarial Valuation as of August 31, 2016 for TRS-Care

Submitted in this report are the results of an Actuarial Valuation of the liabilities associated with the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post-retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS). The date of the valuation was August 31, 2016. This report was prepared at the request of TRS.

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results. Actuarial valuations of the post-retirement benefits are performed annually.

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board based on the 2015 Experience Study of TRS. Assumptions applicable only to TRS-Care have changed since the prior report, and they are disclosed in the assumptions section of this report.

The following CAFR schedules were prepared by GRS and can be found in Section G of this report:

1. Actuarial Present Value of Benefits
2. Schedule of Funding Progress
3. Schedule of Contributions from Employer(s) and Other Contributing Entities
4. Key actuarial assumptions and methods
5. Solvency Test
6. Analysis of Financial Experience
7. Schedule of Retirants and Beneficiaries Added and Removed from Rolls

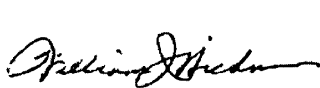
GRS is not responsible for any trend data schedules not found in this report.

The current objective is to fund the Trust in order to maintain benefits through individual biennial periods. There is no arrangement into which the participating employers would make contributions to advance-fund the obligation. However, a Trust does exist into which participating employers are making contributions based on the current funding policy.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements; and changes in plan provisions or applicable law.

To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods. Joe Newton and Mehdi Riazi are members of the American Academy of Actuaries and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

Respectfully submitted,



William J. Hickman
Senior Consultant



Joseph P. Newton, FSA,
MAAA
Senior Consultant



Mehdi Riazi, FSA, MAAA
Consultant

Gabriel Roeder Smith & Company

Actuarial Information Pension Trust Fund

Actuarial Present Value of Future Benefits		
From Actuarial Valuation as of August 31, 2016 (With Comparative Data for August 31, 2015)		
	<u>2016</u>	<u>2015</u>
Present Value of Benefits Presently Being Paid		
Service Retirement Benefits	\$84,731,139,810	\$80,335,545,136
Disability Retirement Benefits	1,141,195,638	1,113,095,219
Death Benefits	867,637,073	851,515,997
Present Survivor Benefits	256,188,158	243,282,654
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	\$86,996,160,679	\$82,543,439,006
Present Value of Benefits Payable in the Future to Present Active Members		
Service Retirement Benefits	\$102,594,460,159	\$98,467,131,191
Disability Retirement Benefits	1,305,439,740	1,203,603,679
Termination Benefits	8,518,349,795	7,863,244,733
Death and Survivor Benefits	1,846,700,055	1,758,578,113
TOTAL ACTIVE MEMBER LIABILITIES	\$114,264,949,749	\$109,292,557,716
Present Value of Benefits Payable in the Future to Present Inactive Members		
Inactive Vested Participants	\$4,333,837,796	\$4,084,868,043
Refunds of Contributions to Inactive Non-vested Members	\$413,997,543	\$400,439,304
Future Survivor Benefits Payable On Behalf of Present Annuitants	1,401,763,178	1,341,025,218
TOTAL INACTIVE LIABILITIES	\$6,149,598,517	\$5,826,332,565
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	\$207,410,708,945	\$197,662,329,287

Summary of Cost Items		
	<u>2016</u>	<u>2015</u>
Actuarial Present Value of Future Benefits	\$207,410,708,945	\$197,662,329,287
Present Value of Future Normal Costs	(33,171,982,143)	(31,209,404,783)
Actuarial Accrued Liability	\$174,238,726,802	\$166,452,924,504
Actuarial Value of Assets	(138,786,120,728)	(133,485,187,642)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	\$35,452,606,074	\$32,967,736,862

Actuarial Information TRS-Care

Actuarial Present Value of Future Benefits		
From Actuarial Valuation as of August 31, 2016 (With Comparative Data for August 31, 2015)		
Based on a 4.75% discount rate		
	<u>2016</u>	<u>2015</u>
Present Value of Benefits Being Paid		
Future Medical Claims	\$ 12,182,178,229	\$ 11,456,408,122
Future Rx Claims	17,064,181,212	14,992,390,269
Retiree Premiums Collected	(5,986,260,264)	(5,699,607,494)
NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES	\$ 23,260,099,177	\$ 20,749,190,897
Present Value of Benefits Payable in the Future to Present Active Members		
Future Medical Claims	\$ 31,279,247,825	\$ 27,343,585,400
Future Rx Claims	36,380,473,859	30,521,332,625
Retiree Premiums Collected	(12,392,538,894)	(11,174,537,629)
NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES	\$ 55,267,182,790	\$ 46,690,380,396
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	\$ 78,527,281,967	\$ 67,439,571,293

Summary of Cost Items		
	<u>2016</u>	<u>2015</u>
Actuarial Present Value of Future Benefits	\$ 78,527,281,967	\$ 67,439,571,293
Present Value of Future Normal Costs	(28,328,831,535)	(23,236,242,417)
Actuarial Accrued Liability	\$ 50,198,450,432	\$ 44,203,328,876
Actuarial Value of Assets	(641,486,153)	(972,919,240)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	\$ 49,556,964,279	\$ 43,230,409,636

These reports include the actuarial valuation of the Texas Public School Retired Employees Group Benefits Program (TRS-Care) dated August 31, 2016. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and chapter 2266 of the Government Code, including Subchapter C of that chapter relating to Other Postemployment Benefits.

TRD-201606084
 Brian Guthrie
 Executive Director
 Teacher Retirement System of Texas
 Filed: November 29, 2016

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Texas Department of Transportation

Public Notice

Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* magazine, both in print and in digital or online assets. The Texas Department of Transportation is authorized by Texas Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §§23.15 - 23.18 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, both in print and in digital or online, list acceptable and unacceptable

subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.17, the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's contact list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas, 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2018 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2018. The *Texas State Travel Guide* is designed to encourage readers to explore and travel to and within the State of Texas. The guide lists cities and towns, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide may also include sections listing Texas lakes, state parks, state and national forests, along with hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

Media kits are available on the texashighways.com website. All *Texas State Travel Guide* insertion orders, including premium space will be accepted on a first-come first-served basis. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order. In most cases, larger ads will be positioned ahead of smaller ads.

The department is now accepting advertising for the 2018 edition of the *Texas Official Travel Map* scheduled to be printed and available in January 2018. The State of Texas distributes this map to travelers in Texas and to those who request information while planning to travel in Texas.

The department continues to accept advertising for all quarterly issues of the *Texas Highways Events Calendar*, beginning with the Summer 2017 calendar. The *Texas Highways Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Highways Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The Summer 2017 calendar lists events scheduled for June 2017, July 2017, and August 2017. The Fall 2017 calendar lists events scheduled for September 2017, October 2017, and November 2017. The Winter 2017-2018 calendar lists events scheduled for December 2017, January 2018, and February 2018. The Spring 2018 calendar lists events scheduled for March 2018, April 2018, and May 2018.

The advertising due dates for the *Texas Highways Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Highways Events Calendar* is the second Wednesday of the fourth month preceding the issue date. The deadline for accepting materials for the *Texas Highways Events Calendar* is two weeks after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The department is now accepting advertising for all monthly 2017 issues of *Texas Highways* magazine. *Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas-based, and that are determined by the department to be of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Highways Events Calendar*, *Texas Highways* magazine, the *Texas Official Travel Map* and related digital assets are included in this notice. Digital assets may include TexasHighways.com and *Texas Highways* Extra eNewsletter.

TEXAS STATE TRAVEL GUIDE

Space Closing: October 5, 2017

Materials Due: October 12, 2017

First Distribution: January 2018

Advertising Rates

ROP:	Gross
Full Page	\$24,850
Two Thirds (2/3) Page	\$17,752
Half (1/2) Page	\$14,928
One Third (1/3) Page	\$ 8,952
One Sixth (1/6) Page	\$ 5,645
Premium Positions:	
Cover 2 (Inside Front)	\$28,578
Cover 3 (Inside Back)	\$28,081
Cover 4 (Back)	\$29,820
Spread (Run of Publication)	\$47,215
Inside Front Cover Spread	\$50,757
Inside Back Cover Spread	\$50,284

Note: All rates are 4-color (no black and white). Note: Special placement requests will be accommodated if possible and will result in a 10% surcharge. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request.

Plans: Early Reservation Discount: Organizations reserving their space by Wednesday, August 2, 2017 will receive a 5% discount off the net space price.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar

Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar

Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Contracted Umbrella Plan discount applies to TexasHighways.com, Texas Highways Extra eNewsletter, and the Official Texas State Travel Map. See advertising representative for details.

Payment: Payment with order or net 30 from invoice date. All orders must be paid in full by October 12, 2017, unless tear sheet or proof of printing is required.

Texas Highways Events Calendar

Advertising Rates/Due Dates

Year 2017/2018

Run of Publication	1X	2X	4X
	Gross	Gross	Gross
FULL PAGE	\$ 2,223	\$ 2,154	\$ 2,084
HALF PAGE	\$ 1,528	\$ 1,493	\$ 1,424
THIRD PAGE	\$ 1,111	\$ 1,076	\$ 1,007

COVERS (4-Color)	1X	2X	4X
	Gross	Gross	Gross
COVER 2	\$ 3,473	\$ 3,226	\$ 2,977
COVER 3	\$ 2,977	\$ 2,729	\$ 2,481
COVER 4	\$ 4,167	\$ 3,969	\$ 3,771

Note: Special placement requests will be accommodated if possible and will result in a 10% surcharge.

Payment with order or net 30 from invoice date. All orders must be paid in full by 30 days after publication release date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

<u>Issue Date</u>	<u>Space Closing</u>	<u>Materials Due</u>	<u>Release Date</u>
Summer 2017 (J,J,A)	Feb 10, 2017	Feb 24, 2017	May 1, 2017
Fall 2017 (S,O,N)	May 11, 2017	May 25, 2017	August 1, 2017
Winter 2017-18 (D,J,F)	Aug 10, 2017	Aug 24, 2017	November 1, 2017
Spring 2018 (M,A,M)	Nov 9, 2017	Nov 23, 2017	February 1, 2018

TEXAS HIGHWAYS MAGAZINE

Texas Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page ROP	\$7,476	\$7,102	\$6,878	\$6,654	\$6,429	\$6,206
2/3 Page	\$6,174	\$5,865	\$5,681	\$5,495	\$5,310	\$5,124
1/2 Page	\$4,853	\$4,615	\$4,469	\$4,323	\$4,177	\$4,032
1/3 Page	\$3,492	\$3,318	\$3,213	\$3,108	\$3,003	\$2,899
1/6 Page	\$1,922	\$1,826	\$1,768	\$1,710	\$1,653	\$1,595
Cover 2	\$8,447	\$8,025	\$7,771	\$7,518	\$7,264	\$7,011
Cover 3	\$8,148	\$7,741	\$7,496	\$7,252	\$7,007	\$6,763
Cover 4	\$8,597	\$8,167	\$7,909	\$7,651	\$7,393	\$7,136
ROP Spread	\$14,204	\$13,494	\$13,068	\$12,642	\$12,215	\$11,789
IFC Spread	\$15,127	\$14,371	\$13,917	\$13,460	\$13,009	\$12,555
IBC Spread	\$14,843	\$14,101	\$13,656	\$13,201	\$12,765	\$12,320

Special placement requests will be accommodated if possible and will result in a 10% surcharge.

Co-op advertisements do not qualify for special placement.

Payment: Payment with order or net 30 from invoice date.

Space Deadline: 25th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

Cover Ad Creative: Back cover and inside cover ad design creative must be approved by the Texas Highways creative director. Coop ads and ads with excessive photography, fonts, and copy will not be accepted.

TEXAS HIGHWAYS MAGAZINE

National Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page ROP	\$12,460	\$11,837	\$11,463	\$11,090	\$10,715	\$10,343
2/3 Page	\$10,290	\$9,776	\$9,469	\$9,158	\$8,894	\$8,540
1/2 Page	\$8,096	\$7,691	\$7,448	\$7,061	\$6,962	\$6,720
1/3 Page	\$5,820	\$5,530	\$5,355	\$5,180	\$5,005	\$4,831
1/6 Page	\$3,202	\$3,043	\$2,947	\$2,851	\$2,754	\$2,659
Cover 2	\$14,080	\$13,376	\$12,954	\$12,531	\$12,109	\$11,686
Cover 3	\$13,581	\$12,902	\$12,495	\$12,087	\$11,680	\$11,272
Cover 4	\$14,329	\$13,613	\$13,183	\$12,753	\$12,323	\$11,893
ROP Spread	\$23,674	\$22,490	\$21,780	\$21,070	\$20,360	\$19,649
IFC Spread	\$25,213	\$23,952	\$23,196	\$22,440	\$21,683	\$20,927
IBC Spread	\$25,450	\$24,178	\$23,414	\$22,651	\$21,887	\$21,124

Special placement requests will be accommodated if possible and will result in a 10% surcharge.

Co-op advertisements do not qualify for special placement.

Payment: Payment with order or net 30 from invoice date.

Space Deadline: 25th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

Cover Ad Creative: Back cover and inside cover ad design creative must be approved by the Texas Highways creative director. Coop ads and ads with excessive photography, fonts, and copy will not be accepted.

TEXAS OFFICIAL TRAVEL MAP

Advertising Rates

Space Closing: October 4, 2017
Materials Due: October 11, 2017
First Distribution: January 2018

ROP:	Gross
Full Panel	\$52,395
Half (1/2) Panel	\$29,584

Note: All rates are 4-color (no black and white).
Payment: Payment with order or net 30 from invoice date. All orders must be paid in full by October 11, 2017.
Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.
Ad Creative: Back cover and inside cover ad design creative must be approved by the Texas Highways creative director.

TexasHighways.com

Online Advertising Rates

Current web statistics are available from advertising representatives.

Based on Available Inventory:	Gross
Medium Rectangle (300 x 250)	\$495
Half Page (300 x 600)	\$695

Note: Based on available inventory
Banners are sold in 25,000 impression increments which are scheduled to be delivered in a 30-day period. In the event that the impressions are not delivered in 30 days, banners will run until 25,000 impressions are delivered. Limit of 6 banners in each position (18 banners total) may be purchased for each product/service in a 12-month period.

Payment: Payment with order or net 30 from invoice date.

Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.

Texas Highways Extra
(Twice monthly eNewsletter)

Advertising Rates

Approximate opt-in recipients per issue: 100,000

Based on Available Inventory:	Gross
Exclusive Banner (468 x 60)	\$1,250
Text Advertisements (limited to 3 per issue)	\$250

Note: Based on available inventory

Payment: Payment with order or net 30 from invoice date.

Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.

TRD-201606089
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 29, 2016



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.

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)

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is \$438 annually for first-class mail delivery and \$297 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printcdsc



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