TEXAS REGISTER

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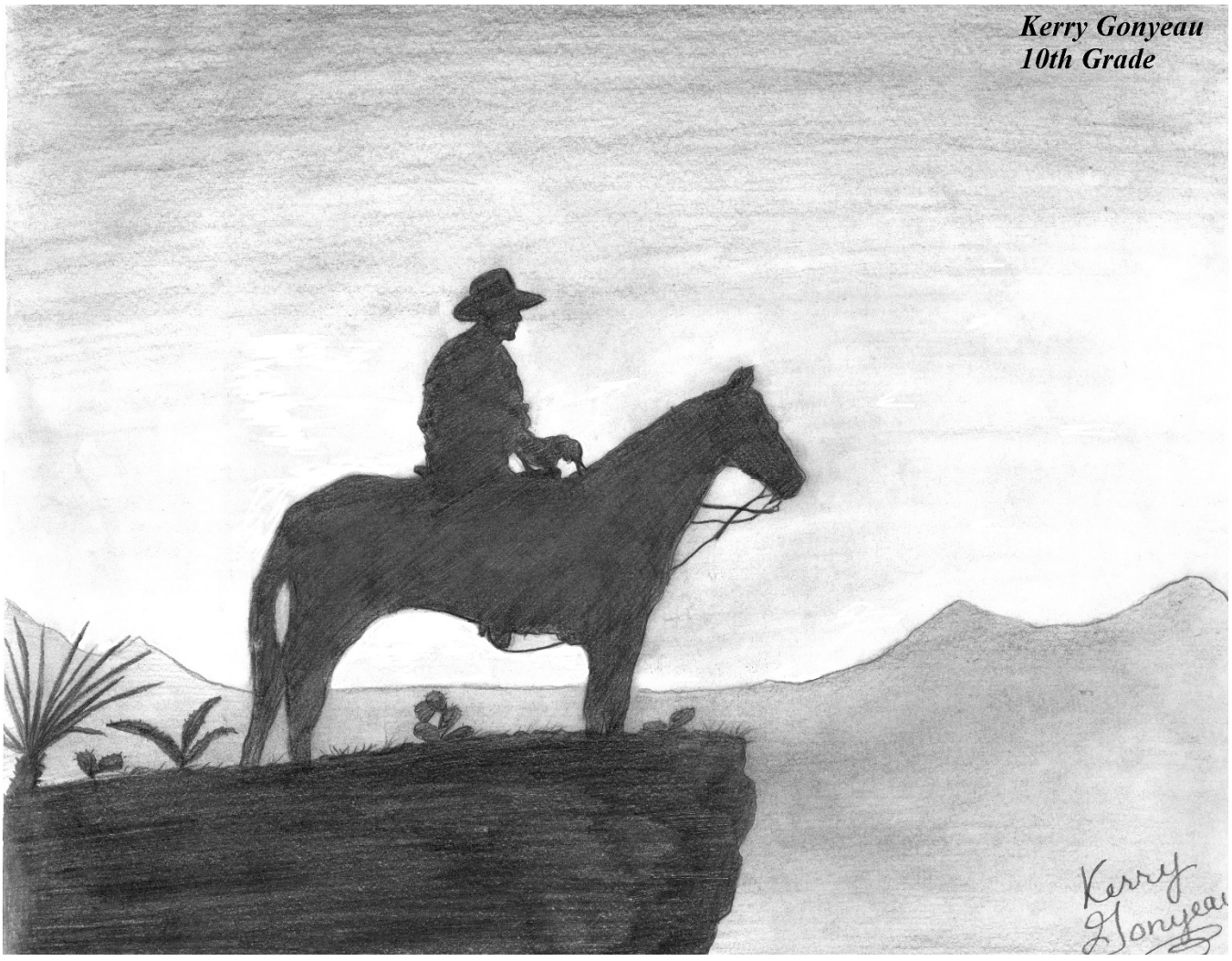

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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In This Issue

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Public Utility Commission of Texas

Texas Department of Transportation

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0150-KP

Requestor:

The Honorable David P. Weeks

Walker County Criminal District Attorney

1036 11th Street

Huntsville, Texas 77340

Re: Whether a commissioners court may enter an order authorizing the treasurer to pay certain types of claims and bills prior to presenting the actual claims or bills to the commissioners court (RQ-0150-KP)

Briefs requested by March 24, 2017

RQ-0151-KP

Requestor:

The Honorable Jodie Laubenberg

Chair, House Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Requirements for signatures on a petition filed in connection with a candidate's application for a place on the ballot (RQ-0151-KP)

Briefs requested by March 27, 2017

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

TRD-201700773
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 27, 2017

♦ ♦ ♦

Opinions

Opinion No. KP-0133

The Honorable J.D. Sheffield

Chair, Joint Committee on Aging

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the proposed Upper San Saba River Management Plan unlawfully delegates legislative power to a private entity (RQ-0124-KP)

S U M M A R Y

The constitutionality of a proposed management plan (the "Plan") for the Upper San Saba River involving a potential delegation of legislative authority, and whether such a Plan would result in a regulatory taking, involves fact determinations that cannot be resolved in an attorney general opinion.

If the Plan involves a delegation of legislative authority to a private entity, a court would first confirm the delegation, examining whether the Plan results in a private entity setting public policy, providing the details of the law, promulgating rules and regulations to apply the law, or ascertaining conditions upon which existing laws may operate. If so, the court would apply the eight-factor test established in *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen* to determine whether the factors as a whole weigh in favor of or against constitutionality. If the Plan involves a delegation of legislative authority to a public entity, a court examines whether the Legislature established reasonable standards to guide the public entity in exercising such powers.

A court considering a regulatory takings challenge would use a federal framework examining: (1) "the economic impact of the regulation on the claimant"; (2) the "character of the governmental action"; and (3) the "extent to which the regulation has interfered with the economic expectations of the property owner."

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

TRD-201700774
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 27, 2017

♦ ♦ ♦

Opinions

Opinion No. KP-0134

The Honorable Dee Hobbs

Williamson County Attorney

405 Martin Luther King Street #7

Georgetown, Texas 78626

Re: Access to court records containing criminal history record information that is subject to an order of nondisclosure under chapter 411 of the Government Code (RQ-0125-KP)

S U M M A R Y

Pursuant to section 411.076 of the Government Code, a court may disclose criminal history record information subject to an order of nondisclosure only to criminal justice agencies for criminal justice or regulatory licensing purposes, to the person who is the subject of the order, or to an agency or entity listed in section 411.0765(b) of the Government Code. Such criminal history record information may not be disclosed to employees of a district or county clerk except as necessary for statutorily authorized purposes. The adequacy of measures necessary to seal criminal history record information involves questions of fact that cannot be determined in an attorney general opinion.

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

TRD-201700809
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 28, 2017

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Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULA TION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 3. OPERATIONS

16 TAC §309.154

The Texas Racing Commission proposes an amendment to 16 TAC §309.154, Stable or Kennel Area. The section relates to the security that an association must provide in the stable or kennel area of a racetrack during a race meet. The proposed amendment would require that an association maintain a written record of all individuals admitted to the stable area between midnight and 5:00 a.m. and provide a copy of the log to the Commission investigator.

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 improve the integrity of racing by allowing the investigators to monitor the entrance of people to the stable or kennel areas during off hours and thereby identify potential sources of contraband.

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.

§309.154. Stable or Kennel Area.

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

(d) A written record of all individuals admitted to the stable or kennel area between the hours of 12:00 midnight and 5:00 a.m. shall be maintained. At a minimum, this record shall contain the name and license number of the person admitted and the time admitted. The daily logs shall be delivered to the Commission investigator regularly or at the earliest opportunity when an investigator returns to duty.

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

Filed with the Office of the Secretary of State on February 27, 2017.

TRD-201700753
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 833-6699

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CHAPTER 311. OTHER LICENSES

SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.105

The Texas Racing Commission proposes an amendment to 16 TAC §311.105, Jockeys. The section relates to the qualifications and experience required to be licensed as a jockey. The proposed amendment establishes a requirement that a jockey weigh no more than 130 pounds at the time the license is issued.

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 enhance the security of a racetrack's stable area. The impact on licensees should be minimal, as jockeys weighing over 130 pounds are not authorized to race under existing rules. By en-

suring that jockey licenses are only issued to jockeys who are capable of racing, the Commission will reduce the opportunity for individuals without a legitimate reason to be on the backside to be licensed.

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 §7.02, which requires the Commission to adopt rules to specify the qualifications and experience required for each category of license.

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

§311.105. Jockeys.

(a) License.

(1) To be licensed as a jockey or apprentice jockey, an individual must be at least 16 years of age, weigh no more than 130 pounds at the time of licensure, and provide proof of a satisfactory physical examination as described in subsection (b) of this section.

(2) - (3) (No change.)

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

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

Filed with the Office of the Secretary of State on February 27, 2017.

TRD-201700754
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 833-6699

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SUBCHAPTER D. ALCOHOL AND DRUG TESTING

DIVISION 1. DRUGS

16 TAC §§311.302, 311.304, 311.308

The Texas Racing Commission proposes amendments to 16 TAC §§311.302, 311.304 and 311.308. Section 311.302 relates to the obligation of licensees to submit to drug testing while on association grounds and the consequences for refusing to submit to such a test. Section 311.304 relates to the procedures for conducting drug testing. Section 311.308 relates to the penalties that will be imposed for failing a drug test.

The proposed amendment to §311.302 increases the penalty for refusing a drug test from a 30 day suspension to a six month suspension. The proposal also calls for the mandatory license revocation of a person who refuses to submit to a second or subsequent drug test.

The proposed amendment to §311.304 makes a technical adjustment to the procedures for taking test specimens by providing that collected specimens are sealed and documented instead of sealed and tagged.

The proposed amendment to §311.308 increases the penalty for failing a drug test from a 30 day suspension to a six month suspension. The proposal also calls for the mandatory license revocation of a person who fails a second or subsequent drug test.

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 proposal.

Mr. Trout has determined that for each year of the first five years that the rules are in effect the anticipated public benefit will be to improve the safety of racing by ensuring that the licensees are not under the influence of drugs while on association grounds and to improve the integrity of racing by reducing the risk that race animals will be contaminated by the drugs of their human handlers.

The amendments will have no adverse economic effects 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.

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.

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

§311.302. Subject to Testing.

(a) The stewards or racing judges may require an occupational licensee acting pursuant to the license to submit to a urine test or other non-invasive fluid test at any time while on association grounds.

(b) A licensee who refuses to submit to such a test when requested to do so by the stewards or racing judges shall be suspended for at least six months [~~30 days~~]. The stewards or racing judges shall revoke the license of a licensee who refuses to submit to a test for a [~~the~~] second or subsequent time. [~~shall be suspended by the stewards or racing judges for at least six months. In addition, for a first or sec-~~

~~ond refusal, the licensee shall be referred to the medical review officer in accordance with the penalties and conditions for the associated violation under §311.308 of this title (relating to Penalties). A licensee who refuses to submit to a test for a third or subsequent time shall be suspended by the stewards or racing judges for one year and referred to the Commission.~~]

§311.304. Taking of Specimens.

(a) (No change.)

(b) The specimen shall be immediately sealed and documented [~~tagged~~] on a form provided by the executive secretary, and the licensee shall sign the form. The portion of the form that accompanies the specimen to the laboratory for analysis may not identify the licensee by name.

(c) - (d) (No change.)

§311.308. Penalties.

(a) The stewards or racing judges shall impose penalties in accordance with this section for a violation of §311.301 of this title (relating to Use Prohibited). A penalty imposed under this section is appealable pursuant to §307.67 of the Rules (relating to Appeal to the Commission.)

(b) If the stewards or racing judges require a licensee to submit to testing under §311.302 of this title (relating to Subject to Testing) as prescribed under §311.303 of this chapter (relating to Method of Selection), the stewards or racing judges shall prohibit the licensee from participating in racing for the remainder of that day.

(c) For a first violation, the stewards or racing judges shall:

(1) suspend the licensee's license for at least six months [~~30 days~~]; and

(2) prohibit the licensee from participating in racing until:

(A) the licensee's condition has been evaluated by the medical review officer or a person designated by the medical review officer under §311.306 of this title (relating to Medical Review Officer);

(B) the licensee has satisfactorily complied with any rehabilitation requirements ordered by the medical review officer; and

(C) the licensee has produced a negative test result.

(d) For a second or subsequent violation, the stewards or racing judges shall revoke the licensee's license.[~~:~~]

[~~(1) suspend the licensee's license for at least six months; and~~]

[~~(2) prohibit the licensee from participating in racing until:~~]

[~~(A) the licensee has satisfactorily completed a certified substance abuse rehabilitation program approved by the medical review officer; and~~]

[~~(B) the licensee produces a negative test result.~~]

[~~(e) For a third or subsequent violation, the stewards or racing judges shall suspend the licensee for one year and refer the licensee to the Commission.~~]

(e) [~~(f)~~] After a suspended licensee has satisfactorily complied with any rehabilitation requirements ordered by the medical review officer or completed a certified substance abuse rehabilitation program approved by the medical review officer, the licensee may apply to have the license reinstated. The stewards or racing judges shall reinstate the license if the stewards or racing judges determine the licensee poses no danger to other licensees or race animals and that reinstatement is in the best interest of racing. On reinstatement, the stewards or racing judges shall require the licensee to submit to further drug testing to verify continued compliance with the Rules and complete any additional rehabilitation or after-care drug treatment recommended by the medical review officer.

(f) [~~(g)~~] All specimens to be tested under this subchapter shall be obtained and tested in accordance with §311.304 (relating to Taking of Samples.) The Commission shall pay the cost of the initial test. The licensee being tested is responsible for paying the costs of all subsequent tests.

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 February 27, 2017.

TRD-201700755
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.501

The Texas Racing Commission proposes an amendment to 16 TAC §313.501, Training Facilities. The section relates to the license required for a facility to provide official workouts for horse racing. Currently, training facility licenses expire on December 31 of the year in which they were issued, which is inconsistent with the expiration dates of other licenses and provides a disincentive for training facilities to become licensed in the second half of the year. The proposal would change the expiration date for training facility fees to the end of the month that is one year after the issuance of the license, which is consistent with the expiration date of other occupational licenses.

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 remove any disincentive for training facilities to delay licensing until the beginning of a new calendar year and to provide new training facilities a with a full year's value for the licensing fee, regardless of when the license was initially issued.

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, §3.021, which authorizes the Commission to adopt rules for the licensing and regulation of workouts at training facilities.

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

§313.501. Training Facility License.

(a) A training facility must be licensed by the Commission in accordance with this section to provide official workouts. Except as otherwise provided by this subchapter, an official workout obtained at a training facility licensed under this section satisfies the workout requirements of §313.103 of this title (relating to Eligibility Requirements).

(b) A training facility license expires one year after the last day of the month [~~on December 31 of the year~~] in which the license was issued. An applicant for a training facility license must submit with the application documents the license fee of $1,800. [~~The annual fee for a training facility license is $1,800, which is due and payable to the Commission on receipt of the license certificate.~~]

(c) A training facility license is personal to the licensee and may not be transferred.

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 February 27, 2017.

TRD-201700756
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 833-6699

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CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING

SUBCHAPTER A. OFFICIALS

DIVISION 1. APPOINTMENT OF OFFICIALS

16 TAC §315.1

The Texas Racing Commission proposes an amendment to 16 TAC §315.1, Required Officials. The section relates to the officials that must be present at each greyhound race conducted in this state. Currently, the track superintendent of a horse racetrack is a race official, but the track superintendent of a greyhound racetrack is not. This proposal would make the greyhound rules consistent with the horse racing rules by designating the greyhound track superintendent as a race official. This change would also help to ensure that the track is properly maintained by qualified association staff.

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 each greyhound racetrack is properly maintained by qualified association staff.

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, §3.021, which authorizes the Commission to adopt rules for the licensing and regulation of workouts at training facilities.

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

§315.1. Required Officials.

(a) The following officials must be present at each greyhound race conducted in this state:

(1) at least two racing judges;

(2) a commission veterinarian;

(3) an association veterinarian;

(4) a racing secretary;

(5) an assistant racing secretary;

(6) a paddock judge;

(7) a starter;

(8) a clerk of scales;

(9) a mutuel manager;

(10) a chart writer;

(11) a photofinish operator and timer;

(12) a kennel master; [~~and~~]

(13) a mechanical lure operator; and

(14) a track superintendent.

(b) - (c) (No change.)

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

Filed with the Office of the Secretary of State on February 27, 2017.

TRD-201700758
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.19

The Texas Board of Professional Engineers (Board) proposes to repeal §137.19, concerning Engineers Qualified to be Texas Windstorm Inspectors.

The proposed repeal removes rule language that is no longer in effect. This change implements the requirements of House Bill 2439 passed by the 84th Texas Legislature in 2015, which removed the special roster of engineers qualified to be windstorm inspectors.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed repeal is in effect, there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as repealed. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the proposed repeal is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to *rules@engineers.texas.gov.*

The repeal is proposed pursuant to the Texas Engineering Practice Act, 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.

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

§137.19. Engineers Qualified to be Texas Windstorm Inspectors.

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 February 23, 2017.

TRD-201700740
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 440-7723

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CHAPTER 139. ENFORCEMENT

SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers (Board) proposes an amendment to §139.35, concerning Sanctions and Penalties.

The proposed amendment removes rule language that is no longer in effect. This change implements the requirements of House Bill 2439 passed by the 84th Texas legislature in 2015, which removed the special roster of engineers qualified to be windstorm inspectors.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendment is in effect, there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

The amendment is proposed pursuant to the Texas Engineering Practice Act, 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.

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

§139.35. Sanctions and Penalties.

(a) (No change.)

(b) The following is a table of suggested sanctions the board may impose against *license holders* for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension", all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

Figure: 22 TAC §139.35(b)

[~~Figure: 22 TAC §139.35(b)~~]

(c) - (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 February 23, 2017.

TRD-201700741
Lance Kinney, P. E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 440-7723

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.61

The Texas State Board of Pharmacy proposes amendments to §281.61, concerning Definitions of Discipline Authorized. The amendments to §281.61, if adopted, update the definition of probation and revocation.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure licensees are appropriately disciplined. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas, 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., April 14, 2017.

The amendments are proposed under §§551.002, 554.051, 565.051, and 568.0035 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §565.051 and §568.0035 as authorizing the agency to discipline a license or registration.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.61. Definitions of Discipline Authorized.

For the purpose of the Act, §565.051 and §568.0035:

(1) "Probation" means a period of supervision by the board [~~the suspension of a sanction~~] imposed against a license or registration [~~during good behavior,~~] for a term and under conditions as determined by the board, including a probation fee.

(2) "Reprimand" means a public and formal censure against a license or registration.

(3) "Restrict" means to limit, confine, abridge, narrow, or restrain a license or registration for a term and under conditions determined by the board.

(4) "Revoke" means a license or registration is void and may not be reissued; provided, however, upon the expiration of 12 months from and after the effective date of the order revoking a license or registration, the license or registration may be reinstated by [~~application may be made to~~] the board [~~by the former licensee or registrant for the issuance of a license or registration~~] upon the successful completion of any requirements determined by the board.

(5) "Suspend" means a license or registration is of no further force and effect for a period of time as determined by the board.

(6) "Retire" means a license or registration has been withdrawn and is of no further force and effect.

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 February 27, 2017.

TRD-201700762
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 305-8028

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22 TAC §281.65

The Texas State Board of Pharmacy proposes amendments to §281.65, concerning Schedule of Administrative Penalties. The amendments, if adopted, will add an administrative penalty for operating a Class E or Class E - S pharmacy without a Texas licensed pharmacist and accessing information submitted to the Prescription Monitoring Program.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate

administrative penalties for violations of the laws and rules governing the practice of pharmacy. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas, 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., April 14, 2017.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.65. Schedule of Administrative Penalties.

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (DD) (No change.)

(EE) accessing information submitted to the Prescription Monitoring Program in violation of §481.076 of the Controlled Substances Act: $1,000 - $5,000.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to provide patient counseling: $1,500;

(B) failing to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title (relating to Operational Standards): $1,500;

(C) failing to clarify a prescription with the prescriber: $1,500;

(D) failing to properly supervise or improperly delegating a duty to a pharmacy technician: $1,500;

(E) failing to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing to maintain records of prescriptions: $500;

(G) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(H) following an accountability audit, shortages of prescription drugs: up to $5,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(J) dispensing unauthorized prescriptions: up to $5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(L) violating a disciplinary order of the Board: $1,000 - $5,000;

(M) failing to report or to assure the report of a malpractice claim: up to $1,000;

(N) failing to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to $1,000;

(O) allowing a pharmacist to practicing pharmacy with a delinquent license: $250 - $1,000;

(P) operating a pharmacy with a delinquent license: $1,000 - $5,000;

(Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $500 - $3,000;

(R) failing to comply with the requirements of the Official Prescription Program: up to $1,000;

(S) aiding and abetting the unlicensed practice of pharmacy, if an employee of the pharmacy knew or reasonably should have known that the person engaging in the practice of pharmacy was unlicensed at the time: up to $5,000;

(T) receiving a conviction or deferred adjudication for a misdemeanor or felony which serves as a ground for discipline under the Act: up to $5,000;

(U) unauthorized substitutions: $1,000;

(V) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: up to $5,000;

(W) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to $1,000;

(X) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): up to $1,000;

(Y) failing to keep, maintain or furnish an annual inventory as required by §291.17 of this title (relating to Inventory Requirements): $1,000;

(Z) failing to obtain training on the preparation of sterile pharmaceutical compounding: $1,500;

(AA) failing to maintain the confidentiality of prescription records: $1,000 - $5,000;

(BB) failing to inform the board of any notification or information required to be reported by the Act or rules: $250 - $500; [~~and~~]

(CC) failing to operate a pharmacy as specified in [~~provided by~~] §291.11 of this title (relating to Operation of a Pharmacy): $3,000; and[.]

(DD) operating a Class E or Class E-S pharmacy without a Texas licensed pharmacist-in-charge: $1,000 - $5,000.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (K) (No change.)

(L) accessing information submitted to the Prescription Monitoring Program in violation of §481.076 of the Controlled Substances Act: $1,000 - $5,000.

(4) - (6) (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 February 27, 2017.

TRD-201700766
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.3

The Texas State Board of Pharmacy proposes amendments to §291.3, concerning Required Notifications. The amendments to §291.3, if adopted, update the requirements for a change of name for a pharmacy; update the notification requirements for internet sites verified by NABP; add a requirement for pharmacies and pharmacists to report disciplinary action by another state to TSBP as required by §562.106 of the Act; and clarify requirements to be consistent with other sections of the rules.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure licensees are appropriately disciplined. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 14, 2017.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.3. Required Notifications.

(a) Change of Location [~~and/or~~ Name].

(1) When a pharmacy changes location [~~and/or~~ name], the following is applicable.

(A) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application), must be filed with the board not later than 30 days before the date of the change of location of the pharmacy.

(B) The previously issued license must be returned to the board office.

(C) An amended license reflecting the new location [~~and/or~~ name] of the pharmacy will be issued by the board; and

(D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the prescription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(b) Change of Name. When a pharmacy changes its name, the following is applicable.

(1) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application), must be filed with the board within 10 days of the change of name of the pharmacy.

(2) The previously issued license must be returned to the board office.

(3) An amended license reflecting the new name of the pharmacy will be issued by the board; and

(4) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(c) [~~(b)~~] Change of Managing Officers.

(1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any managing officer of a partnership or corporation which owns a pharmacy. The written notification shall include the effective date of such change and the following information for all managing officers:

(A) name and title;

(B) home address and telephone number;

(C) date of birth;

(D) a copy of social security card or other official document showing the social security number as approved by the board;

[~~however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;~~] and

(E) a copy of current driver's license, state issued photo identification card, or passport.

(2) For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(d) [~~(c)~~] Change of Ownership.

(1) When a pharmacy changes ownership, a new pharmacy application must be filed with the board following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application). In addition, a copy of the purchase contract or mutual agreement between the buyer and seller must be submitted.

(2) The license issued to the previous owner must be returned to the board.

(3) A fee as specified in §291.6 of this title will be charged for issuance of a new license.

(e) [~~(d)~~] Change of Pharmacist Employment.

(1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment occurs, the pharmacist shall report such change in writing to the board within 10 days.

(2) Change of pharmacist-in-charge of a pharmacy. The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days in writing on a form provided by the board that a change of pharmacist-in-charge has occurred. The notification shall include the following:

(A) the name and license number of the departing pharmacist-in-charge;

(B) the name and license number of the incoming pharmacist-in-charge;

(C) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

(D) a statement signed by the incoming pharmacist-in-charge attesting that:

(i) an inventory, as specified in §291.17 of this title (relating to Inventory Requirements), has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and

(ii) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

(f) [~~(e)~~] Notification of Theft or Loss of a Controlled Substance or a Dangerous Drug.

(1) Controlled substances. For the purposes of the Act, §562.106, the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board immediately on discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by submitting to the board a copy of the Drug Enforcement Administration (DEA) report of theft or loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances stolen or lost.

(2) Dangerous drugs. A pharmacy shall report in writing to the board immediately on discovery the theft or significant loss of any dangerous drug by submitting a list of the name and quantity of all dangerous drugs stolen or lost.

(g) [~~(f)~~] Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following requirements are applicable.

(1) Responsibilities of the pharmacist-in-charge.

(A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of the injury, illness, and disease; such notification shall be immediately reported to the board, but in no event shall exceed 10 days from the date of the disaster.

(B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

(i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA) order forms are lost or destroyed in the disaster, the pharmacy shall:

(I) notify the DEA[~~, Department of Public Safety (DPS),~~] and the board [~~Texas State Board of Pharmacy (board)~~] of the loss of the controlled substances or order forms. A pharmacy shall be in compliance with this section by submitting to each of these agencies a copy of the DEA's report of theft or loss of controlled substances, DEA Form-106, immediately on discovery of the loss; and

(II) notify the board in writing of the loss of the dangerous drugs by submitting a list of the dangerous drugs lost.

(ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be determined, the pharmacy shall:

(I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title (relating to Inventory Requirements);

(II) submit to DEA [~~and DPS~~] a statement attesting that the loss of controlled substances is indeterminable and that a new, complete inventory of all remaining controlled substances was conducted and state the date of such inventory; and

(III) submit to the board a statement attesting that the loss of controlled substances and dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in §291.17(c) of this title was conducted and state the date of such inventory.

(C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall comply with subsection (a) of this section.

(D) If the pharmacy moves to a temporary location, the pharmacist shall comply with subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-charge shall again comply with subsection (a) of this section.

(E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for longer than 90 days as specified in §291.11 of this title (relating to Operation of a Pharmacy).

(F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

(G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications required by this section for a period of two years.

(2) Drug stock.

(A) Any drug which has been exposed to excessive heat, smoke, or other conditions which may have caused deterioration shall not be dispensed.

(B) Any potentially adulterated or damaged drug shall only be sold, transferred, or otherwise distributed pursuant to the provisions of the Texas Food Drug and Cosmetics Act (Chapter 431, Health and Safety Code) administered by the Bureau of Food and Drug Safety of the Texas Department of State Health Services.

(h) [~~(g)~~] Notification to Consumers.

(1) Pharmacy.

(A) Every licensed pharmacy shall provide notification to consumers of the name, mailing address, Internet site address, and telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(i) If the pharmacy serves walk-in customers, the pharmacy shall either:

(I) post in a prominent place that is in clear public view where prescription drugs are dispensed:

(-a-) a sign which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number, and a toll-free telephone number for filing complaints; or

(-b-) an electronic messaging system in a type size no smaller than ten-point Times Roman which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number, and a toll-free number for filing complaints; or

(II) provide with each dispensed prescription a written notification in a type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and a toll-free telephone number for filing complaints)."

(ii) If the prescription drug order is delivered to patients at their residence or other designated location, the pharmacy shall provide with each dispensed prescription a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number, and a toll-free telephone number for filing complaints)." If multiple prescriptions are delivered to the same location, only one such notice shall be required.

(iii) The provisions of this subsection do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(B) A pharmacy that maintains a generally accessible site on the Internet that is located in Texas or sells or distributes drugs through this site to residents of this state shall post the following information on the pharmacy's initial home page and on the page where a sale of prescription drugs occurs.

(i) Information on the ownership of the pharmacy, to include at a minimum, the:

(I) owner's name or if the owner is a partnership or corporation, the partnership's or corporation's name and the name of the chief operating officer;

(II) owner's address;

(III) owner's telephone number; and

(IV) year the owner began operating pharmacies in the United States.

(ii) The Internet address and toll free telephone number that a consumer may use to:

(I) report medication/device problems to the pharmacy; and

(II) report business compliance problems.

(iii) Information about each pharmacy that dispenses prescriptions for this site, to include at a minimum, the:

(I) pharmacy's name, address, and telephone number;

(II) name of the pharmacist responsible for operation of the pharmacy;

(III) Texas pharmacy license number for the pharmacy and a link to the Internet site maintained by the Texas State Board of Pharmacy; and

(IV) the names of all other states in which the pharmacy is licensed, the license number in that state, and a link to the Internet site of the entity that regulates pharmacies in that state, if available.

(C) A pharmacy whose Internet site has been verified [~~awarded a Verified Internet Pharmacy Practice Sites (VIPPS), Veterinary-Verified Internet Pharmacy Practice Sites (Vet-VIPPS) accreditation, or e-Advertiser Approval Program~~] by the National Association of Boards of Pharmacy to be in compliance with the laws of this state, as well as in all other states in which the pharmacy is licensed shall be in compliance with subparagraph (B) of this paragraph [~~by displaying the VIPPS, Vet-VIPPS, or e-Advertiser seal on the pharmacy internet site~~].

(2) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a pharmacy profile system as specified in §2054.2606, Government Code.

(A) The board shall make the pharmacy profiles available to the public on the agency's Internet site.

(B) A pharmacy profile shall contain at least the following information:

(i) name, address, and telephone number of the pharmacy;

(ii) pharmacy license number, licensure status, and expiration date of the license;

(iii) the class and type of the pharmacy;

(iv) ownership information for the pharmacy;

(v) names and license numbers of all pharmacists working at the pharmacy;

(vi) whether the pharmacy has had prior disciplinary action by the board;

(vii) whether the pharmacy's consumer service areas are accessible to disabled persons, as defined by law;

(viii) the type of language translating services, including translating services for persons with impairment of hearing, that the pharmacy provides for consumers; and

(ix) insurance information including whether the pharmacy participates in the state Medicaid program.

(C) The board shall gather this information on initial licensing and update the information in conjunction with the license renewal for the pharmacy.

(i) [~~(h)~~] Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report in writing to the board immediately on discovery of such forgery. A pharmacy shall be in compliance with this subsection by submitting to the board the following:

(1) name of licensee or registrant obtaining controlled substances or dangerous drugs by forged prescription;

(2) date(s) of forged prescription(s);

(3) name(s) and amount(s) of drug(s); and

(4) copies of forged prescriptions.

(j) Notification of Disciplinary Action. For the purpose of the Act, §562.106, a pharmacy shall report in writing to the board not later than the 10th day after the date of:

(1) a final order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state; or

(2) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state.

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

Filed with the Office of the Secretary of State on February 27, 2017.

TRD-201700763
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 305-8028

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.52

The Texas State Board of Pharmacy proposes amendments to §291.52, concerning Definitions. The amendments, if adopted, add the definition of a full-time pharmacist to the Nuclear (Class B) pharmacy rules.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure nuclear pharmacies are properly supervised by the pharmacist-in-charge. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., April 14, 2017.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.52. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §551.003.

(1) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code, as amended.

(2) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order or radioactive prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Subchapter A, Chapter 562 of the Act.

(3) ACPE--Accreditation Council for Pharmacy Education.

(4) Administer--The direct application of a prescription drug and/or radiopharmaceutical, by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(5) Authentication of product history--Identifying the purchasing source, the intermediate handling, and the ultimate disposition of any component of a radioactive drug.

(6) Authorized nuclear pharmacist--A pharmacist who:

(A) has completed the specialized training requirements specified by this subchapter for the preparation and distribution of radiopharmaceuticals; and

(B) is named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(7) Authorized user--Any individual named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(8) Board--The Texas State Board of Pharmacy.

(9) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(10) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Act.

(11) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(14) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(15) Designated agent--

(A) an individual, including a licensed nurse, physician assistant, nuclear medicine technologist, or pharmacist:

(i) who is designated by a practitioner and authorized to communicate a prescription drug order to a pharmacist; and

(ii) for whom the practitioner assumes legal responsibility;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom a practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to administer a prescription drug order for a dangerous drug under Subchapter B, Chapter 157 (Occupations Code).

(16) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(17) Diagnostic prescription drug order--A radioactive prescription drug order issued for a diagnostic purpose.

(18) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(19) Dispensing pharmacist--The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(20) Distribute--The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(21) Electronic radioactive prescription drug order--A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(22) Full-time pharmacist--A pharmacist who works in a pharmacy at least 30 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(23) [~~(22)~~] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(24) [~~(23)~~] Nuclear pharmacy technique--The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(25) [~~(24)~~] Original prescription--The:

(A) original written radioactive prescription drug orders; or

(B) original verbal or electronic radioactive prescription drug orders maintained either manually or electronically by the pharmacist.

(26) [~~(25)~~] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(27) [~~(26)~~] Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(28) [~~(27)~~] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(29) [~~(28)~~] Radiopharmaceutical--A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any

nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

(30) [~~(29)~~] Radioactive drug service--The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(31) [~~(30)~~] Radioactive prescription drug order--An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(32) [~~(31)~~] Sterile radiopharmaceutical--A dosage form of a radiopharmaceutical free from living micro-organisms.

(33) [~~(32)~~] Therapeutic prescription drug order--A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(34) [~~(33)~~] Ultimate user--A person who has obtained and possesses a prescription drug or radiopharmaceutical for administration to a patient by a practitioner.

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 February 27, 2017.

TRD-201700764
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 305-8028

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.3

The Texas State Board of Pharmacy proposes amendments to §315.3 concerning Definitions. The amendments, if adopted, clarify the requirements for dispensing schedule II prescriptions when issued as a multiple set.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacies are dispensing schedule II medications within the authorized timeframes. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., April 14, 2017.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.3. Prescriptions - Effective September 1, 2016.

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in the TCSA, §481.002(39)(A), must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form [~~by legibly completing the spaces provided~~].

(3) A practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose by a [~~while~~] practitioner [~~is~~] acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription if the practitioner intends for that prescription to be filled immediately, [~~that is to be dispensed within 21 days of issuance,~~] indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(4) A schedule II prescription must be dispensed within 21 days of issuance or, if the prescription is part of a multiple set of prescriptions, within 21 days of the earliest date on which a pharmacy may dispense the prescription.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined in the TCSA, §481.002(39)(A), (C), (D), may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescription. A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(d) Controlled Substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number. [~~The official prescription order form must be signed by the requesting advanced practice registered nurse or physician assistant, and by the delegating physician.~~]

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 February 27, 2017.

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 305-8028

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.74

The Comptroller of Public Accounts proposes amendments to §3.74, concerning seller responsibility. This amendment reorganizes the content of existing §3.74 to be consistent with other sections of this title, amends existing definitions, and adds new definitions. This amendment also implements House Bill 2400, 84th Legislature, 2015; Senate Bill 1, 82nd Legislature, 1st Called Session, 2011; House Bill 2357, 82nd Legislature, 2011; Senate Bill 1235, 81st Legislature, 2009; House Bill 3314, 80th Legislature, 2007; and Senate Bill 1617, 80th Legislature, 2007. The amendment corrects grammatical and typographical errors and memorializes comptroller practice not addressed in the current section.

To make the section clearer, the phrase "motor vehicle tax" is used in place of the word "tax," and the defined term "motor vehicle" is used in place of the word "vehicle." The phrases "tax statement" and "application for certificate of title" are deleted and replaced with the term "Application for Texas Title and/or Registration," which is defined in new subsection (a)(1). The phrase "franchised dealer" is replaced with the more specific term "franchised motor vehicle dealer," which is defined in new subsection (a)(7), and the term "dealer" is used instead of the undefined phrase "selling dealer." For consistency, the word "report" is used throughout the section instead of the word "return."

Thirteen new defined terms are added to subsection (a). Subsequent paragraphs are renumbered accordingly. New paragraph (1) is added to define "Application for Texas Title and/or Registration." The terms "application for certificate of title" and "tax statement" were previously used in this section, but were not defined.

New paragraph (2) defines the term "cash discount." The definition is based, in part, on the meaning assigned to the term "cash discounts" by Black's Law Dictionary 498 (8th ed. 2004), as well as prior comptroller guidance provided in STAR Accession No. 7008L0011C06 (August 20, 1970). The definition also incorporates long standing agency practice that manufacturers' and dealers' rebates passed directly to the customer are cash discounts. See STAR Accession No. 7909L2018E07 (September 7, 1979).

Renumbered paragraph (3), formerly paragraph (1), defining the term "date of sale" is amended by replacing the word "delivery" with the word "possession" to memorialize the comptroller's understanding that the term used in this definition, whether delivery or possession, has the meaning assigned to the term "absolute delivery" by Black's Law Dictionary 461 (8th ed. 2004).

Renumbered paragraph (4), formerly paragraph (2), defining the term "dealer" is amended to use the term "general distinguishing number," which is defined in new paragraph (8), instead of the phrase "license to reflect the wording of Transportation Code, Chapter 503 (Dealer's and Manufacturer's Vehicle License Plates)." In addition, the term "franchised motor vehicle dealer," which is defined in new paragraph (7), is used instead of the phrase "authorized by law and by franchise agreement to offer for sale a new motor vehicle;" and the term "independent motor vehicle dealer," which is defined in new paragraph (9), is used instead of the phrase "authorized by law to offer for sale a motor vehicle other than a new motor vehicle." In addition, a sentence is added to make clear that salvage dealers do not meet the definition of "dealer" for purposes of this section.

New paragraphs (5) through (11) are added to define terms not previously used in this section. New paragraph (5) defines the term "distributor" based on the definition of the term in Occupations Code, §2301.002(11) (Definitions).

New paragraph (6) defines the term "extended warranty or service contract." This term is given the same meaning as the definition in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment), except that the term "motor vehicle" is used in place of the more generic term "product."

New paragraph (7) defines the term "franchised motor vehicle dealer." The definition is taken from Occupations Code, §2301.002(16) and (17) and Transportation Code, §503.001(8) (Definitions).

New paragraph (8) defines the term "general distinguishing number" and is based on Occupations Code, §2301.002(17).

New paragraph (9) defines "independent motor vehicle dealer." The definition is taken in part from Transportation Code, §503.001(9) and §503.029(6) (Application for Dealer General Distinguishing Number), and Occupations Code, §2301.002(25).

New paragraph (10) defines the term "lease." The definition is based on Tax Code, §152.001(6) (Definitions).

New paragraph (11) defines the term "manufacturer" and is based on the definition of the term in Occupations Code, §2301.002(19). The definition lists manufacturers that are excluded from the definition, as provided by Occupations Code, Chapter 2301. See, for example, Occupations Code, §2301.002(1-a) ("'Ambulance manufacturer' means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as an ambulance.")

New paragraph (12) defines "motor vehicle." The definition is based, in part on Tax Code §152.001(3) and (4) and the definition

of the term given in §3.80 of this title (relating to Motor Vehicles Transferred as a Gift or for No Consideration).

Renumbered paragraph (13), formerly paragraph (3), defining the term "new motor vehicle" is amended to follow the statutory language more closely.

New paragraph (14) defines "rental" based on Tax Code, §152.001(5) and the definition of the term provided in §3.78 of this title (relating to Motor Vehicle Rentals).

Renumbered paragraph (15), formerly paragraph (4), defining the term "retail sale" is amended to state that the term does not include a sale that is a "sale for resale" - a term that is defined in new paragraph (16). Existing subparagraphs (A) and (B) are deleted because the content of these subparagraphs is now addressed in the new definition of a "sale for resale." Existing subparagraph (C) is relettered as subparagraph (B). In addition, the beginning of the subparagraph is amended to add the following: "a sale for lease, meaning…" The word "immediately" is removed and is replaced with the phrase "seven calendar days," and provides the dealer's purchase is presumed to be a retail purchase and taxable unless the presumption is overcome by showing evidence of intent, as provided in subsection (a) of §3.70 of this title (relating to Motor Vehicle Leases and Sales).

New paragraph (16) is added to define the term "sale for resale." This definition is based on Tax Code, §152.001(2) and incorporates the content of subsection (a)(4)(A) and (B) of the current rule, which identify sales to franchised motor vehicle dealers and independent motor vehicle dealers, respectively, as not being retail sales. This paragraph also includes transactions in which motor vehicles are purchased by a manufacturer or distributor who acquires the motor vehicles either for the exclusive purpose of sale or for purposes allowed under Transportation Code, Chapter 503. This implements House Bill 2400, which enacted Tax Code, §152.001(2)(D) and excludes these transactions from the definition of retail sales. Subparagraph (E) of this paragraph is included to identify uses of motor vehicles that are allowed under Transportation Code, Chapter 503.

Renumbered paragraph (17), formerly paragraph (5), defines the term "seller-financed sale." Subparagraph (A) is amended to use the defined term "total consideration."

New paragraph (18) is added to define the term "seller-financed sales tax report," which appears in this section but is not defined.

Renumbered paragraph (19), formerly paragraph (6), defining the term "total consideration" is expanded to incorporate language from Tax Code, §152.002 (Total Consideration). Subparagraphs are added to make the definition easier to read. New subparagraph (A) follows the language of §152.002(a)(1) - (4). New subparagraph (B) memorializes prior comptroller guidance that "consideration" can be something other than cash. See §3.80 of this title. New subparagraph (C) identifies charges that are not included in total consideration and adds to existing language items that have not previously been addressed in this section, including: examples taken from Tax Code, §152.002(b), such as a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller; a fair market value deduction, as provided by § 3.73 of this title (relating to Qualifying for Fair Market Value Deduction and Determination of Fair Market Value for Replaced Vehicles); and a separately stated charge for an extended warranty or service contract, as addressed in STAR Accession No. 201505188L (May 27, 2015).

Subsection (b) addresses tax permits. The subsection's heading is amended to use the phrase "motor vehicle seller-financed sales tax permit," rather than "tax permit," to better identify the subsection. Paragraphs are added to make the subsection easier to read. For consistency, the words "owner" and "entity" are replaced with "dealer" where appropriate within the subsection.

New paragraph (1) addresses how to obtain a permit and provides the address of the comptroller website where taxpayers can find the application. New paragraph (2) provides that a dealer making seller-financed sales at multiple locations is only required to have one Motor Vehicle Seller-Financed Sales Tax Permit. In new paragraph (3), the existing language is amended to delete the phrase, "The permit application will be furnished by the comptroller," as this information is addressed in new paragraph (1).

Subsection (c), addressing collection of motor vehicle tax, is amended to also address remittance of the tax to the appropriate county tax assessor-collector or to the comptroller. The term "remittance" is added to the subsection's heading.

Paragraph (1) addresses the collection of tax on seller-financed sales. To make the paragraph easier to read, subparagraphs are added. New subparagraph (A) states that a dealer making a seller-financed sale must apply for title and registration to the appropriate county tax assessor-collector no later than the 45th day after the date the motor vehicle is delivered to the purchaser. This amendment implements Senate Bill 1235, which amended Tax Code, §152.069(a) (Registration of Motor Vehicles Using Seller-Financing) to add that the dealer who sells a motor vehicle through a seller-financed sale shall apply for title and registration for the motor vehicle in the name of the purchaser no later than the 45th day after the date the motor vehicle is delivered to the purchaser.

New subparagraph (B) amends existing language to implement House Bill 3314, which amended Tax Code, §152.0472(b) (Determination of Whether Loan is Factored, Assigned, or Transferred). The new subparagraph provides that a dealer making seller-financed sales may elect to pay motor vehicle tax on the total consideration for the motor vehicle at the time the Application for Texas Title and/or Registration is presented to the county tax assessor-collector, or may collect and remit the motor vehicle tax to the comptroller as payments are received, as provided in subsection (d). In addition, language is added to provide that the dealer must include its 11-digit seller-financed sales tax permit number on the Application for Texas Title and/or Registration if the dealer intends to remit the tax on a report to the comptroller.

The language in the current rule addressing the fact that the tax is a debt of the purchaser to the seller until paid is moved to new paragraph (4). The current rule language addressing down payments is incorporated into subsection (e) of this section.

Paragraph (2) addresses collection of tax on retail sales other than seller-financed sales. This paragraph is amended by reorganizing the existing information into subparagraphs.

New subparagraph (A) amends existing language to state that a dealer must collect motor vehicle tax on the total consideration for each motor vehicle, unless the sale is exempt. New subparagraph (B) explains the dealer must remit the motor vehicle tax due on the retail sale at the time the Application for Texas Title and/or Registration is presented to the county tax assessor-collector. The sentence in current subsection (c)(2) addressing the fact that the tax is a debt of the purchaser to the dealer until paid is moved to new paragraph (4) of this subsection.

New subparagraph (C) revises the language in current subsection (c)(2), advising dealers they are not required to collect tax on the sale of a motor vehicle with a gross weight in excess of 11,000 pounds. The subparagraph also advises that the Application for Texas Title and/or Registration must be signed by both the dealer and purchaser, as required by Tax Code, §152.062 (Required Statements). The statement "required by Texas Department of Motor Vehicles to apply for title or registration of the motor vehicle in Texas" is added in place of the word "necessary." The amendment also states that the purchaser must remit the tax due to the county tax assessor-collector within 30 calendar days after the date of sale.

New subparagraph (D) restates information currently provided in subsection (d)(2)(B) but is updated to implement House Bill 2357, which amended Transportation Code, §502.040 (Registration Required; General Rule for Title) to change the deadline for applying to register a vehicle to 30 days from the date of purchase or initial occupancy in this state.

New paragraph (3) addresses recordkeeping requirements. This subparagraph is based on Tax Code, §111.0041 (Records; Burden to Produce and Substantiate Claims).

New paragraph (4) incorporates existing language stating that, except as provided in paragraph (2)(C) of this subsection, the tax is a debt of the purchaser to the dealer. Additional language is derived, in part, from §3.286 of this title. The amendment also states the comptroller can proceed against either the dealer or purchaser, or both, until all applicable motor vehicle tax, penalty, and interest is paid.

Subsection (d) is amended to address the remittance of motor vehicle tax on seller-financed sales as payments are received. The heading of the subsection is amended to better identify information the revised subsection now addresses. Because the entire subsection now addresses seller-financed sales, existing paragraph (1) is deleted. Subparagraphs (A) - (G) are renumbered as paragraphs (1) - (7).

The existing language in renumbered paragraph (1), formerly subparagraph (A), is revised to make the paragraph easier to read. The term "owned" is used in place of the term "operated" to make the paragraph more precise. Subparagraph (B) is deleted, as the information is incorporated into new paragraph (2).

Paragraph (2), formerly subparagraph (C), is amended to replace the word "will" with "must" and to use the defined term "seller-financed sales tax report."

New paragraph (3) is added to address electronic filing and remittance. The paragraph is further amended to advise that some dealers must file reports and remit tax electronically, as provided by Tax Code, §111.0625 (Electronic Transfer of Certain Payments) and §111.0626 (Electronic Filing of Certain Reports). A reference to §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers) is also added.

Paragraphs (4) and (5), formerly subparagraphs (D) and (E), are amended to make the paragraphs easier to read.

Paragraph (6), formerly subparagraph (F), is amended to make the paragraph easier to read and to include a reference to paragraph (7).

Paragraph (7), formerly subparagraph (G), is amended to address prepayments of the tax as well as discounts. The heading of the subparagraph is revised accordingly. Existing clauses (i) and (ii) are relettered as subparagraphs (A) and (B) and expanded to include language derived from §3.286 of this title. Subparagraph (B), formerly clause (ii), is divided into five clauses to make it easier to read.

New paragraph (8) is added to address penalties and interest. Paragraph (8)(A) was formerly subsection (d)(1)(G)(iv). The language is revised to make the paragraph easier to read. New paragraph (8)(B) is added to implement Senate Bill 1, which added an additional penalty of $50 for failing to file a timely report. See Tax Code, §152.047(j) (Collection of Tax on Seller-Financed Sale). In addition, the statement describing the calculation of interest assessed on late-filed reports that were due on or before December 31, 1999 is deleted as it is no longer relevant due to the passage of time.

Existing paragraph (2), addressing retail sales other than seller-financed sales, is deleted. The relevant portions of the paragraph are incorporated into subsection (c)(2) of this section. The statement that a copy of the receipt for taxes issued by the county tax assessor-collector may be retained as evidence that the proper amount of tax was submitted by the dealer is deleted because it is no longer relevant, as receipts are no longer routinely issued by county tax assessor-collectors or the Texas Department of Motor Vehicles.

Subsection (e) addresses general principles of seller-financed sales. New paragraph (1), formerly subsection (c)(1), addresses the taxability of a down payment. New paragraph (2), also formerly subsection (c)(1), states that when a finance agreement bears interest, it is presumed that interest accrues and is paid by the purchaser on a straight line basis.

Paragraph (3), formerly paragraph (1), is amended by substituting the term "dealer" for the term "seller" to be consistent with the rest of the section. The paragraph is further amended by adding that the remainder of tax owed is due "on the first seller-financed report due no later than the 20th day of the month following the end of the reporting period," instead of "in the report period."

Renumbered paragraph (4), formerly paragraph (2), is amended to use the defined term "Application for Texas Title and/or Registration" and to make the paragraph easier to read.

Renumbered paragraph (5), formerly paragraph (3), is amended to make the paragraph easier to read. The paragraph is also amended to clarify that unremitted tax is based on the total consideration for the motor vehicle and is due no later than the 20th day of the month following the end of the reporting period in which the expiration of the 60 days occurred.

Renumbered paragraph (6), formerly paragraph (4), is amended by adding the clause "unless excluded from acceleration of tax by paragraph (7) of this subsection" to address tax acceleration when the dealer sells, factors, assigns, or otherwise transfers the right to receive payments to a related finance company. Renumbered paragraph (6) is also amended to clarify that the dealer is liable for all unremitted tax due on the total consideration on the sale of the motor vehicle, and the dealer must report and remit any tax due on the first seller-financed report due no later than the 20th day of the month following the end of the reporting period in which the transfer of the right to receive payments occurred.

New paragraph (7) is added to implement House Bill 3314 and Senate Bill 1617. This paragraph provides that tax acceleration does not occur if the dealer making the seller-financed sale sells, factors, assigns, or otherwise transfers the right to receive pay-

ments to a person registered with the comptroller's office as a related finance company, as provided by Tax Code, §152.0475 (Registration of Related Finance Company). Similarly, tax acceleration does not occur when the dealer making a seller-financed sale grants a security interest in a purchaser's account, but retains custody and control of the account and the right to receive payments in the absence of a default under the security agreement.

Renumbered paragraph (8), formerly paragraph (5), is amended to update the cross-reference.

Subsection (f) addresses resale certificates and exemption documentation. Paragraphs (1) and (2), addressing the resale exemption and the exemption for use out-of-state, respectively, are amended to provide the address of the comptroller website where taxpayers can find the resale certificates. The paragraphs are also amended to use the form numbers for the resale and exemption certificates.

Paragraph (3), addressing exemption certificates, is amended to make the paragraph easier to read.

Subsection (g), addressing unremitted tax paid to the seller, contains minor amendments intended to make the subsection easier to read. In addition, paragraphs (1), (2), and (3) are amended to use the defined term "Application for Texas Title and/or Registration."

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutes and agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§152.001 (Definitions), 152.002 (Total Consideration) 152.0411 (Collection by Sellers), 152.047 (Collection of Tax on Seller-Financed Sale), and 152.0472 (Determination of Whether Loan is Factor, Assigned, or Transferred).

§3.74. Seller Responsibility.

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

(1) Application for Texas Title and/or Registration--Form 130-U, its electronic equivalent, or a successor form, promulgated jointly by the comptroller and the Texas Department of Motor Vehicles, used to apply for a motor vehicle title and registration and to pay any motor vehicle sales or use tax due. The Application for Texas Title and/or Registration is available at comptroller.texas.gov.

(2) Cash discount--An actual reduction of the price required to be paid by the purchaser to the dealer. The term includes, but is not limited to, separately stated manufacturers' rebates, dealers' rebates, and cash rebates passed directly to the purchaser at the time of sale, and discounts allowed for payment within a specified time.

(3) [~~(1)~~] Date of sale--The day the purchaser takes possession of a motor vehicle [~~is delivered to the purchaser~~] unless otherwise specified by written agreement.

(4) [~~(2)~~] Dealer--A person who holds a general distinguishing number or operates under similar regulatory requirements of another state or jurisdiction [~~license issued pursuant to Transportation Code, Chapter 503~~]. The term includes a franchised motor vehicle dealer and [~~authorized by law and by franchise agreement to offer for sale a new motor vehicle. The term also includes~~] an independent motor vehicle dealer. The term does not include a salvage vehicle dealer licensed under Occupations Code, chapter 2302 (Salvage Vehicle Dealers). [~~authorized by law to offer for sale a motor vehicle other than a new motor vehicle~~]

(5) Distributor--A person, other than a manufacturer, who:

(A) distributes or sells new motor vehicles to a franchised motor vehicle dealer; or

(B) enters into franchise agreements with franchised motor vehicle dealers, on behalf of the manufacturer.

(6) Extended warranty or service contract--A policy sold to the purchaser of a motor vehicle for an additional amount, the provisions of which become effective after the manufacturer's warranty expires.

(7) Franchised motor vehicle dealer--A dealer who:

(A) holds a franchised motor vehicle license issued under Occupations Code, Chapter 2301 (Sale or Lease of Motor Vehicles); and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles at an established and permanent place of business under a franchise agreement with a manufacturer or distributor; or

(C) is licensed under similar regulatory requirements of another state or jurisdiction.

(8) General distinguishing number--A dealer license issued by the Texas Department of Motor Vehicles under Transportation Code, Chapter 503 (Dealer's and Manufacturer's Vehicle License Plates).

(9) Independent motor vehicle dealer--A dealer who is not a franchised motor vehicle dealer, an independent mobility motor vehicle dealer, or a wholesale motor vehicle dealer.

(10) Lease--An agreement other than a rental, by an owner of a motor vehicle to give for longer than 180 days exclusive use of a motor vehicle to another for consideration. For more information on motor vehicle leases, see §3.70 of this title (relating to Motor Vehicle Leases and Sales).

(11) Manufacturer--A person who manufactures or assembles new motor vehicles and holds a manufacturer's license issued under Occupations Code, §2301.259 (Application for Manufacturer's License). The term does not include a person operating only as an ambulance manufacturer, chassis manufacturer, fire-fighting vehicle manufacturer, motor home manufacturer, or a converter as those terms are defined in Occupations Code, §2301.002 (Definitions).

(12) Motor vehicle--A vehicle described by Tax Code, §152.001(3) (Definitions). In general, a motor vehicle includes a self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; buses; vans; motor homes; motorcycles; trucks and truck tractors; truck cab and chassis; semitrailers; trailers and travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax). The term does not include a vehicle to which the certificate of title has been surrendered in exchange for a salvage vehicle title or a nonrepairable vehicle title issued under Transportation Code, Chapter 501 (Certificate of Title Act).

(13) [~~(3)~~] New motor vehicle--A motor vehicle that, without regard to mileage, has not been the subject of a retail tax [~~sale~~].

(14) Rental--An agreement:

(A) by the owner of a motor vehicle to give exclusive use of that motor vehicle to another for consideration, for a period of time not to exceed 180 days under any one agreement;

(B) by an original manufacturer of a motor vehicle to give exclusive use of the motor vehicle to another for consideration; or

(C) by the owner of a motor vehicle to give exclusive use of the motor vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement.

(15) [~~(4)~~] Retail sale--A sale of a motor vehicle other than:

(A) a sale for resale; or [~~of a new motor vehicle in which the purchaser is a franchised dealer who is authorized by law and by franchise agreement to offer the vehicle for sale as a new motor vehicle and who acquires the vehicle to sell in a manner provided by law or for purposes allowed under Transportation Code, Chapter 503;~~]

[~~(B) a sale of a vehicle other than a new motor vehicle in which the purchaser is a dealer who holds a dealer's license issued under Transportation Code, Chapter 503, and who acquires the vehicle either for the exclusive purpose of resale in the manner provided by law or for purposes allowed under Transportation Code, Chapter 503; or~~]

(B) [~~(C)~~] a sale for lease, meaning a sale to a franchised motor vehicle dealer of a new motor vehicle removed from the franchised motor vehicle dealer's inventory for the purpose of entering into a contract to lease the motor vehicle to another person if, within seven days of [~~immediately after~~] executing the lease contract, the franchised motor vehicle dealer transfers title of the motor vehicle and assigns the lease contract to the lessor of the motor vehicle. If the title is not transferred and the lease assigned within seven calendar days, the dealer's purchase and use will be presumed to be a retail purchase and taxable. The presumption may be overcome by showing evidence of intent.

(16) Sale for resale--The sale of a motor vehicle to a purchaser who acquires the motor vehicle either for the exclusive purpose of sale in a manner provided by law, or for purposes allowed by the Texas Department of Motor Vehicles under Transportation Code, Chapter 503, when the purchaser is:

(A) a distributor;

(B) a manufacturer;

(C) a franchised motor vehicle dealer who is authorized by law and by a franchise agreement to offer a motor vehicle for sale as a new motor vehicle; or

(D) an independent motor vehicle dealer who is authorized by law to offer a motor vehicle for sale as a used motor vehicle.

(E) The following are examples of uses allowed under Transportation Code, Chapter 503, that do not disqualify a purchase as a sale for resale:

(i) when a dealer uses the motor vehicle on public highways with a metal dealer's plate issued under Transportation Code, §503.061 (Dealer's License Plates);

(ii) when a manufacturer or distributor removes a motor vehicle from its inventory and tests the motor vehicle on public highways with a manufacturer's plate issued under Transportation Code, §503.064 (Manufacturer's License Plates); and

(iii) when a manufacturer or distributor loans the motor vehicle to a consumer for a purpose described by Occupations Code, §2301.605 (Rebuttable Presumption--Reasonable Number of Attempts).

(17) [~~(5)~~] Seller-financed sale--A retail sale of a motor vehicle by a dealer in which the selling dealer collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received. The term does not include a:

(A) retail sale of a motor vehicle in which a person other than the seller provides the total consideration for the sale and retains a lien on the motor vehicle as collateral;

(B) lease; or

(C) rental.

(18) Seller-financed sales tax report--The Texas Motor Vehicle Seller-Financed Sales Tax Report, Form 14-117, its electronic equivalent, or a successor form, promulgated by the comptroller. The seller-financed sales tax report is available at comptroller.texas.gov.

(19) [~~(6)~~] Total consideration--

(A) The amount paid or to be paid for a motor vehicle and its accessories attached on or before the sale, without deducting:[~~.~~]

(i) the cost of the motor vehicle;

(ii) the cost of material, labor or service, interest paid, loss, or any other expense;

(iii) the cost of transportation of the motor vehicle before its sale; or

(iv) the amount of manufacturers' or importers' excise tax imposed on the motor vehicle by the United States.

(B) The amount paid or to be paid includes anything of monetary value, such as cash or the equivalent; a book entry reflecting cash received or paid; the forgiveness or assumption of debt; book entries reflecting accounts receivable or accounts payable for an item; the performance of a service; or real or tangible personal property.

(C) The term does not include:

(i) separately stated cash discounts;

(ii) a full cash or credit refund to a customer of the sales price of, meaning the amount paid for, a motor vehicle that the customer returns to the seller;

(iii) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(iv) separately stated finance or interest charges on credit extended under a conditional sale or other deferred payment contract; [, ~~or~~]

(v) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle;[.]

(vi) the fair market value of a motor vehicle titled in Texas in the name of a dealer or a person who is in the business of renting or leasing motor vehicles, as provided by §3.73 of this title (relating to Qualifying for Fair Market Value Deduction and Determination of Fair Market Value for Replaced Vehicles);

(vii) a charge for transportation of the motor vehicle after the sale of the motor vehicle;

(viii) motor vehicle inventory tax; or

(ix) separately stated charges for the sale of an extended warranty or service contract.

(b) Motor vehicle seller-financed sales tax [~~Tax~~] permit. Every dealer making seller-financed sales must apply to the comptroller and obtain a Motor Vehicle Seller-Financed Sales Tax Permit [~~for a tax permit~~].

(1) To obtain a permit, the dealer must complete a Texas Application for Motor Vehicle Seller-Financed Sales Tax Permit, Form AP-169, its electronic equivalent, or its successor, promulgated by the comptroller. The application is available at comptroller.texas.gov.

(2) A separate permit is not required for each location. The comptroller issues one Motor Vehicle Seller-Financed Sales Tax Permit to each dealer making seller-financed sales, regardless of the number of locations or dealerships the dealer operates.

(3) Each dealer [~~entity~~] (corporation, partnership, sole proprietor, etc.) must apply for its own permit. [~~The permit application will be furnished by the comptroller.~~] The permit cannot be transferred from one dealer [~~owner~~] to another.

(c) Collection and remittance of motor vehicle [~~the~~] tax.

(1) Seller-financed sales.

(A) A dealer who makes a seller-financed sale must apply to the appropriate county tax assessor-collector to title and register the motor vehicle by filing an Application for Texas Title and/or Registration no later than the 45th day after the date the motor vehicle is delivered to the purchaser.

(B) A [~~The selling~~] dealer making a seller-financed sale must also:

(i) collect and remit motor vehicle tax on the total consideration for the motor vehicle at the time the Application for Texas Title and/or Registration is presented to the county tax assessor-collector; or

(ii) collect and remit the motor vehicle tax to the comptroller [~~paid~~] as the payments are received, as explained in subsection (d) of this section. A dealer making a seller-financed sale must include its 11-digit Seller-Financed Sales Tax Permit Number on the Application for Texas Title and/or Registration if the dealer intends to remit the motor vehicle tax on a report to the comptroller instead of remitting the motor vehicle tax at the time the Application for Texas Title and/or Registration is presented to the county tax assessor-collector. [~~. The tax is a debt of the purchaser to the seller until paid. The total downpayment is subject to tax unless the payment is itemized to indicate nontaxable charges. If the finance agreement bears interest, it is conclusively presumed that interest accrues and is paid by the purchaser on a straight line basis.~~]

(2) Retail sales other than seller-financed sales.

(A) A [~~Unless the sale is exempt, the selling~~] dealer must collect motor vehicle [~~the~~] tax on each retail sale, unless an exemption applies. The tax is imposed on the total consideration for the motor vehicle.

(B) The dealer must remit the motor vehicle tax due to the appropriate county tax assessor-collector at the time the dealer submits the Application for Texas Title and/or Registration. Motor vehicle tax is due within 30 calendar days after the date of the sale. [~~on the total consideration paid for the motor vehicle. The tax is a debt of the purchaser to the seller until paid.~~]

(C) A dealer is not required to collect motor vehicle tax on [~~This section does not apply to~~] the sale of a motor vehicle with a gross weight in excess of 11,000 pounds. If the dealer does not collect the motor vehicle tax, the dealer[~~; however, the seller~~] must provide the purchaser with an Application for Texas Title and/or Registration, signed by both the dealer and purchaser, [~~a completed tax statement~~] and all other documents required by the Texas Department of Motor Vehicles [~~necessary~~] to apply for title or [~~and~~] register the motor vehicle. The purchaser must remit motor vehicle tax to the county tax assessor-collector within 30 calendar days after the date of sale.

(D) If a dealer sells a commercial motor vehicle that is required to be equipped with a body or other necessary equipment before the motor vehicle can be registered under the Transportation Code, then the dealer must remit the motor vehicle tax within 30 calendar days after the date on which the motor vehicle becomes eligible for registration.

(3) The dealer must retain copies of the documentation provided to the purchaser and all other records pertaining to the sale. The specific records each dealer is required to keep are listed in Tax Code, §152.063 (Records) and §152.0635 (Records of Certain Sellers). The dealer must keep the records for a minimum of four years from the date on which the record is made, and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period.

(4) The motor vehicle tax due is 6.25% of the total consideration. Except as provided in paragraph (2)(C) of this subsection, the motor vehicle tax is a debt of the purchaser to the dealer until paid. Unpaid motor vehicle tax is recoverable by the dealer in the same manner as the total consideration for the motor vehicle, if unpaid, would be recoverable. The comptroller may proceed against either the dealer or purchaser, or both, until all applicable motor vehicle tax, penalty, and interest due has been paid.

(d) Remittance of motor vehicle [~~the~~] tax on seller-financed sales as payments are received.

(1) [~~Seller-financed sales.~~]

[~~(A)~~] Each [~~selling~~] dealer making seller-financed sales who collects motor vehicle tax as the payments are received from the purchaser must remit the motor vehicle tax collected [~~due~~] to the comptroller on [~~as the payments are received. On~~] or before the 20th day of the month following each reporting period. The [~~, each selling~~] dealer must [~~shall~~] file a consolidated report [~~return~~] with the comptroller, together with the motor vehicle tax collected [~~payment~~] for

seller-financed sales made at all locations owned [~~operated~~] by the dealer [~~entity~~].

[~~(B) The returns must be signed by the person required to file the report or by the person's duly authorized agent.~~]

(2) [~~(C)~~] The dealer must file a consolidated seller-financed sales tax report for seller-financed sales made at all locations owned by the dealer, together with the motor vehicle tax collected. The report must be signed by the dealer or the dealer's authorized agent. [~~returns will be filed on forms prescribed by the comptroller.~~] The fact that the dealer does not receive the form or does not receive the correct form [~~forms~~] from the comptroller for the filing of the report [~~return~~] does not relieve the [~~selling~~] dealer of the responsibility of filing a report [~~return~~] and remitting motor vehicle tax. The report is available at comptroller.texas.gov. [~~payment.~~]

(3) A dealer making seller-financed sales may file reports and remit motor vehicle tax electronically, such as through Webfile at comptroller.texas.gov. Dealers who paid $100,000 or more in motor vehicle tax to the comptroller during the preceding fiscal year must remit motor vehicle tax electronically, as provided by Tax Code, §111.0625 (Electronic Transfer of Certain Payments). Dealers who paid $50,000 or more to the comptroller during the preceding fiscal year must file report data electronically, as provided by Tax Code, §111.0626 (Electronic Filing of Certain Reports). For more information on electronic filing and payments, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(4) [~~(D)~~] A dealer completing a seller-financed sales tax report must allocate the motor vehicle tax paid on a motor vehicle [~~The return should be completed attributing the receipts~~] to the county in which the dealer submitted the Application for Texas Title and/or Registration for the vehicle [~~applied for a motor vehicle certificate of title~~].

(5) [~~(E)~~] A dealer who remits [~~Selling dealers owing tax of~~] less than $1,500 in motor vehicle tax per quarter may file reports [~~returns~~] quarterly. The quarterly reporting periods end on March 31st, June 30th, September 30th, and December 31st.

(6) [~~(F)~~] A dealer who remits [~~Selling dealers owing~~] $1,500 or more in motor vehicle tax per quarter must file monthly reports, except a dealer making seller-financed sales who chooses to prepay [~~returns unless a seller prepays~~] the motor vehicle tax, as provided in paragraph (7) of this subsection.

(7) [~~(G)~~] Discounts and prepayments of [~~prepaying~~] the motor vehicle tax.

(A) [~~(i)~~] Each dealer making seller-financed sales may claim a discount for timely filing a seller-financed sales tax report and remitting motor vehicle [~~retain 0.5% of the amount of~~] tax due as reimbursement for the expense of collecting and remitting the motor vehicle tax. The discount is equal to 0.5% of the amount of the motor vehicle tax due and may be claimed on the report for each reporting period. The discount is computed on the amount of motor vehicle tax timely reported and remitted for each reporting period.

(B) [~~(ii)~~] A dealer making seller-financed sales who makes a timely prepayment of at least 90% of the total amount of motor vehicle tax currently due, or an amount equal to the actual motor vehicle tax liability due and paid for the same reporting period of the immediately preceding year, [~~based upon an estimate of tax liability~~] may retain an additional 1.25% of the amount of motor vehicle tax due.

(i) The monthly prepayment must be made on or before the 15th day of the [~~second~~] month [~~of the quarter~~] for which the tax is due.

(ii) The quarterly prepayment must be made [~~Monthly prepayments are due~~] on or before the 15th day of the second month of the quarter for which the tax is due [~~and are also entitled to the additional 1.25% deduction~~].

(iii) The dealer must file a seller-financed sales tax report showing the actual liability and remit any amount due in excess of the prepayment on [~~On~~] or before the 20th day of the month following the quarter or month for which a prepayment was made[~~, the dealer must file a return showing the actual liability and remit any amount due in excess of the prepayment~~].

(iv) If there is an additional amount due when the seller-financed sales tax report is filed, the dealer may claim the 0.5% discount for timely filing, including on the additional amount of motor vehicle tax due, [~~retain the 0.5% reimbursement~~] provided that both the seller-financed sales tax report [~~return~~] and the additional amount of motor vehicle tax due are filed timely [~~filed~~]. If the prepayment exceeded the actual liability, the [~~selling~~] dealer will be mailed a notice of [~~an~~] overpayment [~~notice~~] or a refund warrant.

(v) A remittance that is less than 90% of the total amount of motor vehicle tax currently due, or less than the amount of actual motor vehicle tax due and paid for the same reporting period of the immediately preceding year, is not a valid prepayment and the 1.25% discount will not be allowed.

(8) Penalties and interest.

(A) [~~(iv)~~] If a dealer does not file a seller-financed sales tax report [~~quarterly or monthly return~~] together with payment on or before the due date, the dealer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the [~~selling~~] dealer. After the first 60 days delinquency, interest begins to accrue at the prime rate, [~~plus 1.0%~~] as published in the *Wall Street Journal* on the first business day of each calendar year, plus 1.0%. [~~For taxes due on or before December 31, 1999, interest is assessed at the rate of 12% annually.~~]

(B) A dealer who fails to timely file a seller-financed sales tax report when due must pay an additional penalty of $50. The penalty is due regardless of whether motor vehicle taxes are due for the reporting period.

[~~(2) Retail sales other than seller-financed sales.~~]

[~~(A) Except for sales of motor vehicles with a gross weight in excess of 11,000 pounds and for sales of motor vehicles that fall within subparagraph (B) of this paragraph, the selling dealer must remit the tax, along with the properly completed tax statement, to the county tax assessor- collector by the 20th working day following the date of sale.~~]

[~~(B) If a dealer sells a commercial motor vehicle that is required to be equipped with a body or other necessary equipment before the motor vehicle can be registered under the Transportation Code then the selling dealer must remit the tax, along with the properly completed tax statement, by the 20th working day following the date on which the motor vehicle becomes eligible for registration.~~]

[~~(C) Documentation must be retained to indicate that the proper amount of tax was submitted to the county tax assessor-collector. A copy of the receipt for taxes issued by the county tax assessor-collector will satisfy this requirement.~~]

(e) General principles of seller-financed sales.

(1) The total downpayment is subject to motor vehicle tax unless the payment is itemized to indicate nontaxable charges.

(2) If the finance agreement bears interest, it is presumed that interest accrues and is paid by the purchaser on a straight line basis.

(3) [~~(1)~~] A transaction is considered paid in full when the purchaser of a seller-financed [~~the~~] motor vehicle trades-in [~~provides~~] that motor vehicle to the dealer [~~seller~~] as consideration for the purchase of another motor vehicle from the same dealer [~~seller~~]. The remainder of motor vehicle [~~any~~] tax owed on the initial sale must be reported on the first seller-financed sales tax report due no later than the 20th day of the month following the end of the reporting [~~in the report~~] period in which the trade-in occurred [~~motor vehicle is traded in~~].

(4) [~~(2)~~] Motor vehicle tax [~~Tax~~] remitted to the county tax assessor-collector at the time the Application for Texas Title and/or Registration is submitted is [~~of registration and title transfer will be~~] considered [~~to be intended~~] to satisfy the tax liability for that transaction and no refund is [~~will be~~] available if the purchaser fails to satisfy their [~~his~~] total liability to the dealer making the seller-financed sale.

(5) [~~(3)~~] If a [~~the selling~~] dealer making a seller-financed sale fails to submit the Application for Texas Title and/or Registration to apply for [~~certificate of~~] title and registration within 60 days from [~~of~~] the date of sale, the dealer [~~seller~~] becomes liable for all unremitted motor vehicle tax based on the total consideration for the motor vehicle. The dealer [~~and~~] must remit all unremitted motor vehicle tax [~~that amount~~] on the first seller-financed sales tax report [~~return~~] due no later than the 20th day of the month following the end of the reporting period in which [~~after~~] the expiration of the 60 days occurred.

(6) [~~(4)~~] Unless excluded from acceleration of motor vehicle tax by paragraph (7) of this subsection, if [~~If~~] the [~~selling~~] dealer sells, factors, assigns, or otherwise transfers the right to receive payments on a seller-financed sale, the dealer is liable for all unremitted motor vehicle [~~the unpaid~~] tax due on the total consideration for the motor vehicle. The dealer [~~and~~] must report and remit any motor vehicle tax due on [~~that amount in~~] the seller-financed sales tax report due no later than then 20th day of the month following the end of the reporting [~~for the~~] period in which the transfer of the right to receive payments occurred [~~is made~~]. The dealer may not take a deduction in the amount of motor vehicle tax due, even if the dealer sells the right to receive payments at a discount or grants the purchaser of the notes a right of recourse. [~~The right to receive payments is transferred and the tax remittance accelerated regardless of recourse to the seller or any other condition.~~]

(7) Motor vehicle tax remittance does not accelerate if a dealer sells, factors, assigns, or otherwise transfers the right to receive payments on a seller-financed sale to a person registered with the comptroller's office as a related finance company, as provided by Tax Code, §152.0475 (Registration of Related Financed Company), or when the dealer grants a security interest in a purchaser's account, but retains custody and control of the account and the right to receive payments in the absence of a default under the security agreement.

(8) [~~(5)~~] If the [~~selling~~] dealer remits the motor vehicle [~~unpaid~~] tax due in accordance with paragraph (6) [~~(4)~~] of this subsection, and the motor vehicle purchaser fails to make payments to the dealer's transferee or assignee, then no bad debt deduction for any amount that the transferee or assignee determines to be uncollectible on the purchaser's account may be taken against any motor vehicle [~~sales~~] tax that the transferee or assignee may owe.

(f) Resale certificates and exemption documentation.

(1) A seller may accept a Texas Motor Vehicle Resale Certificate, Form 14-313, its electronic equivalent, or its successor, promulgated by the comptroller [~~motor vehicle resale certificate~~] only from a dealer as defined in this section. A motor vehicle resale certificate for the sale of a new motor vehicle purchased for resale may only be accepted from a franchised motor vehicle dealer [~~who is authorized by law and by franchise agreement to offer the vehicle for sale as a new motor vehicle~~]. To be valid, the motor vehicle resale certificate must show the dealer license issued under [~~pursuant to~~] Transportation Code, Chapter 503. The resale certificate is available at comptroller.texas.gov. See §3.95 of this title (relating to Motor Vehicle Sales Tax Resale Certificate; Sales for Resale).

(2) A seller may accept a properly completed Texas Motor Vehicle Sales Tax Exemption Certificate--For Vehicles Taken Out of State, Form 14-312, its electronic equivalent, or its successor, promulgated by the comptroller, in lieu of collecting tax on motor vehicles that will be removed from this state without being operated other than to remove the motor vehicle from this state. The exemption certificate is available at comptroller.texas.gov. See §3.90 of this title (relating to Motor Vehicles Purchased for Use Outside of Texas).

(3) A purchaser claiming an exemption on the purchase of a motor vehicle that qualifies for an exemption under [~~Exemptions provided for in the~~] Tax Code, Chapter 152, Subchapter E, must indicate the exemption claimed on the Application for Texas Title and/or Registration at the time of purchase. The Application for Texas Title and/or Registration noting the exemption claimed is submitted to the county tax assessor-collector in lieu of tax. [~~other than those discussed in paragraphs (1) and (2) of this subsection, shall be indicated on the tax statement provided to the county tax assessor-collector at the time of title application~~]

(g) Unremitted tax paid to seller, transfer of certificate of title.

(1) A county tax assessor-collector may accept an Application for Texas Title and/or Registration [~~application for certificate of title~~] without the payment of motor vehicle tax from a purchaser who paid the motor vehicle tax to a dealer [~~as described in subsection (c) of this section to a seller~~] who failed to remit the motor vehicle tax as described in subsection (c) [~~(d)~~] of this section.

(2) The purchaser must present acceptable evidence of motor vehicle tax payment at the time an Application for Texas Title and/or Registration is submitted to the county tax assessor-collector. [~~of title application.~~] Acceptable evidence includes, but is not limited to, a sales contract or bill of sale that identifies the dealer and the amount of motor vehicle tax paid.

(3) The Application for Texas Title and/or Registration must contain the dealer's Motor Vehicle Seller-Financed Sales Tax Permit number (if applicable and available) and must indicate that motor vehicle tax has been paid to the dealer and no additional motor vehicle tax is due from the purchaser. [~~application for certificate of title and receipt should indicate "tax paid to seller," a zero in the space labeled amount of tax due, and the seller's motor vehicle seller-finance tax permit number (if appropriate and available).~~]

(4) The county tax assessor-collector shall notify the comptroller of the dealer's [~~seller's~~] failure to remit the motor vehicle tax through the automated Registration-Title System (RTS) and include the document indicating motor vehicle tax paid to the [~~selling~~] dealer in the title application material.

(h) Prohibited advertising. A dealer may not directly or indirectly advertise, hold out or state to a customer or the public that he will assume, absorb or refund a part of the motor vehicle tax imposed on the sale of a motor vehicle, or will not add tax to the sales price.

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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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.280

The Comptroller of Public Accounts proposes new §3.280, concerning aircraft. The new section implements Senate Bill 1396, 84th Legislature, 2015, which enacted Tax Code, Chapter 163, relating to sales and use taxation of aircraft. In addition, the new section replaces those portions of §3.297 of this title (relating to Carriers) and §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) that address aircraft in order to create a section dedicated solely to aircraft.

Subsection (a) provides definitions. Paragraph (1) defines the term "affiliate." This definition is based upon the definition of the term "affiliate" in Tax Code, §163.006(c) (Certain Transactions Between Related Persons) as an entity that would be classified as a member of the purchaser's affiliated group under Tax Code, §171.0001 (General Definitions).

Several of the terms defined in subsection (a) relate to the use of aircraft in connection with agricultural operations. Paragraph (2) defines the term "agricultural aircraft operation," pursuant to Tax Code, §151.316(a)(11) (Agricultural Items). Pursuant to Tax Code, §151.328(a)(5) (Aircraft), paragraph (3) defines the term "agricultural use" using the definition assigned to the term by Tax Code, §23.51 (Appraisal of Agricultural Land; Definitions). Paragraph (8) defines the term "exotic animals." The term references the definitions of the terms exotic fowl and exotic livestock given in Texas Agriculture Code, §161.001(a) (Definitions). Paragraphs (12), (18), and (26) define the terms "livestock," "predator control," and "wildlife," respectively, all of which appear in Tax Code, §151.328(a)(5) but are not defined therein. For purposes of this subsection, the term "livestock" is defined to refer to horses, mules, donkeys, llamas, alpacas, and animal life of a kind that ordinarily constitutes food for human consumption. This definition reflects the meaning of the term "livestock" as it appears in §3.296 of this title (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer). The definition of the term "predator control" refers to Texas Parks and Wildlife Code, Chapter 43, Subchapter G (Permits to Manage Wildlife and Exotic Animals from Aircraft). The definition of the term "wildlife" is based upon the definition of the term in Texas Parks and Wildlife Code, §43.103(6) (Definitions).

Paragraph (4) addresses the statutory change to the definition of "aircraft" in Tax Code, §151.328(c) enacted by House Bill 3319, 80th Legislature, 2007, which amended the types of flight simulation training devices that are defined as aircraft. The definition further incorporates prior comptroller determinations that "balloons" and "gliders" do not meet the definition of an aircraft for sales and use tax purposes. See, for example, Comptroller's Decision No. 33,078 (1995) and STAR Accession No. 8510L0667A14 (October 1, 1985). The definition also excludes unmanned aerial vehicles, including missiles, rockets, model aircraft, and drones.

Paragraph (5) defines the term "certificated or licensed carrier" using the definition given in Tax Code, §163.001 (Certificated or Licensed Carriers). The definition further emphasizes that letters of authorization, certificates of inspection, and airworthiness certificates do not convey authority to operate as a certificated or licensed carrier. Such letters and certificates relate to the carrier device itself rather than to a person's right to operate a carrier business.

Paragraph (6) defines the term "component part" using language derived from both §3.297 and *Southwest Airlines Co. v. Bullock,* 784 S.W.2d 563 (Tex. App.--Austin 1990, no writ).

Paragraph (7) defines the term "consumable supplies" consistent with the meaning given to the term in §3.292 of this title. Paragraph (9) defines the term "extended warranty or service policy" consistent with the meaning given to the term in §3.292 of this title.

Paragraph (10) defines the acronym "FAA."

Paragraph (11) defines the term "incorporated materials" consistent with the meaning given to the term in §3.291 of this title (relating to Contractors). Paragraph (13) defines the term "lump-sum contract." This definition is based, in part, on the meaning given to the term in §3.291 of this title. Paragraphs (14), (15), and (16) define the terms "maintain," "maintenance," and "manufacturer's written warranty," respectively, consistent with the meaning given to the terms in §3.292 of this title.

Paragraph (17) defines the term "operational control." This definition is based on Tax Code, §163.002(b) (Resale of Aircraft), which states, "For purposes of this subsection, 'operational control' has the meaning assigned by the Federal Aviation Regulations and includes the exercise of authority over initiating, conducting, or terminating a flight."

The definition for the term "qualified flight instruction" in paragraph (19) is adapted, in part, from §3.297, which is being proposed for amendment. Additional language is added to the definition to make clear that qualified flight instruction does not include training in aerobatic maneuvers. See STAR Accession No. 200210542L (October 30, 2002) (partially superseded on other grounds).

Paragraph (20) defines the term "remodel." This definition is derived from the definition of the term "remodeling" in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). Paragraphs (21) and (22) define the terms "repair" and "restore," respectively, consistent with the meaning given to the terms in §3.292 of this title.

Paragraph (23) defines the term "sale for resale" in the context of aircraft purchases. This definition is taken from Tax Code, §163.002.

The definition of the term "separated contract" in paragraph (24) is based, in part, on the definition of the term provided in §3.291. Paragraph (25) defines the term "service provider" consistent with the meaning given to the term in §3.292 of this title.

Subsection (b) provides information about the taxability of the sale, lease, or rental of aircraft, aircraft engines, and component parts. Paragraph (1) states that the sale, lease, or rental of an aircraft, aircraft engine, or component part in Texas is subject to sales tax. Paragraph (2) explains what is included in the taxable sales price of an aircraft, aircraft engine, or component part.

Subsection (c) provides information concerning use tax. Paragraph (1) reiterates that use tax is due when an aircraft purchased, leased, or rented outside of Texas is brought into Texas for use in Texas. See Tax Code, §151.101 (Use Tax Imposed) and §151.105 (Importation for Storage, Use, or Consumption Presumed).

Subsection (c)(2) addresses when an aircraft purchased outside of Texas and brought into Texas is presumed to have been purchased for use in this state. The paragraph implements Tax Code, §151.105 and §163.004 (No Presumption of Use).

Subsection (c)(3) explains that an aircraft is not subject to use tax in Texas if it is predominantly used outside of the state for a year. See Tax Code, §163.005 (No Imposition of Tax Following Out-of-State Use). This subsection also provides recordkeeping requirements for substantiating out of state use.

Subsection (c)(4) states that an aircraft is not subject to use tax in Texas if it is brought into the state for the sole purpose of being completed, repaired, remodeled, or restored. See Tax Code, §163.003 (Use of Aircraft). This subsection also provides recordkeeping requirements for proving that an aircraft was in Texas for the sole purpose of completion, repair, remodeling, or restoration.

Subsection (c)(5) states that a taxpayer may be entitled to a credit against Texas use tax for tax paid to another state and refers taxpayers to §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers) for more information.

Subsection (d) addresses transactions between related persons. Paragraph (1) implements Tax Code, §163.006(a). Paragraphs (2) and (3) implement Tax Code, §163.006(b), which exempts from sales tax certain sales, leases, or rentals of an aircraft by an affiliate of the aircraft's purchaser.

Subsection (e) addresses the sales and use tax exemptions in Tax Code, Chapters 163 (Sales and Use Taxation of Aircraft) and 151 (Limited Sales, Excise, and Use Tax) that are specific to aircraft. This subsection reflects the comptroller's general policy that purchasers *may* issue a resale or exemption certificate to a seller, but are not required to do so in order to later claim an exemption on a purchase, except as provided in subsection (e)(4). "Only *sellers* of taxable items are required to accept and maintain resale or exemption certificates to prove tax-free sales." Comptroller's Decision No. 46,537 (2009) (emphasis added).

Subsection (e)(1) incorporates the exemptions provided by Tax Code, §151.328(a)(1) and (e) for the sale, lease, or rental to a certificated or licensed carrier of aircraft, component parts, and tangible personal property necessary for the normal operation of, and pumped or poured into, an aircraft. Paragraph (1)(D) makes clear that the exemption does not extend to, and sales and use tax is due on, the sale, lease, or rental of taxable items that support the overall operation of a certificated or licensed carrier. In addition, paragraph (1)(E) incorporates from existing §3.297 the exemption from sales tax created by Tax Code, §151.330(h) (Interstate Shipments, Common Carriers, and Services Across State Lines) for the sale of tangible personal property to a certificated or licensed carrier in Texas for use solely outside Texas if the carrier, using its own facilities, ships the items to a point outside this state under a bill of lading. Subsection (e)(1)(E) restates the language of the statute.

Subsection (e)(2) incorporates from §3.297, and expands upon, a description of the exemption created by Tax Code, §151.328(a)(2) and (e) for the sale, lease, or rental to a qualified flight school or instructor of aircraft, component parts, and tangible personal property necessary for the normal operation of, and pumped or poured into, an aircraft. Paragraph (2)(E) also incorporates from §3.297 a description of the exemption from sales tax for the rental of an aircraft by a student enrolled in a program providing qualified flight instruction.

Subsection (e)(3) incorporates from existing §3.297 the sales and use tax exemption created by Tax Code, §151.328(a)(3) for the sale, lease, or rental of an aircraft to a foreign government. The paragraph further states that sales or use tax is due on the sale or lease of component parts or materials that are incorporated in this state into an aircraft owned by a foreign government, unless the sale or lease is otherwise exempt under Tax Code, Chapter 151.

Subsection (e)(4) restates Tax Code, §151.328(a)(4), (f), and (g), which creates an exemption from tax for the sale or lease of an aircraft in this state to a person for use and registration in another state or nation before any use in this state. This subsection also memorializes the holding of *Energy Education of Montana, Inc. v. Comptroller of Public Accounts,* 2013 Tex. App. LEXIS 5047 (Tex. App - Austin 2013, pet. denied).

Subsection (e)(4)(A)(i) is added to establish that performing repairs, remodeling, maintenance, or restoration on the aircraft in Texas prior to flying the aircraft out of Texas does not cause a loss of the exemption. See STAR Accession No. 9401L1283G12 (December 26, 1994).

Given the unique, highly mobile nature of aircraft, the comptroller has determined that aircraft purchased under the fly-away exemption should not be subject to the general rules regarding divergent use of property purchased under an exemption, and should instead be treated as aircraft purchased out-of-state. Consequently, subsection (e)(4)(C) and (D) explains that an aircraft purchased under the fly-away exemption and subsequently used in Texas will not be subject to tax if it is predominantly used outside of Texas for one year. Subsection (e)(4)(E) establishes recordkeeping requirements for proving the predominant use of the aircraft. These subparagraphs mirror subsection (c)(3).

Subsection (e)(4)(F) provides that the fly-away exemption does not apply to short-term hourly rentals. Subsection (e)(4)(G) requires a purchaser claiming the fly-away exemption to provide the seller with a properly completed Texas Aircraft Exemption Certificate Out-of-State Registration and Use, Form 01-907. This subparagraph implements Tax Code, §151.328(f).

Subsection (e)(5) implements Senate Bill 958, 81st Legislature, 2009. This legislation amended Tax Code, §151.316 (Agricultural Items) to memorialize existing comptroller policy allowing an exemption for aircraft, machinery, and equipment used exclusively in an agricultural aircraft operation. In addition, the bill amended Tax Code, §151.328 to exempt aircraft used for other agricultural purposes, such as predator control. Subsection (e)(5)(A) provides that sales and use tax is not due on aircraft purchased exclusively for an agricultural use. See Tax Code, §151.328(a)(5). Subsection (e)(5)(B) provides that aircraft, component parts, and tangible personal property necessary for the

normal operation of, and pumped or poured into, an aircraft are exempt when used exclusively in an agricultural aircraft operation. See Tax Code, §151.316(a)(11). Subsection (e)(5)(B) also implements House Bill 268, 82nd Legislature, 2011, which added Tax Code, §151.1551 (Registration Number Required for Timber and Certain Agricultural Items) requiring an agricultural aircraft operation to obtain an Agriculture/Timber registration number from the comptroller and to provide that registration number to the seller when purchasing taxable items exempt under Tax Code, §151.316.

Subsection (e)(5)(C) states that selling a gunner's seat on an aircraft used in agriculture operations to a person who will take nuisance feral hogs or coyotes is subject to Texas sales and use tax as an amusement service. See Tax Policy News, June 2012 (STAR Accession No. 201207530L). The comptroller has long held that hunting is not a taxable amusement service. See, for example, §3.298(a)(2)(H) of this title (relating to Amusement Services); see also STAR Accession No. 200807120L (July 17, 2008) ("No tax is due on a separate charge for hunts or hunting guide services."). However, using a helicopter to take feral hogs or coyotes is not hunting. A Texas hunting license is not required to take nuisance feral hogs and coyotes; rather, a special permit must be obtained from the Texas Parks and Wildlife Department. See Parks and Wildlife Code, §43.1075 (Using Helicopters to Take Certain Animals). Further, it is a violation of state law to sport hunt from an aircraft. See Parks and Wildlife Code, §43.1095(c) (Prohibited Acts).

Subsection (e)(6) addresses fractional ownership programs and explains that the sale, lease, or rental of an aircraft operated under Part 91, Subpart K of the Federal Aviation Regulations is not subject to tax. See Tax Code, §163.007 (Aircraft Operated Under Fractional Ownership Programs).

Subsection (f) provides information about the tax due when an aircraft or other taxable item that was sold, leased, or rented tax-free under a resale or exemption certificate is subsequently put to a divergent use. This subsection directs taxpayers to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates) for more information.

Subsection (g) provides information concerning the tax responsibilities of service providers repairing, remodeling, maintaining, or restoring aircraft, aircraft engines, or component parts. Paragraph (1) explains that the labor to complete, repair, remodel, maintain, or restore an aircraft is not a taxable service. See Tax Code, §151.0101(a)(5)(A) (Taxable Services). Paragraph (2) contains information that was previously provided in existing §3.292(i). Paragraph (3) describes the sales tax exemption for repair, remodeling, and maintenance services performed on aircraft that are exempt from tax under subsection (e)(1), (2), or (5). Paragraph (4) memorializes guidance previously provided in STAR Accession Nos. 8804L0873G11 (April 6, 1988) and 200008645L (August 28, 2000). The provisions in paragraph (5), concerning the repair, remodeling, maintenance, or restoration of component parts removed from and returned to an aircraft pursuant to the repair, remodeling, maintenance, or restoration of that aircraft, also incorporates longstanding comptroller guidance. See STAR Accession No. 200810222L (October 9, 2008).

Subsection (h) addresses jet turbine engines. Paragraphs (1) and (2) are incorporated from existing §3.297. These paragraphs grant an exemption for persons providing electrochemical plating or a similar process used in overhauling, retrofitting, or repairing jet turbine aircraft engines and their components, as provided by Tax Code, §151.318(n) (Property Used in Manufacturing). Paragraph (3) addresses the exemption for the sale of electricity or natural gas used in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier provided by Tax Code, §151.317(a)(7) (Gas and Electricity). This paragraph is also incorporated from existing §3.297.

Subsection (i)(1) and (2), concerning manufacturer's written warranty and extended warranties, respectively, are incorporated from §3.292, which is being proposed for amendment.

Subsection (j) addresses the occasional sale exemption provided in Tax Code, §151.304 (Occasional Sales) and makes reference to §3.316 of this title (relating to Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

Subsection (k) addresses the purchase of an aircraft for resale. Paragraph (1) provides the requirements sellers must meet in order to accept a resale certificate in good faith. These requirements are derived from §3.285 of this title and are reflected in prior Comptroller's Decisions, such as Comptroller's Decision No. 105,680 (2013). Paragraph (2) explains when a person purchasing, leasing, or renting an aircraft may provide a properly completed resale certificate in lieu of paying tax on the purchase, lease, or rental. This paragraph implements Tax Code, §163.002.

Subsection (l) addresses the application of local sales and use tax to the sale, lease, and rental of aircraft.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutes and agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, Chapter 163 (Sales and Use Taxation of Aircraft), and Tax Code, §§151.006 (Sale for Resale), 151.011 (Defining Use and Storage), 151.0101(a)(5) (Taxable Services), 151.101 (Use Tax Imposed), 151.105 (Importation for Storage, Use, or Consumption Presumed), 151.1551 (Registration Number Required for Timber and Certain Agricultural Items), 151.304 (Occasional Sales), 151.316 (Agricultural Items), 151.317(a)(7) (Gas and Electricity), 151.318(n) (Property Used in Manufacturing), 151.328 (Aircraft), and 151.330 (Inter-

state Shipments, Common Carriers, and Services Across State Lines).

§3.280. Aircraft.

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

(1) Affiliate--A member of a group of entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

(2) Agricultural aircraft operation--The operation of an aircraft licensed by the FAA under 14 Code of Federal Regulations, Part 137. Agricultural aircraft operations include crop dusting, pollination, and seeding.

(3) Agricultural use--This term includes, but is not limited to, the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used is not less than 5 or more than 20 acres.

(4) Aircraft--A fixed-wing, heavier-than-air craft that is operated by a pilot from within the craft, is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings; a helicopter; or an airplane flight simulation training device approved by the FAA under Appendices A and B, 14 Code of Federal Regulations, Part 60. The term does not include balloons, gliders, rockets, missiles, or unmanned aerial vehicles.

(5) Certificated or licensed carrier--A person authorized by the FAA to operate an aircraft to transport persons or property in compliance with the certification and operations specifications requirements of 14 Code of Federal Regulations, Part 121, 125, 133, or 135. Letters of authorization, certificates of inspection, and airworthiness certificates are not appropriate evidence of authority to operate as a certificated or licensed carrier.

(6) Component part--Tangible personal property that is intended to be permanently affixed to, and become a part of, an aircraft; is necessary to the normal operations of the aircraft, or is required by FAA regulations; and is secured or attached to the aircraft. The term includes tangible personal property necessary to the normal operations of the aircraft that can be removed temporarily from the aircraft for servicing, such as engines, seats, radar equipment, and other electronic devices used for navigational or communications purposes, and air cargo containers, food carts, fire extinguishers, survival rafts, and emergency evacuation slides. Items such as pillows, blankets, trays, ice for drinks, kitchenware, and toilet articles are not component parts.

(7) Consumable supplies--Tangible personal property that is used by a service provider to repair, remodel, maintain, or restore tangible personal property belonging to another; is not transferred into the care, custody, or control of the purchaser of the service; and, having been used once for its intended purpose, is completely used up or destroyed. Examples of consumable supplies include, but are not limited to, canned air used to remove dust from equipment and solvents used to clean equipment parts.

(8) Exotic animals--Livestock and fowl that are not indigenous to Texas and are defined as exotic livestock or exotic fowl by Agriculture Code, §161.001(a) (Definitions). Examples include, but are not limited to, nilgai antelope, blackbuck antelope, axis deer, fallow deer, sika deer, aoudad, ostriches, and emus.

(9) Extended warranty or service policy--A contract sold to the purchaser of tangible personal property for an amount in addition to the charge for the tangible personal property, or sold to an owner of tangible personal property, to extend the terms of the manufacture's written warranty or provide a warranty in addition to or in place of the manufacture's written warranty.

(10) FAA--Federal Aviation Administration, an agency of the United States Department of Transportation.

(11) Incorporated materials--Tangible personal property that is attached or affixed to, and becomes a part of, an aircraft, aircraft engine, or component part in such a manner that the property loses its distinct identity as separate tangible personal property.

(12) Livestock--Horses, mules, donkeys, llamas, alpacas, and animal life of a kind that ordinarily constitutes food for human consumption. The term livestock does not include wildlife or pets.

(13) Lump-sum contract--A written agreement in which the agreed price is one lump-sum amount and in which the charge for incorporated materials is not separated from the charge for skill and labor. Separated invoices or billings issued to the customer will not change a written lump-sum contract into a separated contract unless the terms of the contract require separated invoices or billings.

(14) Maintain--To perform maintenance.

(15) Maintenance--Work performed on operational and functioning tangible personal property that is necessary to sustain or support safe, efficient, and continuous operation of the tangible personal property, or is necessary to keep the tangible personal property in good working order by preventing decline, failure, lapse, or deterioration.

(16) Manufacturer's written warranty--A manufacturer's guarantee made for no additional charge to the purchaser of an item of tangible personal property that the item is operable and will remain operable for a specified period of time.

(17) Operational control--This term has the meaning assigned by FAA regulations and includes the exercise of authority over initiating, conducting, or terminating a flight.

(18) Predator control--A form of wildlife and exotic animal management regulated by the Texas Department of Parks and Wildlife under Parks and Wildlife Code, Chapter 43, Subchapter G (Permits to Manage Wildlife and Exotic Animals from Aircraft) used to protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops. Feral hog eradication using an aircraft is one form of predator control.

(19) Qualified flight instruction--Training recognized by the FAA that is designed to lead to a pilot certificate or rating issued by the FAA, or is otherwise required by rule or regulation of the FAA, and that is conducted under the direct or general supervision of a flight instructor certified by the FAA. Qualified flight instruction includes FAA-required check flights, maintenance flights, and test flights, but

does not include demonstration flights for marketing purposes or training in aerobatic maneuvers.

(20) Remodel--To modify or remake tangible personal property belonging to another in a similar but different manner, or to change the style, shape, or form of tangible personal property belonging to another, without causing a loss of its identity or without causing it to operate in a new or different manner. Remodeling does not include processing.

(21) Repair--To mend or restore to working order or operating condition tangible personal property that was broken, damaged, worn, defective, or malfunctioning.

(22) Restore--To return tangible personal property that is still operational and functional, but that has faded, declined, or deteriorated, to its former or original state.

(23) Sale for resale--The sale, lease, or rental of an aircraft to a person who acquires the aircraft for the purpose of leasing, renting, or reselling the aircraft to another person, or for the purpose of transferring operational control of the aircraft to one or more persons pursuant to one or more written lease agreements, in exchange for a fixed, variable, or periodic consideration, whether or not the consideration is in the form of a cash payment, in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the form or condition in which the aircraft is acquired.

(24) Separated contract--A written agreement in which the agreed price is divided into a separately stated charge for incorporated materials and a separately stated charge for skill and labor. An agreement is a separated contract if the charge for incorporated materials and the charge for labor are separately stated on an invoice or billing that, according to the terms of the contract, is deemed to be a part of the contract. Adding the separated charge for incorporated materials and the separated charge for labor together to give a lump-sum total does not transform a separated contract into a lump-sum contract. An aircraft completion, repair, remodeling, maintenance, or restoration contract that separates the charge for incorporated materials from the charge for labor is a separated contract even if the charge for labor is zero.

(25) Service provider--A person who repairs, remodels, maintains, or restores tangible personal property belonging to another.

(26) Wildlife--Animals, other than insects, that normally live in a state of nature and are not ordinarily domesticated.

(b) Sales tax.

(1) The sale, lease, or rental of an aircraft, aircraft engine, or component part in Texas is the sale, lease, or rental of tangible personal property, and is subject to sales tax, unless otherwise exempt under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) or Chapter 163 (Sales and Use Taxation of Aircraft). The lease or rental of an aircraft complete with pilot or crew for a single charge is a nontaxable transportation service, rather than the lease or rental of an aircraft, even when the charges for the aircraft and the pilot or crew are separately stated. For more information about leases and rentals, refer to §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(2) Sales tax is due on the total sales, lease, or rental price of the aircraft, aircraft engine, or component part. The total sales, lease, or rental price includes separately stated charges for any service or expense connected with the sale, lease, or rental, including transportation or delivery charges. The total sales, lease, or rental price does not include separately stated cash discounts or the value of any tangible personal property taken as a trade-in by the seller in the regular course of business in lieu of all or part of the price of the aircraft. For more information on determining the taxable sales price of an item of tangible personal property, refer to Tax Code, §151.007 ("Sales Price" or "Receipts") and §3.294 of this title.

(c) Use tax.

(1) General rule. Use tax is due on the use, storage, or other consumption in this state of an aircraft purchased, leased, or rented outside of Texas and brought into Texas to be used in Texas. For more information about the application of the use tax to aircraft engines and component parts, refer to §3.346 of this title (relating to Use Tax).

(2) Presumption of purchase for use in Texas. An aircraft purchased, leased, or rented outside of Texas and then brought into Texas by a purchaser is presumed to have been purchased from a seller for use in Texas and is subject to Texas use tax. An aircraft that is brought into Texas by a person who did not purchase the aircraft directly from a seller is not presumed to have been purchased for use in Texas.

(3) Predominant use outside of Texas.

(A) An aircraft purchased, leased, or rented outside of Texas and then brought into Texas is not subject to Texas use tax if the aircraft is predominantly used outside of Texas for a period of one year beginning on the later of:

(i) the date the aircraft was acquired, by purchase, lease, rental, or otherwise, by the person bringing the aircraft into Texas; or

(ii) the date the aircraft was substantially complete in the condition for its intended use and conducted its first flight for the carriage of persons or property.

(B) For purposes of this subsection, an aircraft is predominantly used outside of this state if more than 50% of its total departures are from locations outside of Texas.

(C) The owner or operator of the aircraft must maintain records sufficient to show each of the aircraft's departures. The comptroller may examine all logs and records maintained on any aircraft brought into Texas to determine the percentage of an aircraft's total departures that were made from locations in Texas.

(4) Completing, repairing, remodeling, or restoring aircraft in Texas. An aircraft purchased, leased, or rented outside of Texas and then brought into Texas for the sole purpose of completing, repairing, remodeling, or restoring the aircraft is not subject to Texas use tax.

(A) Completion, repair, remodeling, or restoration includes flights solely for troubleshooting, testing, or training, and flights between service locations under an FAA-issued ferry permit.

(B) Any use of the aircraft for business or pleasure travel during the time that the aircraft is being completed, repaired, remodeled, or restored means the aircraft was not brought into Texas for the sole purpose of completion, repairs, remodeling, or restoration, and Texas use tax may be due on the aircraft.

(C) The owner or operator of the aircraft must maintain records sufficient to show all uses of the aircraft within Texas. The comptroller may examine all logs and records maintained on the aircraft to determine the actual use of the aircraft in Texas.

(5) Use tax credit. The purchaser or lessee of an aircraft is allowed to claim a credit against Texas use tax due on the use of the aircraft for any legally imposed sales or use tax due and paid on the sale or use of the item by the purchaser or lessee of the item to another state or any political subdivision of another state. For information on

taking a credit for tax paid to another state, refer to §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(d) Related parties.

(1) The sale, lease, rental, or other transaction between a person and a member, owner, or affiliate of the person involving an aircraft that would not be subject to tax, or would qualify for an exemption from tax if the transaction were between unrelated persons remains not subject to tax or exempt from tax to the same extent as if the transaction were between unrelated persons.

(2) Except as provided in paragraph (3) of this subsection, the use of an aircraft by an affiliate of the purchaser of the aircraft, or an owner or member of either the purchaser or its affiliate, is not subject to tax if the purchaser paid Texas sales or use tax on the purchase of the aircraft, or the purchase of the aircraft was exempt from Texas sales or use tax.

(3) The exemption in paragraph (2) of this subsection does not apply if the purchase of the aircraft was exempt as:

(A) a sale for resale; or

(B) an occasional sale, unless the owner, member, affiliate, or the owner or member of the affiliate, who is leasing or renting the aircraft could have purchased the aircraft as an occasional sale. For information on the occasional sale exemption, see subsection (j) of this section.

(e) Tax exemptions specific to aircraft. In addition to the other exemptions from tax provided under Tax Code, Chapter 151, the following tax exemptions apply specifically to the sale, lease, rental, and use in Texas of aircraft, aircraft engines, and component parts. A person claiming a sales tax exemption under this subsection may provide the seller with a properly completed exemption certificate at the time of the transaction. For more information, refer to §3.287 of this title (relating to Exemption Certificates).

(1) Certificated or licensed carriers.

(A) Sales and use tax is not due on the sale, lease, or rental of an aircraft to a certificated or licensed carrier.

(B) Sales and use tax is not due on the sale, lease, or rental of component parts of an aircraft to a certificated or licensed carrier.

(C) Sales and use tax is not due on the sale or use of tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft owned or operated by a certificated or licensed carrier.

(D) Sales and use tax is due on the sale, lease, or rental of machinery, tools, and equipment that support the overall operation of a certificated or licensed carrier, such as baggage loading or handling equipment, reservation or booking machinery and equipment, garbage and other waste disposal equipment, and office supplies and equipment, unless otherwise exempt under Tax Code, Chapter 151.

(E) Sales tax is not due on the sale of tangible personal property transferred to a certificated or licensed carrier in Texas, if the carrier, using its own facilities, ships the items to a point outside of Texas under a bill of lading and the items are purchased for use by the carrier in the conduct of its business as a certificated or licensed carrier solely outside Texas.

(2) Flight schools, instructors, and students.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft to a person who:

(i) holds a current flight school or flight instructor certificate issued by the FAA;

(ii) holds a current sales and use tax permit issued under Tax Code, Chapter 151; and

(iii) uses the aircraft to provide qualified flight instruction.

(B) Any use of the aircraft other than that described in this paragraph is subject to tax as a divergent use under subsection (f) of this section, unless otherwise exempt under Tax Code, Chapter 151.

(C) Sales or use tax is not due on the sale or use of component parts of an aircraft owned or operated by a flight school or flight instructor to provide qualified flight instruction.

(D) Sales or use tax is not due on the sale or use of tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft owned or operated by a flight school or flight instructor to provide qualified flight instruction.

(E) A student enrolled in a program providing qualified flight instruction may claim an exemption from sales tax on the short-term hourly rental of an aircraft for qualified flight instruction, including solo flights and other flights. When completing an exemption certificate claiming this sales tax exemption, the student must identify the flight school by name and address or, if the student is not enrolled in a flight school program, the student must identify the student's flight instructor and the instructor's address. The student must also retain copies of written tests and instructor's endorsements. Without evidence that the student is in pursuit of a FAA-certified pilot certificate or flight rating, aircraft rentals are subject to sales tax.

(3) Foreign governments. Sales tax is not due on the sale, lease, or rental of an aircraft to a foreign government. Sales tax is due on the sale or lease of component parts or materials incorporated in Texas into an aircraft owned by a foreign government, unless otherwise exempt under Tax Code, Chapter 151. Refer to subsection (g) of this section for information concerning the repair, remodeling, maintenance, and restoration of aircraft, aircraft engines, and component parts.

(4) Fly-away exemption.

(A) Sales tax is not due on the sale or lease of an aircraft in Texas to a person for use and registration in another state or nation before any use in Texas other than:

(i) completing, repairing, remodeling, maintaining, or restoring the aircraft in Texas, including necessary flights for troubleshooting, testing, or flights between service locations under an FAA-issued ferry permit; or

(ii) flight training in the aircraft.

(B) Any use of the aircraft in Texas other than that described in subparagraph (A) of this paragraph before the aircraft is flown out of this state for use and registration in another state or nation will result in the loss of the exemption.

(C) The subsequent use of an aircraft in Texas after the aircraft has left Texas will not subject the aircraft to tax on the purchase price if the aircraft is predominantly used outside of Texas for a period of one year beginning on the later of:

(i) the date the aircraft was purchased or leased by the person bringing the aircraft into Texas; or

(ii) the date the aircraft was substantially complete in the condition for its intended use and conducted its first flight for the carriage of persons or property.

(D) For purposes of this subsection, an aircraft is predominantly used outside of Texas if more than 50% of its total departures are from locations outside of Texas.

(E) The owner or operator of the aircraft must maintain records sufficient to show each of the aircraft's departures. The comptroller may examine all logs and records maintained on any aircraft brought into Texas to determine the percentage of an aircraft's total departures that were made from locations in Texas.

(F) The fly-away exemption does not apply to the short-term hourly rental of an aircraft in Texas, even if the person renting the aircraft intends to use the aircraft in another state.

(G) Exemption certificate required.

(i) A purchaser claiming the fly-away exemption under this paragraph must provide the seller with a properly completed Texas Aircraft Exemption Certificate Out-of-State Registration and Use, Form 01-907, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form. The seller may only accept the certificate if the seller lacks actual knowledge that the claimed exemption is invalid. Within 30 days of the sale of the aircraft, a copy of the completed certificate signed by both the seller and the purchaser must be provided to the Comptroller of Public Accounts, Business Activity Research Team, P. O. Box 13003, Austin, Texas, 78711-3003.

(ii) By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation in which the aircraft is intended to be used and registered.

(iii) Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed $500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.

(5) Agricultural use.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft for use exclusively in connection with an agricultural use, as defined in this section, when used for:

(i) predator control;

(ii) wildlife or livestock capture;

(iii) wildlife or livestock surveys;

(iv) census counts of wildlife or livestock;

(v) animal or plant health inspection services; or

(vi) agricultural aircraft operations, such as crop dusting, pollination, or seeding.

(B) Component parts and necessary supplies for aircraft used exclusively in agricultural aircraft operations.

(i) Sales or use tax is not due on the sale or use of component parts of an aircraft used exclusively in agricultural aircraft operations.

(ii) Sales or use tax is not due on the sale or use of tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft used exclusively in agricultural aircraft operations.

(iii) Exemption certificate required. A person claiming the exemption under this subparagraph must have a valid Texas Agricultural and Timber Exemption Registration Number issued by the comptroller, and must issue a properly completed Texas Agricultural Sales and Use Tax Exemption Certification, Form 01-924, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(iv) This exemption does not include the sale or use of firearms, ammunition, or other equipment or tangible personal property used to perform predator control, wildlife census counts, or any other activity not included in the definition of agricultural aircraft operation.

(C) Use of an aircraft is considered to be "for use exclusively in connection with an agricultural use" if 95% of the use of the aircraft is for a purpose described by subparagraph (A) of this paragraph. Travel of less than 30 miles each way to a location to perform a service described by subparagraph (A) of this paragraph will not disqualify the sale, lease, or rental of an aircraft from the exemption, and will not be regarded as divergent use.

(D) Selling the use of a gunner's seat on an aircraft that is exempt under this paragraph to a person participating in aerial wildlife management, as authorized by Parks and Wildlife Code, §43.1075 (Using Helicopters to Take Certain Animals), will not result in a loss of the exemption. The sale of the gunner seat is subject to sales tax as a taxable amusement service under Tax Code, §151.0028 (Amusement Services) and §3.298 of this title (relating to Amusement Services).

(E) A person who claims an exemption under this paragraph must maintain and make available to the comptroller upon request flight records for all uses of the aircraft, as well as any other records requested by the comptroller, such as Aerial Wildlife Management Permits issued under Parks and Wildlife Code, Chapter 43, Subchapter G. Failure to maintain adequate records may result in loss of the exemption.

(6) Fractional ownership operations. Sales and use tax is not due on the sale, lease, or rental of an aircraft operated as part of a fractional ownership program under 14 Code of Federal Regulations Part 91, Subpart K-Fractional Ownership Operations. Sales tax is due on the sale or lease of component parts or materials incorporated into an aircraft that is part of an aircraft fractional ownership operation, unless otherwise exempt under Tax Code, Chapter 151.

(f) Divergent use.

(1) Exempt aircraft, aircraft engines, and component parts. Sales and use tax is due when an aircraft, aircraft engine, or component part sold, leased, or rented tax-free under a properly completed exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information, refer to §3.287 of this title.

(2) Sales for resale. Sales and use tax is due when an aircraft engine or component part sold, leased, or rented tax-free under a properly completed resale certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information, refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale). Sales and use tax is not due on the divergent use of an aircraft that is purchased for resale.

(3) Agricultural use and agricultural aircraft operations. No divergent use may be made of an aircraft exempted under subsection (e)(5) of this section, relating to agricultural use, without a total loss of the exemption. Certain limited uses identified in subsection (e)(5)(C) of this section do not constitute divergent use of an agricultural aircraft. No divergent use of component parts or necessary tangible personal property exempted under subsection (e)(5)(B) of

this section, relating to agricultural aircraft operations, can be made without a total loss of that exemption.

(g) Repair, remodeling, maintenance, restoration, and completion.

(1) Labor to complete, repair, remodel, maintain, or restore aircraft in Texas is not subject to sales tax. The sale or use of materials incorporated into an aircraft, aircraft engine, or component part being completed, repaired, remodeled, maintained, or restored in Texas is subject to sales and use tax as provided in paragraph (2) of this subsection, unless otherwise exempt.

(2) Tax responsibilities of service providers.

(A) Incorporated materials. Whether the service provider owes tax on the purchase of materials that will become incorporated materials as part of the completion, repair, remodeling, maintenance, or restoration of an aircraft, aircraft engine, or component part depends upon whether the service provider is operating under a lump-sum or separated contract.

(i) Separated contracts. If the services are performed under a separated contract, the service provider is regarded as the seller of the incorporated materials. If the service provider has a sales and use tax permit, the service provider may issue a properly completed resale certificate to the supplier in lieu of paying sales tax on the purchase of the incorporated materials. The service provider must then collect sales tax from the customer on either the agreed contract price for the incorporated materials, or the amount the service provider paid for the incorporated materials, whichever amount is greater. The service provider may also use incorporated materials removed from an inventory of items upon which sales or use tax was paid at the time of purchase. In such a case, sales tax is to be collected from the customer on the agreed contract price of the incorporated materials as though the incorporated materials had been purchased tax-free with a resale certificate.

(ii) Lump-sum contracts. If the services are performed under a lump-sum contract, the service provider is the ultimate consumer of all incorporated materials. The service provider may not collect sales tax from the customer. The service provider must pay sales or use tax to the suppliers of the incorporated materials at the time of purchase, unless the service provider works under both lump-sum and separated contracts and uses incorporated materials removed from a valid tax-free inventory that were originally purchased tax-free by use of a resale certificate. In such a case, the service provider incurs a tax liability based upon the purchase price of the incorporated materials and must report and remit the tax to the comptroller. The service provider owes sales or use tax on the purchase of incorporated materials even when the services are performed for a customer that is exempt from tax under Tax Code, Chapter 151.

(B) Tools, equipment, and consumable supplies. Sales and use tax is due on the purchase, lease, or rental of tools, equipment, and consumable supplies used by the service provider but not incorporated into the aircraft, aircraft engine, or component part at the time of the service, regardless of the type of contract used to perform the service, and the service provider may not collect sales or use tax from the customer on any charges for such items.

(3) Exemption for certificated or licensed carriers, flight schools or instructors, and persons operating aircraft for an agricultural use.

(A) The total charge for services to complete, repair, remodel, maintain, or restore aircraft, aircraft engines, or component parts by or for a certificated or licensed carrier, a flight school or instructor providing qualified flight instruction, or a person operating aircraft for an agricultural use is exempt from sales and use tax, whether the charge is lump-sum or separately stated.

(B) Sales and use tax is not due on the sale, lease, or rental of machinery, tools, supplies, and equipment used directly and exclusively in the repair, remodeling, maintenance, or restoration of aircraft, aircraft engines, or component parts by or for a certificated or licensed carrier, a flight school or a flight instructor providing qualified flight instruction, or person conducting an agricultural aircraft operation, provided the purchaser issues the seller a properly completed exemption certificate. This includes equipment, such as battery chargers and diagnostic equipment, used to sustain or support safe and continuous operations and to keep the aircraft in good working order by preventing its decline, failure, lapse, or deterioration.

(4) Aircraft used outside Texas. The following guidelines apply to aircraft brought into Texas by out-of-state owners or operators for completion, repair, remodeling, or restoration.

(A) Separated contracts. Sales or use tax is not due on the separately stated charge for labor to complete, repair, remodel, maintain, or restore an aircraft, aircraft engine, or component part performed under a separated contract. The cost of incorporated materials is:

(i) subject to sales tax when the owner or operator takes delivery of the aircraft in Texas; or

(ii) not subject to sales tax when the aircraft is delivered to an out-of-state location by the service provider.

(B) Lump-sum contracts. Sales tax is not due by the owner or operator of an aircraft completed, repaired, remodeled, maintained, or restored under a lump-sum contract. The service provider owes sales or use tax on the incorporated materials, whether the service provider delivers the aircraft out of state or the owner or operator takes delivery of the aircraft in Texas.

(5) The repair, remodeling, maintenance, or restoration of component parts removed from and returned to an aircraft pursuant to the repair, remodeling, maintenance, or restoration of that aircraft is to be treated in accordance with the provisions of this subsection. The repair, remodeling, maintenance, or restoration of a component part removed from an aircraft that is not returned to the aircraft is subject to the provisions of §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(h) Jet turbine aircraft engines.

(1) Sales or use tax is not due on the sale, lease, or rental of the following items used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts:

(A) machinery, equipment, or replacement parts or accessories with a useful life in excess of six months; and

(B) supplies, including aluminum oxide, nitric acid, and sodium cyanide.

(2) A person claiming an exemption under paragraph (1) of this subsection must maintain documentation sufficient to show that no exclusion under Tax Code, §151.318 (Property Used in Manufacturing) applies. Also refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(3) Sales tax is not due on the sale of electricity or natural gas used in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier. For more information, refer to §3.295 of this title (relating to Natural Gas and Electricity).

(i) Warranties.

(1) Manufacturer's written warranty or recall campaign.

(A) Sales or use tax is not due on the use of incorporated materials or services furnished by the manufacturer to repair an aircraft, aircraft engine, or component part under a manufacturer's written warranty or recall campaign.

(B) Records must be kept by a service provider showing that the incorporated materials or services were used in repairing an item under a manufacturer's written warranty or recall campaign.

(C) A service provider purchasing incorporated materials used in a repair under a manufacturer's written warranty or recall campaign may issue a properly completed exemption certificate to the seller in lieu of paying tax on the purchase.

(2) Extended warranties and service policies.

(A) Sales tax is not due on the sale of an extended warranty or service policy that covers an aircraft, aircraft engine, or component part.

(B) A service provider performing services under an extended warranty or service policy must collect sales or use tax on the sale or use of incorporated materials as required under subsection (g)(2)(A) of this section, unless the aircraft, aircraft engine, or component part is owned by a certificated or licensed carrier, a flight school or instructor providing qualified flight instruction, or an agricultural aircraft operation.

(j) Occasional sales. The purchase of an aircraft, aircraft engine, or component part is exempt from sales and use tax if the purchase meets the definition of an occasional sale provided by §3.316 of this title (relating to Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

(k) Sales for resale.

(1) A person selling, leasing, or renting an aircraft, aircraft engine, or component part may accept a properly completed and signed resale certificate from the purchaser at the time of sale in lieu of collecting tax on the sale if the person does not know, and does not have reason to know, that the sale is not a sale for resale. For more information on the good faith acceptance of a resale certificate, refer to §3.285 of this title.

(2) A person purchasing, leasing, or renting an aircraft in a transaction that meets the definition of a sale for resale may provide the seller or lessor with a properly completed resale certificate if the person:

(A) holds a valid sales and use tax permit at the time of the transaction; and

(B) does not intend to exclusively lease the aircraft together with a crew or pilot.

(3) The purchase of an aircraft for lease or rental to another does not qualify as a sale for resale unless more than 50% of the aircraft's departures are made under the operational control of a person other than the purchaser, pursuant to one or more written lease agreements, in exchange for consideration. For purposes of this subsection, consideration is not required to be in the form of a cash payment, and may be fixed, variable, or periodic.

(l) Local tax. Local sales and use taxes, including taxes imposed by a city, county, transit authority, or special purpose district, apply to aircraft in the same manner as any other tangible personal property.

(1) Sales consummated in Texas. Generally, local sales taxes are allocated to the local taxing jurisdictions in which the seller's place of business is located, and the seller must collect the local sales tax, without regard to whether the aircraft is actually delivered to, or intended for use in, a Texas location in a different local taxing jurisdiction. If the seller does not collect the applicable local tax, the purchaser must accrue and remit local tax to the comptroller.

(2) Sales consummated outside of Texas. When an aircraft is purchased or leased outside of Texas and brought into Texas, local use tax is due based on the local taxing jurisdictions in which the aircraft is first stored or used. If the seller does not collect the applicable local tax, the purchaser must accrue and remit to the comptroller any local use tax due.

(3) For more information regarding the local tax collection and reporting responsibilities of sellers and purchasers, refer to §3.334 of this title (relating to Local Sales and Use Tax).

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 February 24, 2017.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

34 TAC §3.292

The Comptroller of Public Accounts proposes amendments to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property. The proposed amendments delete information in current subsections (a)(8) and (i) relating to the repair, remodeling, maintenance, and restoration of aircraft because this information is being included in new §3.280 of this title (relating to Aircraft). The proposed amendments also update information relating to vessels to better distinguish between services provided on noncommercial vessels, which are covered by this section, and services provided on commercial vessels, which are addressed in §3.297 of this title (relating to Carriers).

Subsection (a) is amended to revise existing definitions and to add definitions for several terms which appear in the current section but are not expressly defined therein. Subsequent paragraphs are renumbered accordingly.

New paragraph (1) is added to define the term "Chapter 160 boat" consistent with the definition proposed in §3.297 of this title. The proposed definition is adapted from the definition of the term "taxable boat" in §3.741 of this title (relating to Imposition and Collection of Tax). This definition also states that, for purposes of this section, the length of a vessel is measured from the tip of the bow in a straight line to the stern. This measurement is based upon Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors), which defines the term "boat" by ref-

erence to Parks and Wildlife Code, §31.003(1) (Definitions), as revised by House Bill 1106, 83rd Legislature, 2013.

Renumbered paragraph (2), defining the term "commercial vessel," is amended consistent with the amendments proposed to the definition of the term in §3.297 of this title.

New paragraph (3) is added to define the term "consumable supplies." The proposed definition is intended to provide guidance and assist taxpayers in distinguishing between materials that are transferred to the customer as part of the provision of a service and materials that are consumed by a service provider when repairing, remodeling, maintaining, or restoring the tangible personal property belonging to another. This definition is based, in part, on the definition of the term provided in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment). Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (4), defining the term "extended warranty or service policy," is amended to describe both contracts sold to purchasers for an amount in addition to the charge for the underlying tangible personal property and contracts sold to owners of tangible personal property.

New paragraphs (5) and (9) are added to memorialize longstanding agency policy that the terms "fabricate" and "processing" have the same meaning for the purposes of this section as the meaning given those terms in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

New paragraph (6) is added to define the term "maintain," which is used throughout the section, to mean "to perform maintenance."

Paragraph (7), defining the term "repairman," is deleted. The term "service provider" is used throughout the section in place of the term "repairman." Paragraph (8), defining the term "private aircraft," is also deleted. Information about the repair, remodeling, maintenance, or restoration of private aircraft is proposed to be addressed in new §3.280 of this title.

Renumbered paragraph (7), defining the term "maintenance," is amended to make the paragraph easier to read.

Renumbered paragraph (8), defining the term "manufacturer's written warranty," is amended to state that the term refers to a warranty provided at no additional charge to the purchaser of the tangible personal property.

Renumbered paragraph (10), defining the term "remodel," is amended to follow the definition of the term "remodeling" provided in §3.300 of this title.

New paragraph (12) is added to define the term "restore." This definition is based upon the definition of the term "restoration" in §3.357 of this title (Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). Section 3.357 defines restoration as, "An activity performed to bring back real property that is still operational and functional but that has faded, declined, or deteriorated, as near as possible to its original condition."

New paragraph (13), defining the term "service provider," is added to replace the term "repairman," which is proposed to be deleted. The definition states that a service provider is someone who repairs, remodels, maintains, or restores tangible personal property belonging to another.

New paragraph (14) is added to define the term "vessel" consistent with the definition proposed in §3.297 of this title. The definition is adapted from Parks and Wildlife Code, §31.003(2) (Definitions), Comptroller's Decision Nos. 8864 & 9034 (1980), and STAR Accession Nos. 7708T0083C10 (August 8, 1977) and 8906L0943C10 (June 7, 1989).

New paragraph (15) is added to define the term "warrantor" in accordance with the commonly understood meaning of the term.

Subsection (b), which explains the basic rules of taxability in the context of the repair, remodeling, maintenance, and restoration of tangible personal property, is amended to provide paragraph headings throughout the section to assist taxpayers in locating information. New subsection (b)(1) is added to draw emphasis to information that was previously provided at subsection (b). The subsection also includes a cross-reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

Subparagraphs (A), (B), (C), and (D) are added to subsection (b)(1) to address, respectively, the taxability of services related to aircraft, motor vehicles, vessels, and locomotives and rolling stock. Subparagraph (E) is added to address the taxability of services performed on tax-exempt equipment. The information contained in new subsection (b)(1)(E) was previously provided in subsection (g). All of former subsection (g) was reincorporated into subsection (b)(1)(E), except for former subsections (g)(2)(D) and (F). Subsection (g)(2)(D), regarding boats and motors subject to tax under Chapter 160, is restated in subsection (b)(1)(C). Subsection (g)(2)(F), concerning timber operations, became inapplicable as of January 1, 2008, pursuant to Tax Code, §151.3162(d) (Timber Items), when the exemption in Tax Code, §151.3162(b) became effective.

Former subsection (b)(1) is deleted because the information currently provided in this paragraph is stated more clearly in the new subsection (b)(1).

Subsection (b)(2) is amended by adding the heading, "Resale certificates," creating new subparagraphs (A) and (B), and including cross references to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property). Language is added in subparagraph (A) to explain when a service provider can issue a resale certificate. Subparagraph (B) explains a seller of tangible personal property can issue a resale certificate to a service provider. Minor revisions are proposed to subsection (b)(3) to make the subsection easier to read. Subsection (b)(4) is amended to include a cross reference to §3.287 of this title (relating to Exemption Certificates) and to make the subsection easier to read. In addition, the reference to subsection (g) is deleted as the information is incorporated into subsection (b).

Subsection (c) is amended to address only consumable supplies and equipment. The defined term consumable supplies is used in the body of the subsection in place of the term supplies. The subsection is further amended to state that a service provider owes sales or use tax on consumable supplies, as that term is proposed to be defined in this section.

Taken together, subsections (b)(2)(A) and (c), as amended, reflect tests that must be met before a provider of taxable services can purchase tangible personal property for resale. First, the tangible personal property must be transferred as an integral part of a taxable service. This gives effect to Tax Code, §151.006(a)(1) ("Sale for Resale"). Second, care, custody, and

control of the tangible personal property must be transferred to the purchaser of the service. This gives effect to Tax Code, §151.302(b) (Sales for Resale).

Subsection (d), which addresses taxability issues that arise in the context of repairs made under warranty, is reorganized for clarity. The heading of the subsection is changed from "Repairs under warranties," to "warranties," and the first paragraph is amended to refer taxpayers with questions about the repair of motor vehicles and aircraft to §3.290 and §3.280 of this title, respectively. Subsection (d)(1) is amended to replace the phrase "manufacturer's warranties" with the defined term "manufacturer's written warranty" and to add a reference to recall campaigns. Additional amendments are made to make the paragraph easier to read.

Subsection (d)(2) is amended to make the paragraph easier to read and to use certain defined terms, such as "extended warranty or service policy" and "warrantor." New subsection (d)(2)(E) explains the taxability of charges for tangible personal property and labor not covered by a warranty when the services are performed by a third party.

New subsection (d)(3) is added to reflect longstanding agency policy as to what happens when tangible personal property is replaced or taken in trade or reimbursement is given under the terms of a warranty rather than being repaired, remodeled, or restored.

Subsections (e) and (f) are amended for clarity and readability. No substantive change to policy is intended as a result of these changes.

The information previously provided in subsection (g) concerning services performed on exempt tangible personal property is moved to new subsection (b)(1)(E). Relettered subsection (g), formerly subsection (h), is amended for clarity and readability. In addition, relettered subsection (g)(3)(B) is amended to correct the cross reference to federal authority that allows the President of the United States to declare a disaster area.

Subsection (i) is deleted as the repair, remodeling, maintenance, and restoration of aircraft is now addressed in §3.280 of this title.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by incorporating into the rule current agency policy and by improving the rule's clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§151.006 (Sale for Resale), 151.0101 (Taxable Services), 151.058 (Property Used to Provide Taxable Services and Sale Price of Taxable Services), 151.151 (Resale Certificate), 151.302 (Sales for Resale), 151.3111 (Services on Certain Exempted Personal Property), and 151.331 (Rolling Stock; Train Fuel and Supplies).

§3.292. Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.

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

(1) Chapter 160 boat--A vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern, that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel, or other watercraft designed to be propelled by paddle, oar, or pole, and that is subject to tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors).

(2) [~~(1)~~] Commercial vessel--A vessel that displaces [~~A ship of~~] eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and [~~displacement~~] that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or[~~,~~]

(B) used commercially for pleasure fishing by individuals who are paying passengers [~~but excludes any ship used for sports fishing or pleasure~~].

(3) Consumable supplies--Tangible personal property that is used by a service provider to repair, remodel, maintain, or restore tangible personal property belonging to another; is not transferred into the care, custody, and control of the purchaser of the service; and, having been used once for its intended purpose, is completely used up or destroyed. Examples of consumable supplies include, but are not limited to, canned air used to remove dust from equipment and solvents used to clean equipment parts.

(4) [~~(2)~~] Extended warranty or service policy--A [~~This~~] contract [~~is~~] sold to the purchaser [~~buyer~~] of tangible personal property [~~the product~~] for an [~~additional~~] amount in addition to the charge for the tangible personal property, or sold to an owner of tangible personal property, to extend the terms of the manufacturer's written warranty or provide a warranty in addition to or in place of the manufacturer's written warranty. [~~The provisions of the contract become effective after the manufacturer's warranty expires.~~]

(5) Fabricate--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(6) Maintain--To perform maintenance.

(7) [~~(3)~~] Maintenance--Work performed [~~All work~~] on operational and functioning tangible personal property that is necessary to sustain or support safe, efficient, continuous operation of the tangible personal property [~~operations~~], or is necessary to keep the tangible personal property in good working order by preventing [~~the~~] decline, failure, lapse, or deterioration [~~of tangible personal property~~].

(8) [~~(4)~~] Manufacturer's written warranty--A manufacturer's guarantee made for no additional charge to the purchaser of an item of tangible personal property [~~by the manufacturer~~] that the item [~~product at the time of sale~~] is operable and will remain operable for a specified period of time. [~~The manufacturer's warranty is provided without additional cost to the buyer.~~]

(9) Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property, belonging to another, by restoring it to its original condition is not considered processing of the tangible personal property. The mere packing, unpacking, or shelving of tangible personal property to be sold is not considered to be processing of the tangible personal property. Processing does not include remodeling.

(10) [~~(5)~~] Remodel--To modify or remake [~~the style, shape, or form of~~] tangible personal property belonging to another in a similar but different manner, or to change the style, shape, or form of tangible personal property belonging to another, without causing a loss of its identity or without causing it [~~the item~~] to operate in a new or different manner. Remodeling does not include processing.

(11) [~~(6)~~] Repair--To mend or restore to working order or operating condition tangible personal property that was broken, damaged, worn, defective, or malfunctioning.

(12) Restore--To return tangible personal property that is still operational and functional, but that has faded, declined, or deteriorated, to its former or original state.

(13) Service provider--A person who repairs, remodels, maintains, or restores tangible personal property belonging to another.

(14) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(15) Warrantor--A person who has a contractual obligation for a specified period of time to repair, remodel, maintain, or restore tangible personal property belonging to another.

[~~(7) Repairman--Any person who, under either lump-sum or separated contracts, restores, repairs, performs maintenance services, or replaces a component of an inoperable or malfunctioning item.~~]

[~~(8) Private aircraft--An aircraft that is operated or used for a purpose other than as a certificated carrier of persons or property or by a flight school for the purpose of training pilots. Persons repairing aircraft belonging to or operated by a certificated carrier of persons or property or flight schools should refer to §3.297 of this title (relating to Carriers).~~]

(b) Taxability of services [~~Services~~] to repair, remodel, maintain, or restore tangible personal property [~~other than aircraft, commercial vessels, and motor vehicles~~].

(1) General rule. Except as otherwise provided in this section, service providers [~~Persons~~] who repair, [~~restore,~~] remodel, [~~or~~] maintain, or restore tangible personal property belonging to another are providing taxable services. A service provider is a seller and must obtain a sales and use tax permit and collect and remit sales and use tax as provided in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules). Sales or use tax is due from the purchaser on the entire charge for a service to repair, remodel, maintain, or restore tangible personal property, including any separately stated charge for materials, parts, labor, consumable supplies, or equipment. In addition, the purchaser owes sales or use tax on any charge connected to the taxable service, including separately stated charges for inspecting, monitoring, or testing. [~~Persons who remodel motor vehicles are also covered by this section.~~]

(A) Aircraft. Service providers [~~Persons~~] who repair, remodel, maintain, or restore [~~private~~] aircraft should refer to §3.280 of this title (relating to Aircraft) [~~subsection (i) of this section~~].

(B) Motor vehicles. Service providers who remodel motor vehicles are providing taxable services and are covered by this section. Service providers [~~Persons~~] who repair, maintain, or restore motor vehicles should refer to §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

(C) Vessels. Service providers who repair, remodel, maintain, or restore a vessel that is a Chapter 160 boat, sports fishing boat, or any other boat used for pleasure, and that is not a commercial vessel, are providing taxable services and are covered by this section. Service providers who repair, remodel, maintain, or restore commercial vessels should refer to §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

(D) Locomotives and rolling stock. Service providers who repair, remodel, maintain, or restore locomotives or rolling stock should refer to §3.297 of this title.

(E) Exempt equipment. A service to repair, remodel, maintain, or restore tangible personal property that, if sold, leased, or rented at the time the service is performed, would be exempt under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) due to its nature or its use is exempt from sales and use taxes. Tax is due on the sale of services to repair, remodel, maintain, or restore tangible personal property that was exempt at the time of purchase but would not be exempt at the time the service is performed. For example, services to repair, remodel, maintain, or restore the following tangible personal property will not qualify for exemption based solely on the fact that such tangible personal property was exempt at the time of its purchase;

(i) tangible personal property purchased from an organization exempted from paying sales or use tax under Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations);

(ii) tangible personal property exempted from use tax because sales tax was paid on the purchase;

(iii) tangible personal property acquired tax-free in a transaction qualifying as an occasional sale under Tax Code, §151.304 (Occasional Sales), or as a joint ownership transfer exempted under Tax Code, §151.306 (Transfers of Common Interests in Property). See §3.316 of this title (relating to Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters) and §3.331 of this title (relating to Transfers of Common Interests in Tangible Personal Property; Intercorporate Services); or

(iv) tangible personal property purchased tax-free during a sales tax holiday as provided by §3.353 of this title (relating to Sales Tax Holiday--Certain Emergency Preparation Supplies), §3.365 of this title (relating to Sales Tax Holiday--Clothing, Shoes and School Supplies) or §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products, Certain Water-Conserving Products, and WaterSense Products).

[~~(1) A service provider is a retailer and must obtain a tax permit and collect sales or use tax on the entire charge for materials, parts, labor, consumable supplies, equipment, and any charges connected to the repair, remodeling, restoration, or maintenance service.~~]

(2) Resale certificates.

(A) A service provider may issue a properly completed resale certificate instead of paying sales or use tax on the purchase of tangible personal property that is integral to repairing, remodeling, maintaining, or restoring tangible personal property belonging to another and is [~~to the supplier when purchasing materials that will be~~] transferred to the care, custody, and control of the purchaser of the taxable service. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) [~~a customer~~].

(B) A person holding tangible personal property for sale, lease, or rental may issue a properly completed resale certificate in lieu of paying sales or use tax on the purchase of labor and tangible personal property used to repair, remodel, maintain, or restore that tangible personal property. Refer to §3.285 of this title and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3) A service provider working [~~must collect sales or use tax on services (labor)~~] under an agreement that provides that the purchaser of the service [~~customer~~] will furnish the tangible personal property [~~parts and materials~~] required for the service must collect sales or use tax on the charge for the service [~~repair~~].

(4) A service provider may accept a properly completed [~~an~~] exemption certificate instead of collecting sales or use tax when performing a taxable service for a purchaser who is [~~customer~~] exempt from sales and use tax under Tax Code, Chapter 151, or when performing services [~~tax or~~] on tangible personal property [~~an item~~] that is exempt from sales and use tax. Refer to §3.287 of this title (relating to Exemption Certificates).[~~, see subsection (g) of this section.~~]

(c) Consumable supplies and equipment. Sales or use tax must be paid by the service provider on consumable supplies[~~, tools,~~] and equipment that are purchased for use in the performance of a service [~~the repair but~~] that are not transferred to the care, custody, and control of the customer.

(d) Warranties. For information on warranties for the repair of motor vehicles, refer to §3.290 of this title. For information concerning warranties for the repair of aircraft, refer to §3.280 of this title. [~~Repairs under warranties.~~]

(1) Manufacturer's written warranty or recall campaign [~~warranties~~]. No sales or use tax is due on tangible personal property [~~parts~~] or labor furnished by the manufacturer to repair tangible personal property under a manufacturer's written warranty or recall campaign.

(A) Records must be kept by the service provider to document that the service and tangible personal property [~~parts~~] were used in repairing an item under a manufacturer's written warranty or recall campaign.

(B) The service provider may purchase tangible personal property [~~parts~~] to be used in repairs under a manufacturer's written warranty or recall campaign tax-free by issuing an exemption certificate to the seller [~~supplier~~].

(2) Extended warranty or [~~warranties and~~] service policy [~~contracts for tangible personal property (motor vehicles and private aircraft see subsection (i)(4) of this section)~~].

(A) Sales or use tax [~~Tax~~] is due on the sale of an extended warranty[~~, service contract~~] or service policy [~~for the repair or maintenance of tangible personal property~~].

(B) The warrantor [~~person who warrants the item and is obligated to perform services under the terms of the agreement~~] may issue a resale certificate in lieu of paying sales or use tax on the purchase of taxable items [~~for parts or service to be~~] used in performing the services [~~repair or maintenance services~~] covered by the contract as long as the taxable items are integral to performing the service and the taxable items are also transferred to the care, custody, and control of the purchaser.

(C) If the warrantor [~~person obligated to perform the services~~] uses a third-party service provider [~~repairman~~] to perform the service [~~do the work~~], the third-party service provider [~~repairman~~] may accept a resale certificate from the warrantor in lieu of sales or use tax.

(D) The [~~repairman or~~] warrantor [~~performing the service~~] must collect sales or use tax on any charge to the purchaser [~~customer~~] for labor or tangible personal property [~~parts~~] not covered by the extended warranty or service policy.

(E) If the warrantor uses a third-party service provider to fulfill the warranty and the service provider charges the warrantor or the purchaser for tangible personal property or labor not covered under the warranty, the service provider must collect sales or use tax on such charges.

(3) Replacements and reimbursements.

(A) Trade-in. If the warrantor is a seller of tangible personal property, and if the terms of a manufacturer's or extended warranty agreement provide for either the replacement or the repair, remodeling, maintenance, or restoration of tangible personal property, then tangible personal property accepted by the warrantor under the terms of the warranty in exchange for, or towards the purchase of, tangible personal property of the type sold by the warrantor in the regular course of business will be considered a trade-in. The provisions of Tax Code, §151.007(c)(5) ("Sales Price" or "Receipts") apply to such a transaction and any amount or credit provided for the trade-in reduces the taxable amount of the sale of the replacement item.

(B) The sale of a contract that provides that a warrantor will reimburse a purchaser for payments made to replace, repair, remodel, maintain, or restore faulty, damaged, lost, or stolen tangible personal property, including the amount of any sales and use tax, is not taxable. In addition, the amount reimbursed to the purchaser of the faulty, damaged, lost, or stolen tangible personal property by the warrantor under such a contract is not taxable.

(e) Services performed on real property [~~Contractors and persons who perform real property repair and remodeling~~]. Persons who build new improvements to real property, or repair, restore, or remodel residential real property belonging to others, should refer to §3.291 of this title (relating to Contractors). Persons who repair or remodel nonresidential real property belonging to others should refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Fabricating or processing tangible personal property. Persons who fabricate or process tangible personal property belonging to [~~for~~] another should refer to §3.300 of this title [~~(relating to Manufacturing; Custom Manufacturing; Fabricating; Processing)~~].

[~~(g) Services performed on certain tangible personal property.~~]

[~~(1) Labor to repair, remodel, maintain, or restore certain tangible personal property that, if sold, leased, or rented, at the time of the performance of the service, would be exempted under Tax Code, Chapter 151, because of the nature of the property, its use, or a combination of its nature or use is exempted from sales and use taxes.~~]

[~~(2) The exemption provided in paragraph (1) of this subsection does not apply to:~~]

[~~(A) tangible personal property sold by an organization exempted by Tax Code, Chapter 151;~~]

[(B) tangible personal property exempted from use tax because sales tax was paid on the purchase;]

[(C) tangible personal property acquired tax free in a transaction qualifying as an occasional sale under Tax Code, §151.304, or as a joint ownership transfer exempted under Tax Code, §151.306;]

[(D) taxable boat or motor defined by Tax Code, §160.001;]

[(E) clothing and footwear purchased tax-free during a sales tax holiday; or]

[(F) machinery and equipment used in timber operations.]

(g) [(h)] Exemption for [labor to repair tangible personal property in a] disaster areas [area].

(1) Labor to repair, restore, remodel, or maintain tangible personal property is exempt if:

(A) the amount of the charge for labor is separately stated from any charge for tangible personal property on the invoice, contract, or similar document provided by the service provider to the purchaser [itemized]; and

(B) the service is performed on tangible personal [repair is to] property that was damaged within a disaster area by the condition that caused the area to be declared a disaster area.

(2) The exemption does not apply to tangible personal property transferred from the service provider to the purchaser as part of the repair.

(3) In this subsection, "disaster area" means:

(A) an area declared a disaster area by the Governor of Texas under Government Code, Chapter 418 (Emergency Management); or

(B) an area declared a disaster area by the President of the United States under 42 United States Code, Chapter 68 (Disaster Relief) [§5141].

[(i) Responsibilities of repairman or remodelers of private aircraft.]

[(1) Responsibilities under a lump-sum contract.]

[(A) Labor to maintain, repair or remodel private aircraft is not taxable. A person maintaining, repairing or remodeling a private aircraft for a lump-sum price is not a retailer of a taxable item and may not issue a resale certificate for parts or material used or consumed in such repair or remodel.]

[(B) Under a lump-sum contract, the repairman or remodeler is the ultimate consumer of consumable supplies, tools, equipment, and all materials incorporated into the private aircraft. The lump-sum repairman or remodeler must pay the tax to suppliers at the time of purchase. The repairman will not collect tax from customers on the lump-sum charge or any portion of the charge. Under this type of contract, the repairman will pay the tax on materials even when the property is repaired for an exempt customer.]

[(C) A lump-sum repairman may use materials from inventory that were originally purchased tax free by use of a resale certificate. In those instances, the repairman incurs a tax liability based upon the purchase price of the materials and must report and remit the tax to the comptroller.]

[(2) Responsibilities under a separated maintenance, repair or remodeling contract. Under a separated contract, the repairman of a private aircraft is a retailer and may issue a resale certificate in lieu of tax to suppliers for materials that will be incorporated into the private aircraft of the customer; the repairman must then collect tax from the customer on the agreed contract price of the materials, which must not be less than the amount the repairman paid to suppliers. The repairman must obtain a tax permit to be able to issue a resale certificate in lieu of tax when materials are purchased. The repairman may also use materials from inventory upon which tax was paid to the supplier at the time of purchase. In these instances, tax will be collected from the customer on the agreed contract price of the materials as if the materials had been purchased with a resale certificate; however, the repairman will remit tax to the comptroller only on the difference between the agreed contract price and the price paid to the supplier. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers). A repairman of private aircraft is the ultimate consumer of consumable supplies, tools, and equipment used that are not incorporated into the private aircraft being repaired. The repairman must pay tax to suppliers at the time of purchase. The repairman may not collect tax from customers on any charges for these items.]

[(3) Repairing jet turbine aircraft engines. Persons engaged in overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).]

[(4) Warranties.]

[(A) Manufacturer warranties. Manufacturer's warranties are treated in the same manner as those for tangible personal property (see subsection (d)(1) of this section).]

[(B) Extended warranties and service contracts. A repairman performing services under an extended warranty covering a private aircraft must collect tax on the parts as required under paragraph (2) of this subsection.]

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 February 24, 2017.

TRD-201700747
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 475-0387

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34 TAC §3.297

The Comptroller of Public Accounts proposes an amendment to §3.297, concerning carriers. The section is proposed to be retitled as, "Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles." All provisions in this section related to aircraft are moved to new §3.280 of this title (relating to Aircraft).

New subsection (a) is added to define key terms used throughout this section. Terms that are defined in other subsections of the rule are relocated to new subsection (a) to make the section easier to read and for consistency with other sections of this title. Subsequent subsections are relettered accordingly.

Paragraphs (1) and (2) define terms related to vessels. Paragraph (1) defines the term "Chapter 160 boat." This definition is adapted from the definition of the term "taxable boat" in §3.741 of this title (relating to Imposition and Collection of Tax). This definition also states that, for purposes of this section, the length of a vessel is measured from the tip of the bow in a straight line to the stern. This measurement is based upon Tax Code, Chapter 160 (Taxes on Sales of Boats and Boat Motors), which defines the term "boat" by reference to Parks and Wildlife Code, §31.003(1) (Definitions), as revised by House Bill 1106, 83rd Legislature, 2013. Paragraph (2) defines the term "commercial vessel" as a vessel that displaces eight or more tons of fresh water and is used exclusively and directly in a commercial or business enterprise. This definition is based on the language in Tax Code, §151.329 (Certain Ships and Ship Equipment) and §151.0101(a)(5)(B) ("Taxable Services"), current §3.292(a)(1) of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property), and STAR Accession No. 200206205L (June 24, 2002).

Paragraph (3) defines the term "common carrier." The definition in paragraph (3) is derived from Comptroller's Decision Nos. 8,984 (1983) and 35,637 (2001).

Paragraph (4) defines the term "licensed and certificated common carrier," which appears in Tax Code, §151.330(i) (Interstate Shipments, Common Carriers, and Services Across State Lines), but is not defined therein. The substance of this definition is relocated from current subsection (a)(1), which defined licensed and certificated carrier. The definition is amended to clarify that certificates of inspection or safety are not the appropriate documents for authorizing a person to operate as a common carrier because these documents relate to the carrier device itself rather than a person's right to operate a carrier business.

Paragraph (5) defines the term "locomotive," which appears in Tax Code, §151.331 (Rolling Stock; Train Fuel and Supplies), but is not defined therein, as self-propelled railroad equipment consisting of one or more units powered by steam, electricity, or diesel electric designed to operate on stationary steel rails or electromagnetic guideways. The definition is derived, in part, from definitions in 49 Code of Federal Regulations §218.5 and §229.5.

Paragraph (6) defines the term "marine cargo container." The substance of this definition is relocated from current subsection (b)(2)(A).

Paragraph (7) defines the term "motor vehicle." The substance of this definition is based, in part, on the definition of the term in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

Paragraph (8) defines the phrase "operating exclusively in foreign or interstate coastal commerce," which appears in Tax Code, §151.329, but is not defined therein. This definition is relocated from current subsection (b)(3)(A). Minor revisions are made to make the definition easier to read.

Paragraph (9), defining the term "railroad," is based on the definition in 49 Code of Federal Regulations §229.5, and §220.5, and Comptroller's Decision Nos. 39,781 and 41,577 (2004). The term includes narrow gauge shortline railroads, such as tourist, historical, or amusement park railroads, pursuant to Comptroller's Decision No. 36,869 (2000) and STAR Accession Nos. 7012L0782G14 (December 23, 1970) and 9003L0996A01 (March 30, 1990). The term is further defined to include private industrial railroads operated on steel rails connected directly to traditional railroads, but not private industrial railroads inside an installation not connected directly to traditional railroads, pursuant to Comptroller's Decision Nos. 39,781 and 41,577.

Paragraph (10) defines the term "rolling stock," which appears in Tax Code, §151.331, but is not defined therein. The term is defined, in part, as railroad equipment mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways. This portion of the definition is derived from Comptroller's Decision No. 36,869 (2000) and 49 Code of Federal Regulations §215.5. "Rolling stock" is further defined to include self-propelled specialized roadway maintenance equipment and trackmobile rail car movers pursuant to Comptroller's Decision No. 21,658 (1988) and STAR Accession No. 9208L1190C01 (August 31, 1992). However, "rolling stock" excludes equipment mounted on steel rails that is used for intra-plant transportation that is not part of or connected to a railroad. Examples include cranes operated on steel rails or tracks used to load or unload ships. *See Reynolds Metals Co. v. Combs,* 2009 Tex. App. LEXIS 2466 (Tex. App.-- Austin 2009, pet. denied).

Paragraph (11) defines the term "train" as one or more locomotives coupled to one or more units of rolling stock operated by a railroad. This definition is based on 49 Code of Federal Regulations §220.5.

Paragraph (12) defines the term "vessel." This definition is adapted from Parks and Wildlife Code, §31.003(2), Comptroller's Decision Nos. 8,864 & 9034 (1980), and STAR Accession Nos. 7708T0083C10 (August 8, 1977) and 8906L0943C10 (June 7, 1989).

Relettered subsection (b), which is currently subsection (a), is amended to delete paragraph (1). The definition of a licensed and certificated carrier provided in this paragraph is relocated to new subsection (a). Subsequent paragraphs are renumbered accordingly. In addition, subsequent paragraphs are revised to replace the phrase "this state" with "Texas," and to replace the phrase "taxable items" with "tangible personal property," where appropriate. Renumbered paragraph (1) is amended to state that use tax is not due on "the storage or use of" repair or replacement parts. Tax Code, §151.101 (Use Tax Imposed) does not impose use tax on taxable items themselves, but rather imposes a tax on the storage or use in Texas of taxable items purchased outside of the state. Renumbered paragraph (2) is amended to replace the term "licensed and certificated carrier devices" with an explanation of the term derived from Comptroller's Decision No. 35,424 (2000). Current paragraph (5), concerning divergent use, is deleted. The information contained in this paragraph is moved to relettered subsection (d).

Relettered subsection (c), which is currently subsection (b), addresses the sale and repair of commercial vessels and their component parts. New paragraph (1) is added to explain that boat and boat motor sales or use tax is due on the sale or use of a Chapter 160 boat. Subsequent paragraphs are renumbered accordingly. Renumbered paragraph (2) is amended to add a subheading and to use the defined terms "commercial vessel" and "Chapter 160 boat." Information currently contained in paragraph (2), regarding the taxability of labor to repair vessels, is relocated to new paragraph (4).

Renumbered paragraph (3), addressing component parts, is revised to use the defined term "marine cargo container." This

paragraph is also revised to memorialize prior comptroller guidance. See STAR Accession Nos. 9107T1125E10 (July 19, 1991) (identifying what constitutes the attachment of a component part to a commercial vessel), 8706L0819B10 (June 19, 1987) (identifying navigation equipment as a component part), 9210L1197D11 (October 2, 1992) (listing long-line fishing gear, rigging equipment, turnbuckle, shackle, thimble, eye swivel, etc., as component parts), 201001518L (January 6, 2010) (including permanent coatings such as paint or varnish as a component part), and 8403T0557C14 (March 22, 1984) (stating that items required by federal or state law are component parts).

New paragraph (4) is added to address the taxability of labor and materials used to repair, remodel, restore, renovate, convert, or maintain a commercial vessel. This paragraph contains information previously provided in paragraph (2). Additional language is added from Comptroller's Decision No. 12,354 (1982) (providing that equipment used to repair commercial vessels is subject to tax). Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (5), which is currently paragraph (3), is revised to use the defined term "operating exclusively in foreign or interstate coastal commerce" and for readability.

Current subsections (c) and (d), which address aircraft, are deleted. The information contained in these subsections is relocated to new §3.280 of this title. Subsequent subsections are relettered accordingly.

Relettered subsection (d) which is currently subsection (e), is revised to more clearly address divergent use of property purchased tax free. Much of the information contained in this subsection is derived from subsection (a)(5) of the existing section.

Relettered subsection (e), which is currently subsection (f), contains specific rules of taxation relating to locomotives, rolling stock, and railroad tracks. The subsection's heading is amended by adding the terms "locomotives" and "trains" for consistency with the language in the body of the subsection. Paragraph (2) is amended to state, "Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items required by federal or state regulation." The phrase "if required by federal or state regulation" is deleted to more closely follow the language of Tax Code, §151.331. The paragraph is further amended to identify specific examples of supplies essential to the operations of locomotives and trains and to memorialize prior comptroller guidance. See Comptroller's Decision No. 33,003 (2000) (concerning federally-required telecommunication and signaling devices or equipment), and STAR Accession Nos. 9202L1155C02 (February 4, 1992) (listing rails, ballast, cross ties, plates, spikes, bridges, and trestles as examples of essential supplies) and 200002042L (February 11, 2000) (including roadbed moisture barriers as essential supplies). Paragraph (2) also gives examples of certain supplies that are not exempt, such as materials used to construct, repair, remodel, or maintain depots, loading facilities, and storage facilities pursuant to STAR Accession No. 9205L1169E01 (May 7, 1992).

Paragraph (3) is added to explain the exemption from sales or use tax on the sale of labor and incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. This paragraph is based, in part, on language from Tax Code, §151.331 and §151.3111 (Services on Certain Exempted Personal Property) and STAR Accession No. 9003L0996A01 (March 30, 1990). Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (4), currently paragraph (3), is amended to add a cross-reference to §3.295 of this title (relating to Natural Gas and Electricity).

Paragraph (5) is added to address the taxability of labor and incorporated materials used in both the new construction and the repair of railroad tracks and roadbeds pursuant to Comptroller's Decision No. 34,595 (1998) and STAR Accession Nos. 9112L1142C11 (December 11, 1991) and 9202L1155C02 (February 4, 1992).

Relettered subsection (f), which is currently subsection (g), is amended to add a cross-reference to §3.290 of this title.

Subsection (h), which adopts by reference Texas Aircraft Exemption Certificate for Out-of-State Registration and Use, is deleted. Aircraft are addressed in new §3.280 of this title.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by incorporating into the rule current agency policy and by improving the rule's clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, §§151.0101 (Taxable Services), 151.3111 (Services on Certain Exempted Personal Property), 151.329 (Certain Ships and Ship Equipment), 151.330 (Interstate Shipments, Common Carriers, and Services Across State Lines), 151.331 (Rolling Stock; Train Fuel and Supplies), 151.3291 (Boats and Boat Motors) and 152.089 (Exempt Vehicles).

§3.297. Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles.

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

(1) Chapter 160 boat--A vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern, that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel, or other watercraft designed to be propelled by paddle, oar, or pole, and that is subject to tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors).

(2) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(3) Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(4) Licensed and certificated common carrier--A person authorized through issuance of a license or certificate by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common carrier. Certificates of inspection or safety do not authorize a person to operate as a licensed and certificated common carrier.

(5) Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, diesel electric, or other fuel, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled roadway maintenance equipment.

(6) Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(7) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; motor homes; motorcycles; trucks; truck tractors; trailers; semitrailers; house trailers or travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and truck cab/chassis. The term does not include a nonrepairable vehicle and a salvage vehicle, as defined by §3.86 of this title (relating to Destroyed and Repaired Motor Vehicles).

(8) Operating exclusively in foreign or interstate coastal commerce--Transporting persons or property between a point in Texas and a point in another state or foreign country. A vessel that travels between a point in Texas and an offshore area or fishing area on the high seas, or between two points in Texas, is not operating exclusively in foreign or interstate coastal commerce.

(9) Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including but not limited to:

(A) high speed ground transportation systems that connect metropolitan areas;

(B) commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C) narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D) private industrial railroads operated on steel rails that connect directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(10) Rolling stock--A unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, and gondolas. Rolling stock also includes self-propelled trackmobile rail car movers and roadway maintenance equipment. Rolling stock does not include equipment used for intra-plant transportation or other nontraditional railroad activities and that is mounted on stationary steel rails or tracks but that are not part of, or connected to, a railroad. For example, cranes operated on steel rails or tracks and used to load or unload ships are not rolling stock.

(11) Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(12) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b) [~~(a)~~] Carriers generally.

[~~(1) Licensed and certificated carrier--A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle, or pipeline as a common or contract carrier transporting persons or property for hire in the regular course of business. Certificates of inspection or airworthiness certificates are not the appropriate documents for authorizing a person to operate as a common or contract carrier. These documents relate to the carrier device itself rather than a person's right to operate a carrier business.~~]

(1) [~~(2)~~] Use tax is not due on the storage or use of repair or replacement parts acquired outside of Texas [~~this state~~] and actually affixed in Texas [~~this state~~] to a self-propelled vehicle that is used by [~~as~~] a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(2) [~~(3)~~] Use tax is due on the storage or use of tangible personal property [~~Except as provided under subsection (d) of this section, taxable items~~] brought into Texas [~~this state~~] to be assembled into a vehicle used by a common carrier to transport persons or property from place to place, unless the tangible personal property is otherwise exempt from sales and use tax under this section [~~licensed and certificated carrier devices are not exempt from the taxes imposed by the Tax Code, Chapter 151, Subchapter D~~].

(3) [~~(4)~~] Sales tax is not due on the sale of tangible personal property [~~taxable items~~] to a common carrier if the tangible personal property is [~~such items are~~] shipped to a point outside of Texas [~~this state~~] using the purchasing carrier's facilities under a bill of lading, and if the tangible personal property is [~~such items are~~] to be used by the purchasing carrier in the conduct of its business outside [~~the State~~] of Texas.

[~~(5) Sales tax is due on licensed and certificated carrier devices purchased under valid resale or exemption certificates that are put to a use other than the one specified in the certificate. The sales tax is based on the fair market rental value of the licensed and certificated carrier device for the period of time used. At any time the person us-~~

ing the carrier device in a taxable manner may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).]

(c) [(b)] Vessels.

(1) Chapter 160 boats. The sale or use in Texas of a Chapter 160 boat is subject to boat and boat motor sales or use tax under Tax Code, Chapter 160, even if the vessel meets the definition of a commercial vessel. The lease or rental of a Chapter 160 boat is subject to limited sales, excise, and use tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax). For information concerning the imposition of the boat and boat motor sales and use tax, see §3.741 of this title (relating to Imposition and Collection of Tax).

(2) [(1)] Commercial vessels. Sales or use tax is not due on the sale by the builder of a commercial vessel that is not a Chapter 160 boat [in excess of eight tons displacement that is used exclusively for commercial purposes. For the purpose of this section, eight tons displacement means the weight of fresh water displaced by a vessel before being loaded with fuel, supplies, or cargo. Vessels not more than 65 feet in length measured from end to end over the deck, excluding sheer, are subject to Boat and Boat Motor Sales Tax under Tax Code, Chapter 160].

(3) Component parts. Sales and use tax is not due on the sale or use of materials, equipment, and machinery that become component parts of a commercial vessel or a marine cargo container. A component part is

[(2)] [Sales or use tax is not due on labor to repair vessels, or machinery, equipment, or component parts of vessels in excess of eight tons displacement that are used exclusively for commercial purposes whether purchased by the builder or by a subsequent owner or operator. A component part is:]

[(A) a marine cargo container that is fully or partially enclosed to constitute a compartment of a permanent character intended for containing goods. It is strong enough to be suitable for repeated use, specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading. It is designed for ready handling, particularly when being transferred from one mode of transport to another. The term "marine cargo container" includes the accessories and equipment of the container provided that such accessories and equipment are carried with the container. The term "marine cargo container" does not include chassis, vehicles, accessories or spare parts of vehicles.]

[(B)] [all] tangible personal property that is actually attached to and becomes a part of a commercial vessel or a marine cargo container. For example, items such as radios, radar equipment, navigation equipment, wenches, long-line fishing gear, and rigging equipment, that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, including items required by federal or state law, are component parts. Permanent coatings such as paint and varnishes are also component parts [qualified under paragraph (1) of this subsection]. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, [or] lubricants, first aid kits, tools, or polishes, waxes, glazes, or other similar temporary coatings.

(4) Repair and maintenance. Sales and use tax is not due on the labor to repair, remodel, restore, renovate, convert, or maintain a commercial vessel or a component part of a commercial vessel. Sales and use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service. For more information about the repair, remodeling, maintenance, and restoration of vessels that are not commercial vessels, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) [(3)] Sales or use tax is not due on the sale of materials [Materials] and consumable supplies, including items commonly known as ships' stores and sea stores, [sold] to the owner [owners] or operator [operators] of a vessel [ships or vessels] operating exclusively in foreign or interstate coastal commerce, if the materials and consumable supplies are for use and consumption in the operation and maintenance of the vessel, or if the materials and supplies enter into and become component parts of the vessel [such ships or vessels, are exempt from the sales and use tax].

[(A) "Operating exclusively in foreign or interstate coastwise commerce" is defined, for the purposes of this section, as transporting goods or persons between a point in the State of Texas and a point in another state or in a foreign country. It does not include trips to and from offshore areas or fishing areas on the high seas, or trips between two points in the State of Texas.]

(B) Operation of the vessel in a manner other than in foreign or interstate coastal commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of [such] a vessel operating exclusively in foreign or interstate coastal commerce shall, when giving an exemption certificate, include on the certificate [set forth] the title or position of the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(6) [(4)] Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on the sale or use of materials and supplies purchased by a person providing stevedoring services for a [ship or] vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the [ship or] vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

[(c) Aircraft other than aircraft used by licensed and certificated carriers.]

[(1) The term "aircraft" does not include rockets or missiles, but does include:]

[(A) a fixed-wing, heavier-than-air craft that is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings;]

[(B) a helicopter;]

[(C) an airplane flight simulator approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations, Part 121.]

[(2) Sales or use tax is not due on aircraft sold to a foreign government.]

[(3) An aircraft is not subject to use tax if it is hangared outside this state and is used more than 50% outside this state. In order to qualify for exemption from the use tax, owners or operators of aircraft entering this state must maintain sufficient records to show the percentage of time the aircraft was used in this state.]

[(A) In determining whether an aircraft is used more than 50% outside this state, the comptroller will consider all flight time in this state, including the portion of interstate flights in Texas airspace.]

[(B) The comptroller may examine all flight, engine, passenger, airframe, and other logs and records maintained on any aircraft brought into this state to determine whether it is used more than 50% in this state.]

[(4) An aircraft purchased outside this state is subject to Texas use tax, if not otherwise exempt, if it is hangared in this state. Some factors to be considered in determining whether an aircraft is hangared in this state include:]

[(A) where the aircraft is rendered for ad valorem taxes;]

[(B) whether the owner owns or leases hangar space in this state; and]

[(C) declarations made to the Federal Aviation Administration, an insurer, or another taxing authority concerning the place of storage of the aircraft.]

[(5) Sales or use tax is not due on supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts.]

[(6) Persons repairing or remodeling aircraft other than aircraft used by persons qualified under subsection (a)(1) of this section or paragraph (7) of this subsection should refer to §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).]

[(7) Sales or use tax is not due on aircraft purchased by a person who uses the aircraft to provide flight instruction that is recognized by the Federal Aviation Administration (FAA), under the direct or general supervision of an FAA certified flight instructor, and designed to lead to a pilot certificate or rating issued by a rule or regulation of the FAA. See §3.287 of this title (relating to Exemption Certificates).]

[(8) A student enrolled in an FAA approved program may claim a tax exemption when renting aircraft for flight training, including solo flights and other flights, under an instructor's direction. When completing an exemption certificate claiming sales tax exemption, the student must identify the flight school (name and address) or if the student is not enrolled in a flight school, the student must list his or her primary flight instructor with the instructor's address. The student must also retain copies of written tests and instructors endorsements. Without evidence that the student is in pursuit of a flight rating, he or she will owe tax on aircraft rentals.]

[(9) Texas sales or use tax is not due on aircraft sold to a person for use and registration in another state or nation before any use in Texas. Flight training in the aircraft in Texas and flying the aircraft out of state does not constitute a use of the aircraft in Texas.]

[(A) To claim the exemption, an exemption certificate, substantially similar in form and content to the certificate shown on the last page of this section, must be signed by both the seller and the purchaser at the time of purchase. The seller may accept a certificate if the seller lacks actual knowledge that the claimed exemption is invalid. The seller must provide a copy of the completed certificate to the Comptroller of Public Accounts within 30 days of the sale.]

[(B) By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation of intended use and registration.]

[(C) Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed $500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.]

[(d) Licensed and certificated carriers, flight schools, and flight school instructors].

[(1) Sales or use tax is not due on aircraft used by persons defined in subsection (a)(1) of this section in the regular course of business of transporting persons or property for hire.]

[(2) The following items or services used in the repair, remodeling, or maintenance of aircraft or aircraft engines or component parts by or for a person qualified under subsection (a)(1) or (c)(7) of this section are exempt if purchased by the aircraft owner or operator, by the aircraft manufacturer, or by a repair facility.]

[(A) Machinery, tools, supplies, and equipment used directly and exclusively in the repair, remodeling, or maintenance. Included in the exemption is equipment used to sustain or support safe and continuous operations or to keep the aircraft in good working order by preventing its decline, failure, lapse, or deterioration, such as battery chargers or diagnostic equipment.]

[(B) Repair, remodeling, and maintenance services.]

[(3) Tax is not due on tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a person described in subsection (a)(1) or (c)(7) of this section or that is necessary for the normal operations of the aircraft and is pumped, poured, or otherwise placed in an aircraft owned or operated by a person described in subsection (a)(1) or (c)(7) of this section. Exempt component parts include air cargo containers that are secured or attached to the aircraft while in flight, radar equipment or other electronic devices used for navigational or communications purposes, food carts, smoke detectors, fire extinguishers, and seats. Pillows, blankets, trays, ice for drinks, kitchenware, or toilet articles are not exempt from tax.]

[(4) Tax is not due on electricity or natural gas used in the off-wing processing, overhaul or repair of a jet turbine engine or its parts for a person described in subsection (a)(1) of this section.]

[(5) Machinery, tools, and equipment that support the overall carrier operation such as baggage loading or handling equipment, garbage and other waste disposal equipment, or reservation making or booking machinery and equipment, do not qualify for exemption.]

(d) [(e)] Taxable uses of tangible personal property purchased tax free. Sales and use tax is due when tangible personal property sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information [Persons making a taxable use of tangible personal property purchased tax free, including aircraft purchased for flight training, should] refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(e) [(f)] Rolling stock, locomotives, and trains.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items [~~if~~] required by federal or state regulation. Examples include, but are not limited to, telecommunication and signaling equipment, rails, ballast, cross ties, and roadbed moisture barriers. Items of tangible personal property used to construct, repair, remodel, or maintain improvements to real property such as depots, maintenance facilities, loading facilities, and storage facilities are not supplies essential to the operation of locomotives and trains.

(3) Sales or use tax is not due on the amount charged for labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. Sales or use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service.

(4) [~~(3)~~] Sales or use tax is not due on the sale or use of electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock. For more information, see §3.295 of this title (relating to Natural Gas and Electricity).

(5) Sales or use tax is not due on the amount charged for labor or incorporated materials, whether lump-sum or separately stated, used for the construction of new railroad tracks and roadbeds. For more information, see §3.291 of this title (relating to Contractors). Sales or use tax is not due on the separately stated sales price of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. Sales and use tax is due on the sales price for labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) [~~(g)~~] Motor vehicles [~~carriers~~]. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). For information on repairs to motor vehicles, see §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment.

[~~(h) Certificate. The comptroller adopts by reference the Texas Aircraft Exemption Certificate Out-of-State Registration and Use (Form 01-907). Copies of the certificate are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Account Maintenance, 111 E. 17th Street, Austin, Texas 78774-0100. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)~~]

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 February 24, 2017.

TRD-201700748
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 9, 2017
For further information, please call: (512) 475-0387

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.65

The Texas State Board of Pharmacy withdraws the proposed amended §281.65, which appeared in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10507).

Filed with the Office of the Secretary of State on February 21, 2017.

TRD-201700697
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: February 21, 2017
For further information, please call: (512) 305-8028

♦ ♦ ♦

Trey Pardue

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 210. STATE ELECTRONIC INTERNET PORTAL

The Texas Department of Information Resources (the Department) adopts amendments to 1 TAC Chapter 210, §§210.1, 210.30 - 210.32, 210.34 - 210.36, and 210.54, concerning the State Electronic Internet Portal, to clarify the processes and policies of current practices and correct typographical errors. The amendments are adopted without changes to the proposal as published in the November 18, 2016, issue of the *Texas Register* (41 TexReg 9071). The Department published a formal notice of rule review in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011). DIR received no comments to the proposed rules. Review of the sections implements Government Code, §2001.039.

In 1 TAC §210.1, the Department adopts amendments to correct a typographical error by capitalizing all words in the defined term "State Electronic Internet Portal".

In 1 TAC §210.30, the Department adopts amendments to the title as it is redundant to the title of the Chapter. The Department proposes amendments to correct a typographical error by capitalizing all words in the defined term "State Electronic Internet Portal".

In 1 TAC §210.30(b), The Department adopts amendments to change the requirement to collect five (5) dollars annually per license issued to a passive requirement. Some state agencies are collecting the fee and others are not. This amendment empowers state agencies to determine the need to collect a fee.

In 1 TAC §210.31(a), the Department adopts amendments to clarify that the information shall be found on the State Electronic Internet Portal.

In 1 TAC §210.31(b), the Department adopts amendments to clarify that the information shall be found on the State Electronic Internet Portal. Additionally, the Department separated 1 TAC §210.21(b)(3) into two separate items to make it easier to read. The Department removes the requirement that the State Electronic Internet Portal establish a funding opportunity number system for all programs that post a synopsis to the Electronic Grant System.

In 1 TAC §210.32, the Department adopts amendments to clarify that the referenced information shall be found on the State Electronic Internet Portal.

In 1 TAC §§210.34 - 210.36, and 210.54, the Department adopts amendments to correct a typographical error by capitalizing all words in the defined term "State Electronic Internet Portal".

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

Jennifer Buaas, Director of Digital Government, has determined that during the first five-year period following the amendments to 1 TAC Chapter 210 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Ms. Buaas has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 210 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rule.

SUBCHAPTER A. DEFINITIONS

1 TAC §210.1

The rules are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities, and §2054.111(d) and §2054.262, Texas Government Code, regarding rules for state agency websites and the State Electronic Internet Portal.

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

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

Filed with the Office of the Secretary of State on February 24, 2017.

TRD-201700750
Martin Zelinsky
General Counsel
Department of Information Resources
Effective date: March 16, 2017
Proposal publication date: November 18, 2016
For further information, please call: (512) 936-7577

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SUBCHAPTER B. STATE AGENCY USE OF THE STATE ELECTRONIC INTERNET PORTAL

1 TAC §§210.30 - 210.32, 210.34 - 210.36

The rules are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities, and §2054.111(d) and §2054.262, Texas Government Code, regarding rules for state agency websites and the State Electronic Internet Portal.

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

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

Filed with the Office of the Secretary of State on February 24, 2017.

TRD-201700751
Martin Zelinsky
General Counsel
Department of Information Resources
Effective date: March 16, 2017
Proposal publication date: November 18, 2016
For further information, please call: (512) 936-7577

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION USE OF THE STATE ELECTRONIC INTERNET PORTAL

1 TAC §210.54

The rules are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities, and §2054.111(d) and §2054.262, Texas Government Code, regarding rules for state agency websites and the State Electronic Internet Portal.

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

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

Filed with the Office of the Secretary of State on February 24, 2017.

TRD-201700752
Martin Zelinsky
General Counsel
Department of Information Resources
Effective date: March 16, 2017
Proposal publication date: November 18, 2016
For further information, please call: (512) 936-7577

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Service Commission (HHSC) adopts amended §354.1069, concerning Sign Language Interpreter Services; §354.1382, concerning Conditions for Participation; and §354.1401, concerning In-home Respiratory Therapy Services for Ventilator-Dependent Persons. The amended rules are adopted without changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10031).

BACKGROUND AND JUSTIFICATION

The amendments correct terminology, correct cross references to other sections of the Texas Administrative Code, correct cross references to statute, and make other non-substantive changes.

COMMENTS

The 30-day comment period ended January 23, 2017. During this period, HHSC received one comment regarding the amended rules from the Coalition for Nurses in Advanced Practice (CNAP).

Comment: CNAP requested that advanced practice registered nurses be provided the same benefits and right to reimbursement regarding sign language services that physicians have under §354.1069(b) and (c).

Response: HHSC declines to make the suggested amendment at this time, because it is beyond the scope of this rule amendment. HHSC will consider the suggested amendment at a later date.

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1069

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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 February 23, 2017.

TRD-201700735
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 15, 2017
Proposal publication date: December 23, 2016
For further information, please call: (512) 487-3419

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DIVISION 29. LICENSED PROFESSIONAL COUNSELORS, LICENSED CLINICAL SOCIAL WORKERS, AND LICENSED MARRIAGE AND FAMILY THERAPISTS

1 TAC §354.1382

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

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DIVISION 31. IN-HOME RESPIRATORY THERAPY SERVICES FOR VENTILATOR-DEPENDENT PERSONS

1 TAC §354.1401

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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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Karen Ray
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Texas Health and Human Services Commission
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For further information, please call: (512) 487-3419

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SUBCHAPTER J. MEDICAID THIRD PARTY RECOVERY

DIVISION 7. HEALTH INSURANCE PREMIUM PAYMENT GUIDELINES

1 TAC §354.2361

The Texas Health and Human Services Commission (HHSC) adopts new §354.2361, concerning Medicaid Health Insurance Premium Payment Program. The new rule is adopted without changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10036) and will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule is adopted to comply with §1906 of the Social Security Act (42 U.S.C. 1396e), enacted in the Omnibus Budget Reconciliation Act (OBRA) of 1990, to reimburse eligible individuals for their share of an employer-sponsored health insurance (ESI) premium payment when cost effective. Until Senate Bill 207, 84th Legislature, Regular Session, 2015, repealed the prohibition of Health Insurance Premium Payment (HIPP) participation in Medicaid managed care, the HIPP program only included fee-for-service Medicaid.

The HIPP program generates cost savings to the State by reimbursing individuals eligible for the HIPP program for their ESI premiums, if it is determined that reimbursing the premium is cost effective. Medicaid-eligible individuals in the HIPP program may have access to additional services not covered by Medicaid, or have access to Medicaid services not covered by private insurance. Family members of the individual may have access to services through private health insurance, because the State is paying the private health insurance premiums.

The new rule establishes requirements applicable to individuals with ESI who are Medicaid eligible, or have a family member who is Medicaid eligible, applying for and participating in the HIPP program. Additionally, the rule defines the HIPP program processes for individuals and their employers providing ESI.

COMMENTS

The 30-day comment period ended January 23, 2017. During this period, HHSC did not receive any comments regarding the new rule.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Human Resources Code §32.0422, which provides HHSC with the authority to administer a Medicaid health insurance premium payment reimbursement program for medical assistance recipients.

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 15, 2017
Proposal publication date: December 23, 2016
For further information, please call: (512) 462-6215

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CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Service Commission (HHSC) adopts amendments to §355.7001, concerning Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services; §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners; and §355.8091, concerning Reimbursement to Licensed Professional Counselors, Licensed Master Social Worker-Advanced Clinical Practitioners, and Licensed Marriage and Family Therapists. The amended rules are adopted without changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10039).

BACKGROUND AND JUSTIFICATION

The amendments correct terminology, correct cross references to other sections of the Texas Administrative Code, correct cross references to statute, and make other non-substantive changes.

COMMENTS

The 30-day comment period ended January 23, 2017. During this period, HHSC did not receive any comments regarding the amended rules.

SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.7001

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: December 23, 2016
For further information, please call: (512) 487-3419

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085, §355.8091

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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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Karen Ray
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Proposal publication date: December 23, 2016
For further information, please call: (512) 487-3419

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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

19 TAC §61.1011

The Texas Education Agency (TEA) adopts an amendment to §61.1011, concerning school finance. The amendment is adopted without changes to the proposed text as published in the October 21, 2016, issue of the *Texas Register* (41 TexReg 8252). The adopted amendment enables a school district receiving a reduced local share of Foundation School Program funding as a result of being combined with an academically unacceptable school district to receive the entire benefit of the adjustment rather than having it reduced by the Additional State Aid for Tax Reduction (ASATR) calculation.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §42.2516, allows school districts to be held harmless for the loss in local tax collections for maintenance and operations caused by the compression of adopted tax rates by one third. Section 61.1011, adopted under the TEC, §42.2516, details the calculation of the hold harmless levels for each district, known as revenue targets, as well as how to determine whether hold harmless money is needed or if the state and local revenue received through formula funding is sufficient so that hold harmless money is not needed. Since the annexation of an academically unacceptable school district under the TEC, §13.054, rarely occurs, neither the TEC, §42.2516, nor 19 TAC §61.1011 addresses the impact on the ASATR calculation of the state

assistance provided under the TEC, §13.054(f), which requires the commissioner to annually adjust the local fund assignment for a district to which territory of an academically unacceptable district is annexed.

Because of the recent annexation of an academically unacceptable school district, the TEA has determined that §61.1011 should be modified to ensure the extra state aid under the TEC, §13.054(f), is not reduced by a reduction to the ASATR calculation. The adopted amendment adds language to subsection (b)(5)(C) to describe the calculation adjustment for districts entitled to the state assistance provided under the TEC, §13.054(f).

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began October 21, 2016, and ended November 21, 2016. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §42.2516, which provides for hold harmless payments for school districts for the loss of local tax collections due to the tax rate compression instituted in 2006. TEC, §42.2516(g), authorizes the commissioner to adopt rules necessary to implement additional state aid for tax reduction.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §42.2516.

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 February 27, 2017.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 19, 2017
Proposal publication date: October 21, 2016
For further information, please call: (512) 475-1497

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CHAPTER 101. ASSESSMENT

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

DIVISION 3. SECURITY OF ASSESSMENTS, REQUIRED TEST ADMINISTRATION PROCEDURES AND TRAINING ACTIVITIES

19 TAC §101.3031

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031 is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 10, 2017, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §101.3031, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the December 30, 2016 issue of the *Texas Register* (41 TexReg 10505) and will not be republished. The amendment adopts the *2017 Test Security Supplement* as part of the Texas Administrative Code. The earlier versions of the security supplement will remain in effect with respect to the year for which they were developed.

REASONED JUSTIFICATION. Through the adoption of 19 TAC §101.3031, effective March 26, 2012, the commissioner exercised rulemaking authority relating to the administration of assessment instruments adopted or developed under the TEC, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities, and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials.

The adopted amendment to 19 TAC §101.3031, concerning Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, updates the rule by adopting the *2017 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2). The *2017 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools shall be required to follow to ensure the security and validity of the Texas assessment system.

Within the *2017 Test Security Supplement* is one substantive change for the administration of the 2017 assessments. The change relates to the requirement for testing personnel to cover or remove instructional displays during testing. To help clarify existing policy, the *2017 Test Security Supplement* specifies that prior to the administration, test administrators should walk through each testing location to verify that the environment is appropriate for testing and no instructional displays are visible (e.g., process and cycle diagrams, definitions or examples of literary terms, test-taking strategies, how to write an essay, anchor charts, maps, word walls, timelines, posters identifying historical figures, etc.). On page 12, the supplement explains that campus coordinators need to be trained to examine the test environment before each test.

The security supplements adopted prior to the 2017 year will remain in effect with respect to a given year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 30, 2016, and ended January 30, 2017. Following is a summary of the public comment received and the corresponding agency response.

Comment: An individual commented that the TEA should not score an assessment a student refuses to take. The individual also requested that greater clarity be given about whether students are required to remain in the testing room for four hours if the students immediately turn in their assessment. The individual stated that the TEA should clarify that these students do not have to remain in the room. Finally, the commenter also requested that the TEA should consider adding language that instructs teachers not to ask that students continue working on his or her assessment once submitted.

Agency Response: Regarding the scoring of an assessment that a student refused to take, the agency disagrees. TEC, §26.010, prohibits opting out of an assessment, prohibits a student from

being removed from a class or school by a parent in order to avoid a test, and prohibits a student from being exempted from satisfying grade-level or graduation requirements in a manner acceptable to both the school district and the agency. Districts are required to provide all eligible students who are in attendance during the administration of an assessment with an opportunity to participate in the test. Students are provided directions at the beginning of each test and periodically throughout the administration to record their answers on the answer document or in the online form for the corresponding test within the time period allowed for the administration of the test. As such, students who are in attendance on the day of testing and who choose not to participate or refuse to mark their answers on the answer document or in the online form will have their tests submitted for scoring as is.

As to whether the TEA should consider adding language that instructs teachers not to ask that students continue working on his or her assessment once it is submitted, the agency disagrees. As stated in the previous paragraph, test administrators are trained to provide students with directions at the beginning of each test and periodically throughout the administration to record their answers on the answer document or in the online form for the corresponding test within the time period allowed for the administration of the test. Consistent with the periodic reminders, test personnel have both the latitude and responsibility to remind students to complete the test and record their answers on the answer document for proper scoring.

Regarding the need for greater clarity about whether students are required to remain in the testing room for the duration of the assessment, the agency disagrees. As the agency states in the adopted Test Security Supplement, once a student has completed and turned in or submitted the test, the student may quietly read a book or be allowed to leave the testing area. Based on communication with Texas districts, this policy was implemented to give each district the flexibility to best determine how to most effectively manage a test administration with the resources available to that district.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §26.010, which prohibits a student from being removed from a class or school by a parent in order to avoid a test and prohibits a student from being exempted from satisfying grade-level or graduation requirements in a manner acceptable to both the school district and the agency; TEC, §39.023(a), which requires school districts to administer the Grades 3-8 state-developed assessments to all eligible students; TEC, §39.025(a), which requires a student to pass each end-of-course assessment listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment is administered in order to receive a Texas diploma; TEC, §39.030(a), which requires school districts to ensure the security of the state's assessment instruments and student answer documents in their preparation and administration; TEC, §39.0301(a)(1), which requires the commissioner to establish procedures for the administration of the state's assessment instruments, including procedures designed to ensure the security of those assessments. Per TEC, §39.0301(a-1), the procedures the commissioner is required to establish must, to the extent possible, minimize disruptions to school operations and classroom environment. Additionally, TEC, §39.0301(a-1), stipulates that school districts must also minimize disruptions to school operations and the classroom environment when implementing the required assessment administration procedures; and TEC, §39.0304, which authorizes the commissioner to adopt rules to require training for school district employees involved in the administration of the state's assessments. This training may include qualifying components to ensure the school district personnel involved in an administration of the state's assessments possess the necessary knowledge and skills required to securely and reliably administer those assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§26.010; 39.023(a); 39.025(a); 39.030(a); 39.0301; and 39.0304.

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

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

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CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING VIDEO SURVEILLANCE OF CERTAIN SPECIAL EDUCATION SETTINGS

19 TAC §103.1301

The Texas Education Agency (TEA) adopts an amendment to §103.1301, concerning video surveillance of certain special education settings. The amendment is adopted with changes to the proposed text as published in the November 25, 2016 issue of the *Texas Register* (41 TexReg 9225). The adopted amendment updates the rule to be consistent with the plain language in the authorizing statute.

REASONED JUSTIFICATION. In order to promote the safety of students receiving special education and related services in certain self-contained classrooms and other special education settings, Texas Education Code (TEC), §29.022, requires video surveillance on request by a parent, trustee, or staff member. Beginning with the 2016-2017 school year, a school district or open-enrollment charter school must provide video equipment, including video cameras with audio recording capabilities, to campuses on request by a parent, trustee, or staff member. Campuses that receive such equipment must place, operate, and maintain video cameras in certain self-contained classrooms or other special education settings. Video recordings are confidential under the section and may only be released for viewing to certain individuals.

In March 2016, the TEA sought guidance from the Texas Attorney General regarding the proper construction of certain provisions in TEC, §29.022. While the opinion request was pending, TEA adopted new 19 TAC §103.1301 effective August 15, 2016, and advised the public that it would modify the rule, as necessary, upon receipt of the Texas Attorney General's opinion. On September 13, 2016, the Texas Attorney General issued his opinion, which advised TEA that the definition of *staff member* in

19 TAC §103.1301 is more restrictive than the plain language in TEC, §29.022. The opinion also advised that the plain language of the statute requires a school district or open-enrollment charter school to provide, upon request, video equipment to *each* self-contained classroom or other special education setting.

The adopted amendment updates the rule to be consistent with the plain language in statute by clarifying the definition of *staff member.* A conforming edit is made to language relating to who may view a video recording made under TEC, §29.022. In addition, to align with statute, technical changes are made to change the article *the* to *a* when referring to self-contained classrooms or other special education settings.

In response to public comment, a change was made at adoption to clarify in subsection (g)(4) that a school district's or charter school's policies relating to video surveillance must include a requirement that video cameras be operated at all times during the instructional day when students are in a self-contained classroom or other special education setting in which video cameras are placed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began November 25, 2016, and ended December 27, 2016. In addition, a public hearing was held on January 9, 2017. Following is a summary of public comments received, including those received at the public hearing, and corresponding agency responses.

Comment: The Texas Association of School Boards (TASB) recommended that 19 TAC §103.1301(g)(4) be amended to read, "a requirement that video cameras be operated at all times during the instructional day when students are in a self-contained classroom or other special education setting *in which video cameras are placed* [emphasis added]." TASB stated that doing so would prevent local educational agencies (LEAs) from the need to adopt related policies requiring that cameras operate throughout an instructional day whenever students are in "a" self-contained classroom or setting regardless of whether the LEA has received a request for cameras.

Agency Response: The agency agrees and has made the recommended change to §103.1301(g)(4) at adoption.

Comment: TASB commented that it has received questions from LEAs asking about situations when the bathroom in which an audio recording device is in operation is shared by other classrooms or faculty. TASB commented that it has also received questions from LEAs asking how to address situations where it is necessary for bathroom doors to be left open when students' clothes are being changed, resulting in an inadvertent video recording of part of the bathroom area. TASB requested that the agency amend the rule to clarify what is meant by "a bathroom or any area in the classroom or setting in which a student's clothes are changed" in TEC, §29.022(c)(1), and to clarify that incidental or accidental recording of a bathroom or changing area does not violate statute or rule. TASB requested, alternatively, that the agency issue guidance on the issue to provide clarification.

Agency Response: The agency disagrees that additional clarification in rule is needed. It is not possible to develop a rule that addresses every possible scenario. LEAs must determine how best to comply with the statute and rule. Additionally, the agency disagrees that additional guidance is required of the agency on this issue.

Comment: The Texas Council of Administrators of Special Education (TCASE) requested that the agency provide guidance related to Family Educational Rights and Privacy Act (FERPA) issues surrounding confidentiality that includes a definition of *education record* within the context of the rule.

Agency Response: The agency disagrees. Each situation must be addressed on a case-by-case basis and not through a general guidance document. It is each LEA's responsibility to ensure that it meets FERPA requirements arising from implementation of the related statute and rule.

Comment: TCASE asked the agency to provide the following clarifications.

1. Clarify that one request applies to one classroom in alignment with legislative intent.

2. Clarify the staff member making the request is a staff member assigned or serving students in the classroom for which the camera is requested.

3. Clarify that substitute teachers do not meet the definition of *staff member.*

4. Clarify the parent making the request is the parent of the child in the classroom for which the camera is requested.

5. Add to *classroom setting* definition that students must also be eligible to take or would be eligible to take an alternate state assessment in alignment with legislative intent.

6. Allow cameras to be removed in the event the original requestor rescinds the request or no longer meets the definition of *parent, staff member,* or *trustee.*

7. Add "local" to clarify other available dispute resolution channels.

8. Add language to clarify that in order to view a video based on a policy violation, the video must document a violation of policy related to abuse or neglect.

9. Add language to clarify a videotape cannot be used in due process hearing or litigation unless it involves allegations of abuse or neglect.

10. Add a definition for *in regular attendance* to clarify that regular attendance means the child is enrolled in a class for which attendance is regularly taken for state attendance accounting purposes.

11. Identify appropriate funds for this purpose.

Agency Response: The agency disagrees with the first requested clarification related to the extent of a single request for a camera in an eligible classroom, as a request for cameras in one eligible classroom triggers the requirement that cameras be placed in all eligible classrooms as defined by statute and rule.

The agency disagrees with the second requested clarification related to staff members, as any staff member of an LEA may request that cameras be placed in eligible classrooms as defined by statute and rule.

The agency disagrees with the third requested clarification related to substitute teachers. The rule is clear that an employee of the LEA may request that cameras be placed in all eligible classrooms as defined by statute.

The agency disagrees with the fourth requested clarification related to parent requests. The statute does not impose the limitation that TCASE assumes within the clarification request.

The agency disagrees with the fifth requested clarification related to students to which the statute and rule apply, as the statute does not limit the requests to classrooms of students who take an alternate state assessment.

The agency disagrees with the sixth requested clarification related to allowing the removal of cameras from an eligible classroom in the event the requestor rescinds the request or no longer meets the definition of *parent, staff member,* or *trustee,* as the statute does not provide for this clarification. Once installed, cameras must remain in a classroom until the setting is no longer a "self-contained classroom or other special education setting in which a majority of the students in regular attendance are: (1) provided special education and related services; and (2) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day."

The agency disagrees with the seventh requested clarification to amend §103.1301(e) to read, "other local dispute resolution channels," as this would impose unnecessary limitations on other possible dispute resolution options the parent and local educational agency may access.

The agency disagrees with the eighth requested clarification related to adding language clarifying that a video must document a policy violation related to abuse or neglect prior to someone being able to view the video. The agency has determined that the definition of *incident* in §103.1301(b)(9) and the policy requirements in §103.1301(g)(11) are sufficient to address the request.

The agency disagrees with the ninth requested clarification related to disallowing the use of a video in a hearing or in litigation unless it involves allegations of abuse or neglect. Section 103.1301(g)(9) specifically clarifies that the "video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety."

The agency disagrees with the tenth requested clarification and has determined it is not necessary to define *in regular attendance* in the rule.

Finally, TCASE requested that the agency identify appropriate funds for the purpose of implementing the statute. This comment is outside the scope of the proposed rulemaking. However, the agency has determined that §103.1301(d) provides sufficient guidance on this issue.

Comment: Disability Rights Texas (DRTx) noted agreement with proposed changes to §103.1301(b)(2), resulting from an opinion from the Texas Attorney General.

Agency Response: The agency agrees and has maintained language as proposed.

Comment: DRTx recommended that §103.1301(g)(6) be amended to reference TEC, §29.022(b), related to how long a local educational agency must operate and maintain a camera in an eligible classroom, and to explain that the Texas Attorney General has recognized that there are no exceptions to requirements in TEC, §29.022(a).

Agency Response: The agency disagrees and has determined that the recommend change is not needed. As noted previously, once installed, cameras must remain in a classroom until the setting is no longer a "self-contained classroom or other special education setting in which a majority of the students in regular attendance are: (1) provided special education and related services; and (2) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day."

Comment: DRTx recommended that §103.1301(g) be amended to include the requirement for LEAs to have written policies requiring that, upon receipt of a request, the LEA will ensure the installation of all necessary cameras and audio recording devices in each eligible classroom and setting in the LEA.

Agency Response: The agency disagrees and has determined the additional clarification is not needed given the Texas Attorney General's opinion, written guidance from the agency on the issue, the statute, and current rule text.

Comment: One individual commented in agreement with the rule and the proposed changes.

Agency Response: The agency agrees. However, in response to another comment, the agency has modified §103.1301(g)(4) at adoption.

Comment: One parent and a representative of Coalition of Human Rights Policy Advocates (CHRPA) recommended that §103.1301 be amended to include timelines by when an LEA must respond to a request for cameras and indicate that the LEA is granting or refusing the request, timelines by when an LEA must install cameras after someone makes a request, and timelines for when an LEA must provide maintenance or upkeep to the cameras and related equipment.

Agency Response: The agency disagrees and has maintained language as proposed. TEC, §29.022, does not include timelines as requested by the commenters. Because the number of classrooms and settings that are subject to the requirements of the statute could vary significantly from one LEA to another, LEAs are in the best position to determine reasonable timelines for responding to requests, installing cameras, and providing maintenance and upkeep to the cameras and related equipment.

Comment: One parent provided testimony about her child's specific situation.

Agency Response: The agency thanks the parent for her testimony, but the issues raised fall outside the scope of the proposed rulemaking.

Comment: Two parents recommended that §103.1301 be amended to allow for criminal charges to be filed against LEAs that do not implement the statute and rule and/or that tamper with video or audio recordings made of classrooms.

Agency Response: The agency disagrees that the amendment is necessary and has maintained language as proposed. The agency does not have rulemaking authority under TEC, §29.022, to impose criminal penalties.

Comment: A representative from CHRPA commented that the rule is not clear as to whether a parent should file a grievance with the LEA if the parent believes that the LEA is not implementing the statute or rule or whether the parent should file a complaint with TEA. The representative commented that a grievance at the local level is for human resource issues and that TEA's website seems to indicate that a parent should file a complaint. One individual recommended that §103.1301 be amended to require a parent to file an initial grievance with an LEA and then to allow the parent to appeal the outcome to TEA or to hearing examiners.

Agency Response: The agency disagrees that revision is necessary and has maintained language as proposed. There is

no provision in TEC, §29.022, establishing a complaint or appeal process relating to the statute. The rule requires LEAs to specifically develop and implement policies related to the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or the rule. These policies control in terms of filing a related complaint. While TEC, §7.057(a), allows a person who is aggrieved by actions or decisions of a school district board of trustees that violate the school laws of Texas to file an appeal with the commissioner, the agency notes that commissioner decisions have held that the statute does not apply to decisions made by the governing body of an open-enrollment charter school.

Comment: A representative from the Texas affiliate of the American Federation of Teachers (Texas AFT) recommended that §103.1301(g) be amended to allow educators the ability to stop cameras from recording when no students are in the classroom.

Agency Response: The agency disagrees that the recommended language is needed. Section 103.1301(g)(4) requires an LEA's policies to include a "requirement that video cameras be operated at all times during the instructional day *when students are in the self-contained classroom or other special education setting* [emphasis added]."

Comment: A representative from Texas AFT recommended that §103.1301(g)(8) be amended to clarify that recordings must be encrypted and secured in order to ensure students' privacy.

Agency Response: The agency disagrees and has maintained language as proposed. The agency has determined that LEAs are the best authority for determining how to secure recordings made in their classrooms.

Comment: A representative from Texas AFT recommended that §103.1301 be amended to require LEAs to obtain and use technology for redacting images, voices, and any other student-identifying information from recordings.

Agency Response: The agency disagrees. TEC, §29.022, does not address redactions from video recordings. To the extent a video recording made under TEC, §29.022, is an education record under FERPA, a school should follow the relevant Family Policy Compliance Office (FPCO) guidance in determining whether the images, voices, or other identifying information of students must be redacted.

Comment: A representative from Texas AFT recommended that §103.1301 be amended to require LEAs to maintain viewer logs of those who view recordings made in the classrooms.

Agency Response: The agency disagrees. TEC, §29.022, does not include a requirement for viewer logs. To the extent a video recording made under TEC, §29.022, is an education record under FERPA, a school should follow the relevant FPCO guidance related to maintaining access logs to the recordings.

Comment: A representative from Texas AFT recommended that §103.1301(h)(1) be amended to clarify that only staff members who are involved in an incident as defined by the rule may view a recording as opposed to any staff member of an LEA. The representative states that, as written, "involved in an incident" modifies the word "parent" and not "staff member," meaning that any staff member can view the recordings.

Agency Response: The agency disagrees that clarification is needed and has maintained language as proposed. Section 103.1301(h)(1) is derived from TEC, §29.002(i), and both provisions are clear that "involved in an incident" modifies both "staff member" and "parent."

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §29.022, which requires video surveillance in certain special education settings in order to promote student safety. TEC, §29.022(k), authorizes the commissioner to adopt rules to implement and administer TEC, §29.022, including rules regarding the special education settings to which the section applies.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §29.022.

§103.1301. Video Surveillance of Certain Special Education Settings.

(a) Requirement to implement. Beginning with the 2016-2017 school year, in order to promote student safety, on request by a parent, trustee, or staff member, a school district or open-enrollment charter school must provide video equipment to campuses in accordance with Texas Education Code (TEC), §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.

(b) Definitions. For purposes of TEC, §29.022, and this section, the following terms have the following meanings.

(1) Parent means a person described in TEC, §26.002, whose child receives special education and related services for at least 50 percent of the instructional day in a self-contained classroom or other special education setting. Parent also means a student who receives special education and related services for at least 50 percent of the instructional day in a self-contained classroom or other special education setting and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

(2) Staff member means an employee of the school district or open-enrollment charter school.

(3) Trustee means a member of a school district's board of trustees or a member of an open-enrollment charter school's governing body.

(4) Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.

(5) Self-contained classroom means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district or an open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):

(A) self-contained (mild/moderate/severe) regular campus;

(B) full-time early childhood (preschool program for children with disabilities) special education setting;

(C) residential care and treatment facility--self-contained (mild/moderate/severe) regular campus;

(D) residential care and treatment facility--full-time early childhood special education setting;

(E) off home campus--self-contained (mild/moderate/severe) regular campus; or

(F) off home campus--full-time early childhood special education setting.

(6) Other special education setting means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district or open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:

(A) residential care and treatment facility--separate campus; or

(B) off home campus--separate campus.

(7) Video camera means a video surveillance camera with audio recording capabilities.

(8) Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(9) Incident means an event or circumstance that:

(A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by an employee of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.410, of a student by another student; and

(B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in TEC, §29.022, and this section.

(d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.

(e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.

(f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year and during extended school year services.

(g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to video surveillance under TEC, §29.022, and this section. At a minimum, the policies must include:

(1) a statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

(2) the procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;

(3) the procedures for providing advanced written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted in the classroom or setting;

(4) a requirement that video cameras be operated at all times during the instructional day when students are in a self-contained classroom or other special education setting in which video cameras are placed;

(5) a statement regarding the personnel who will have access to video equipment or video recordings for purposes of operating and maintaining the equipment or recordings;

(6) a requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in TEC, §29.022(a);

(7) a requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no video surveillance may be conducted of the inside of a bathroom or other area used for toileting or diapering a student or removing or changing a student's clothes;

(8) a statement that video recordings must be retained for at least six months after the date the video was recorded;

(9) a statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

(10) at the school district's or open-enrollment charter school's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

(11) the procedures for reporting a complaint alleging that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(12) the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(13) a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be viewed by the following individuals, to the extent not limited

by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

(1) a staff member or a parent of a student involved in an incident described in subsection (b)(9) of this section that is documented by a video recording for which a complaint has been reported to the district or charter school;

(2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;

(3) a peace officer, school nurse, administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a complaint or an investigation of an incident described in subsection (b)(9) of this section; or

(4) appropriate Texas Education Agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i) Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under §61.1051 of this title (relating to Reporting Child Abuse and Neglect) and Texas Family Code, Chapter 261.

(j) Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy must be released for viewing by the district or charter school employee who is the subject of the disciplinary action at the request of the employee.

(k) Access rights. Subsections (i) and (j) of this section do not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: November 25, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

22 TAC §291.93

The Texas State Board of Pharmacy adopts amendments to §291.93, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10509).

The amendments update the rules for Class D pharmacies to be consistent with other sections; and clarify the labeling requirements to allow an auxiliary label be used for adding certain information to the prescription label.

The Coalition for Nurses in Advanced Practice suggested that advanced practice registered nurses be included in the requirements for initiating therapy and examining patients. The Board agrees with the comments but will add the advanced practice registered nurses at a future time.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

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

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TRD-201700759
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: December 30, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.106

The Texas State Board of Pharmacy adopts amendments to §291.106, concerning Pharmacies Compounding Sterile Preparations (Class E-S). The amendments are adopted without

changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10514).

They specify that a Class E-S pharmacy may not renew a pharmacy license unless the pharmacy has been inspected by the board or its designee within the last two year renewal cycle to be consistent with other sections.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Gay Dodson, R.Ph.
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For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.3

The Texas State Board of Pharmacy adopts amendments to §297.3, concerning Registration Requirements. The amendments are adopted with changes due to a grammar correction to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10515).

The amendments clarify the examination requirements for pharmacy technicians.

The National Association of Chain Drugs Stores commented in support of the amendments.

The Texas Society of Health-System Pharmacists suggested the Board further study the merits of multiple exams; if multiple exams are selected, require the exams to be equivalent in scope for a minimum workforce; and take action to assure there are minimum, high quality, accredited education workforce ready requirements for all technicians. The Board will continue to evaluate the pharmacy technician certification examinations that are available and ensure that the examinations are psychometrically sound.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.3. Registration Requirements.

(a) General.

(1) Individuals who are not registered with the Board may not be employed as or perform the duties of a pharmacy technician or pharmacy technician trainee.

(2) Individuals who have previously applied and registered as a pharmacy technician, regardless of the pharmacy technician's current registration status, may not register as a pharmacy technician trainee.

(3) Individuals who apply and are qualified for both a pharmacy technician trainee registration and a pharmacy technician registration concurrently will not be considered for a pharmacy technician trainee registration.

(b) Registration for pharmacy technician trainees. An individual may register as a pharmacy technician trainee only once and the registration may not be renewed.

(1) Each applicant for pharmacy technician trainee registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purposes of this subparagraph, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application.

(C) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician trainee and of his or her pharmacy technician trainee registration number.

(3) Pharmacy technician trainee registrations expire two years from the date of registration or upon issuance of registration as a registered pharmacy technician, whichever is earlier.

(c) Initial registration for pharmacy technicians.

(1) Each applicant for pharmacy technician registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

(B) either have:

(i) taken and passed a pharmacy technician certification examination approved by the board and have a current certification certificate; or

(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application.

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) pay the registration fee specified in §297.4 of this title (relating to Fees).

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number. If the pharmacy technician applicant was registered as a pharmacy technician trainee at the time the pharmacy technician registration is issued, the pharmacy technician trainee registration expires.

(d) Renewal.

(1) All applicants for renewal of a pharmacy technician registration shall:

(A) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number;

(iii) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs; and

(iv) any other information requested on the application.

(B) pay the renewal fee specified in §297.4 of this title; and

(C) complete 20 contact hours of continuing education per renewal period as specified in §297.8 of this title (relating to Continuing Education).

(2) A pharmacy technician registration expires on the last day of the assigned expiration month.

(3) If the completed application and renewal fee are not received in the board's office on or before the last day of the assigned expiration month, the person's pharmacy technician registration shall expire. A person shall not practice as a pharmacy technician with an expired registration.

(4) If a pharmacy technician registration has expired, the person may renew the registration by paying to the board the renewal fee and a delinquent fee that is equal to the renewal fee as specified in §297.4 of this title.

(5) If a pharmacy technician registration has expired for more than one year, the pharmacy technician may not renew the registration and must complete the requirements for initial registration as specified in subsection (c) of this section.

(6) After review, the board may determine that paragraph (5) of this subsection does not apply if the registrant is the subject of a pending investigation or disciplinary action.

(e) An individual may use the title "Registered Pharmacy Technician" or "Ph.T.R." if the individual is registered as a pharmacy technician 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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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.335

The Comptroller of Public Accounts adopts amendments to §3.335, concerning property used in a qualifying data center; temporary state sales tax exemption, with changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7438). This section is amended to implement House Bill 2712, 84th Legislature, 2015. Effective June 1, 2015, Tax Code, §151.3595 was enacted to provide a temporary exemption from the sales and use tax for certain tangible personal property related to large data center projects. New language is found in the title of the rule and throughout subsections (a) - (l) to address the exemption applicable to qualifying large data center projects. This section is also amended to add language consistent with Tax Code, §151.359 and to define previously undefined terms.

Subsection (a) is amended throughout to be applicable to both qualifying data centers and qualifying large data center projects.

Subsection (a)(1)(A) is amended to specify the existing date is applicable only to qualifying data centers and new subparagraph (B) is added to identify the date prior to which purchases will not be considered toward the total capital investment required

by qualifying large data center projects. Subsequent subparagraphs are relettered accordingly.

Paragraph (3) is amended to delete the size requirement from the definition of data center so the remaining definition applies to both qualifying data centers and qualifying large data center projects. The deleted language from paragraph (3) is added to subsection (d).

Paragraph (6) is amended to use the defined term "data center."

Paragraph (7)(B) is amended to apply only to qualifying data centers.

Paragraph (7)(C) is added to explain how the term "qualifying job" applies to qualifying large data center projects. This subparagraph implements Tax Code, §151.3595(a)(4).

Paragraph (8) is added to define the term "qualifying large data center project." Subsequent paragraphs are renumbered accordingly.

Paragraph (12) is added to define the term "shared employment responsibilities." The definition is based on Labor Code, §91.032.

Subsection (b) is amended throughout to apply to both qualifying data centers and qualifying large data center projects.

Paragraph (1) is added to explain that the exemption available for qualifying data centers is only for state sales tax while qualifying large data center projects are exempt from both state and local sales tax. The remaining paragraphs are renumbered accordingly. Renumbered paragraph (2) is amended for consistency with paragraph (1). Subparagraph (A) is amended to address the change in the title of Form 01-929. Subparagraphs (K) and (L) are amended to add the term "described in this section" for consistency with Tax Code, §151.359 and Tax Code, §151.3595.

Subsection (c)(6) is added to be consistent with Tax Code, §151.359 and Tax Code, §151.3595 and subsequent paragraphs are renumbered accordingly. This subsection provides tangible personal property incorporated into real property or an improvement to real estate is not subject to the exemption unless otherwise exempt pursuant to subsection (b).

Subsection (d) is amended to apply only to qualifying data centers. Paragraph (2) is added to include the square footage requirements previously set out in subsection (a)(3). Subsequent paragraphs are renumbered accordingly. Subsection (d) is further amended to correct a grammatical error.

Subsection (e) is added to identify the requirements for qualifying large data center projects. The remaining subsections are relettered accordingly.

Relettered subsection (f) is amended to include qualifying large data center projects and to identify the appropriate application form for certification as a qualifying large data center project.

Relettered subsection (g) is amended throughout to be applicable to both qualifying data centers and qualifying large data center projects. Paragraph (3) is added to identify the exemption period applicable to qualifying large data center projects. The remaining paragraphs are renumbered accordingly. Renumbered paragraph (4) is amended to identify the requirements subject to verification.

Relettered subsection (h) is amended throughout to include qualifying large data center projects. Paragraphs (1) and (3) are amended to address the change in the title of Form 01-929 and to adjust internal references because of renumbering changes. Paragraph (4) is amended to correct a grammatical error. Paragraphs (3) and (4) are also amended to change "retailer" to "sellers" for consistency.

Relettered subsection (i) is amended throughout to be applicable to both qualifying data centers and qualifying large data centers. The specific requirements are deleted and reference to subsection (d) for qualifying data centers and subsection (e) for qualifying large data center projects is added.

Relettered subsection (j) is amended throughout to be applicable to both qualifying data centers and qualifying large data center projects and adds an additional documentation requirement for a qualifying large data center project.

Relettered subsection (k) is amended to be applicable to both qualifying data centers and qualifying large data center projects.

Relettered subsection (l) is amended to apply only to qualifying data centers. Language is added to clarify the subsection does not apply to qualifying large data center projects.

Relettered subsection (m) is amended to be applicable to both qualifying data centers and qualifying large data center projects.

Minor revisions are made to the proposed text as published in the *Texas Register* in subsections (b)(2) and (c)(6) for consistency and readability.

We received one comment from Mr. Michael Kelley with K&L Gates LLP, submitted on behalf of Microsoft Corporation. The comment recommended amending the definition of "shared employment responsibilities" to include a statement that a qualifying owner, qualifying operator, or qualifying occupant who provides the place of work for third-party employees has shared employment responsibilities.

After carefully considering Mr. Kelley's comments, we determined that the suggested change to the definition of "shared employment responsibilities" is not supported by Labor Code, §91.032.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The amendments implement Tax Code, §151.359 (Property Used in Certain Data Centers; Temporary Exemption) and Tax Code, §151.3595 (Property Used in Certain Large Data Center Projects; Temporary Exemption).

§3.335. Property Used in a Qualifying Data Center or Qualifying Large Data Center Project; Temporary Sales Tax Exemption.

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

(1) Capital investment--The amount paid to acquire capital or fixed assets that are purchased for use in the operation of a qualifying data center or qualifying large data center projects, and that, for U.S. federal income tax purposes, qualify as Section 179, Section 1245, or Section 1250 property, as those terms are defined in Internal Revenue Code, §§179(d)(1), 1245(a)(3), and 1250(c), respectively. Examples

include, but are not limited to, land, buildings, furniture, machinery, and equipment used for the processing, storage, and distribution of data, and labor used specifically to construct or refurbish such property. The term does not include:

(A) property purchased before September 1, 2013, for a qualifying data center;

(B) property purchased before May 1, 2015, for a qualifying large data center project;

(C) property purchased by a qualifying owner, qualifying operator, or qualifying occupant from persons or legal entities related to the purchaser by ownership or common control;

(D) property that is leased under an operating lease; or

(E) expenditures for routine and planned maintenance required to maintain regular business operations.

(2) County average weekly wage--The average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a qualifying owner, qualifying operator, or qualifying occupant creates a job used to qualify under this section.

(3) Data center--A facility that:

(A) is or will be located in this state;

(B) is or will be specifically constructed or refurbished for use primarily to house servers, related equipment, and support staff for the processing, storage, and distribution of data;

(C) will be used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) will not be used primarily by a telecommunications provider to house tangible personal property that is used to deliver telecommunications services; and

(E) has or will have an uninterruptible power source, generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(4) Permanent job--An employment position for which an Internal Revenue Service Form W-2 must be issued, that will exist for at least five years after the date the job is created. A permanent job will be considered to exist for at least five years after the date the job is created if during the five-year period any vacancy which occurs is filled within 120 days of the date of vacancy.

(5) Primarily--More than 50% of the time.

(6) Qualifying data center--A data center that the comptroller certifies as meeting each of the requirements in subsection (d) of this section.

(7) Qualifying job--

(A) A new, full-time job created by a qualifying owner, qualifying operator, or qualifying occupant of a qualifying data center or qualifying large data center project that:

(i) is a permanent job;

(ii) is located in the same county in Texas in which the associated qualifying data center or qualifying large data center project is located;

(iii) will provide at least 1,820 hours of employment a year to a single employee;

(iv) pays at least 120% of the county average weekly wage, as defined by paragraph (2) of this subsection, for the county in which the job is located;

(v) is not transferred from one county in Texas to another county in Texas; and

(vi) is not created to replace a qualifying job that was previously held by another employee.

(B) For a qualifying data center, the term includes a new employment position staffed by a third-party employer if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated qualifying data center which:

(i) provides for shared employment responsibilities between the third-party employer and the qualifying owner, qualifying operator, or qualifying occupant; and

(ii) provides that the third-party employment position is permanently assigned to the associated qualifying data center or another location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located for the term of the written contract.

(C) For a qualifying large data center project, the term includes a new employment position staffed by a third party employer if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated large data center project that provides that the employment position is permanently assigned to an associated qualifying large data center project.

(8) Qualifying large data center project--A data center that the comptroller certifies as meeting each of the requirements in subsection (e) of this section.

(9) Qualifying operator--A person who controls access to a qualifying data center or qualifying large data center project, regardless of whether that person owns each item of tangible personal property located at the qualifying data center or qualifying large data center project. A qualifying operator may also be the qualifying owner.

(10) Qualifying owner--A person who owns the building in which a qualifying data center or qualifying large data center project is located. A qualifying owner may also be the qualifying operator.

(11) Qualifying occupant--A person who:

(A) contracts with either a qualifying owner or qualifying operator to place, or cause to be placed, tangible personal property at the qualifying data center or qualifying large data center project for use by the occupant. The qualifying occupant may also be the qualifying owner or the qualifying operator of the same data center; and

(B) is the sole occupant of the qualifying data center or qualifying large data center project. A qualifying occupant may provide data storage and processing services, but may not sublease to a third party any real or tangible personal property located within the area of a building designated by the qualifying occupant, qualifying owner, or qualifying operator as part of the qualifying data center or qualifying large data center project. For example, a qualifying occupant may not sell or lease excess servers or server space, including the provision of dedicated servers, at the qualifying data center to third parties. If a single occupant leases 150,000 square feet of space in a building for use as a qualifying data center, that occupant may not use 100,000 square feet for its own qualifying use and sublease the remaining 50,000 square

feet to a third party, even if the third party will also use the space as a data center. An occupant may, however, lease 150,000 square feet of space in a building and, during the certification process, formally designate 100,000 square feet or more of the space as the area to be used as its qualifying data center. The occupant could then sublease the space not designated for use as the qualifying data center to a third party without causing the qualifying data center to lose its certification as a qualifying data center. Tangible personal property purchased for use in the space outside the area designated for use as a qualifying data center would not qualify for exemption under this section.

(12) Shared employment responsibilities--

(A) The qualifying owner, qualifying operator, or qualifying occupant of a qualifying data center, individually or jointly as set out in the applicable third-party employment contract, and the third-party employer share:

(i) the right of direction and control of third-party employees assigned to the qualifying data center or other location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located;

(ii) the right to hire, fire, discipline, and reassign third-party employees assigned to the qualifying data center or other location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located; and

(iii) the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures for third-party employees assigned to the qualifying data center or other location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located.

(B) The term does not preclude the qualifying data center from exercising the right of direction and control of all employees, including third-party employees, as necessary to conduct business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement.

(b) Exemption.

(1) The exemption under this subsection for qualifying data centers only applies to Texas state sales and use taxes. See Tax Code, §151.359 (Property Used in Certain Data Centers; Temporary Exemption). The exemption under this subsection for qualifying large data center projects applies to Texas state and local sales and use taxes. See Tax Code, §151.3595 (Property Used in Certain Large Data Center Projects; Temporary Exemption).

(2) Tangible personal property purchased by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or in the case of subparagraph (A) of this paragraph, use in a qualifying data center or qualifying large data center project is exempted from the applicable taxes as specified in paragraph (1) of this subsection if the tangible personal property is necessary and essential to the operation of the qualifying data center or qualifying large data center project and is:

(A) electricity. A predominant use study is required to differentiate between taxable and nontaxable use of electricity from a single meter unless the qualifying data center or qualifying large data center project is a stand-alone facility of which the qualifying occupant is the sole inhabitant. For more information regarding predominant use studies, refer to §3.295 of this title (relating to Natural Gas and Electricity). The qualifying owner, qualifying operator, or qualifying occupant of a stand-alone qualifying data center or qualifying large data center project is not required to perform a predominant use study and may, in lieu of tax, supply its utility provider with a properly completed Exemption Certificate for Qualifying Data Centers or Qualifying Large Data Center Projects, Form 01-929. Refer to subsection (h) of this section regarding exemption certificates;

(B) an electrical system;

(C) a cooling system;

(D) an emergency generator;

(E) hardware or a distributed mainframe computer or server;

(F) a data storage device;

(G) network connectivity equipment;

(H) a rack, cabinet, and raised floor system;

(I) a peripheral component or system;

(J) software;

(K) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described in this subsection;

(L) any other item of equipment or system necessary to operate any tangible personal property described in this subsection, including a fixture; or

(M) a component part of any tangible personal property described in this subsection.

(3) The purchase price of qualifying tangible personal property, including building materials, electricity, and other items, jointly procured by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or use in one or more qualifying data centers or qualifying large data center projects is to be apportioned among the purchasers for purposes of subsection (i)(2) of this section, concerning liability in the event of revocation.

(c) Exclusion from exemption. The exemption in subsection (b) of this section does not apply to:

(1) office equipment or supplies;

(2) maintenance or janitorial supplies or equipment;

(3) equipment or supplies used primarily in sales activities or transportation activities;

(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Tax Code, §151.429 (Tax Refunds for Enterprise Projects);

(5) tangible personal property that is rented or leased for a term of one year or less;

(6) tangible personal property not otherwise exempted under subsection (b) of this section that is incorporated into real estate or into an improvement of real estate; or

(7) notwithstanding Tax Code, §151.3111 (Services on Certain Exempted Personal Property), a taxable service that is performed on tangible personal property exempted under this section.

(d) Eligibility for certification as a qualifying data center. The comptroller may certify an applicant facility as a qualifying data center if the following requirements are met:

(1) the applicants declare on the application for certification that the facility does or will meet all of the requirements for the definition of the term "data center" set out in subsection (a)(3) of this section;

(2) the data center is at least 100,000 square feet of space located in a single building or portion of a single building;

(3) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, have agreed to, on or after September 1, 2013:

(A) create at least 20 qualifying jobs on or before the fifth anniversary of the date that the data center is certified by the comptroller as a qualifying data center; and

(B) make a capital investment of at least $200 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center. For purposes of this subparagraph:

(i) an expenditure can only be counted toward the capital investment requirement if invoiced to the qualifying owner, qualifying operator, or qualifying occupant on or after the date the comptroller certifies the data center; and

(ii) purchases by a related corporate entity on behalf of a qualifying owner, qualifying operator, or qualifying occupant cannot be included in the capital investment calculation; and

(4) the applicant facility does not have an agreement under which it receives a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (Texas Economic Development Act).

(e) Eligibility for certification as a qualifying large data center project. The comptroller may certify an applicant facility as a qualifying large data center project if the following requirements are met:

(1) the applicants declare on the application for certification that the facility does or will meet all of the requirements for the definition of the term "data center" set out in subsection (a)(3) of this section;

(2) the data center is composed of one or more buildings totaling at least 250,000 square feet of space located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the qualifying operator;

(3) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, have agreed to:

(A) on or after June 1, 2015, create at least 40 qualifying jobs on or before the fifth anniversary of the date that the data center submits the application to the comptroller;

(B) on or after May 1, 2015, make a capital investment of at least $500 million in that particular data center over a five-year period beginning on the date the data center submits the application to the comptroller. For purposes of this subparagraph:

(i) an expenditure can only be counted toward the capital investment requirement if invoiced to the qualifying owner, qualifying operator, or qualifying occupant on or after the date the data center submits the application to the comptroller; and

(ii) purchases by a related corporate entity on behalf of a qualifying owner, qualifying operator, or qualifying occupant cannot be included in the capital investment calculation; and

(C) on or after June 1, 2015, contract for at least 20 megawatts of transmission capacity for operation of the qualifying large data center project; and

(4) the applicant facility does not have an agreement under which it receives a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (Texas Economic Development Act).

(f) Application process.

(1) A facility that is eligible to be certified under subsection (d) of this section as a qualifying data center or under subsection (e) of this section as a qualifying large data center project by the comptroller shall apply for a registration number on the Texas Application for Certification as a Qualifying Data Center, Form AP-233 or Texas Application for Certification as a Qualifying Large Data Center Project, Form AP-236, as applicable. The application must include:

(A) the name, contact information, and authorized signature for the qualifying occupant and, if applicable, the name, contact information, and authorized signature for the qualifying owner and the qualifying operator who will claim the exemption authorized under this section;

(B) a business proposal summarizing the plan of the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, to meet the requirements in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects; and

(C) a statement confirming that the qualifying owner, qualifying operator, and qualifying occupant, as applicable, agree that the statute of limitation provided in Tax Code, §111.201 (Assessment Limitation) on the assessment of tax, penalty, and interest on purchases made tax-free under this section is tolled from the date of certification until the fifth anniversary of that date, or until such time as the comptroller is able to verify that the requirements set out in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects have been met, whichever is later.

(2) Information provided on and with the application under this subsection is confidential under Tax Code, §151.027 (Confidentiality of Tax Information).

(3) After certifying the qualifying data center or qualifying large data center project, the comptroller will issue a separate registration number to the qualifying owner, the qualifying operator, and the qualifying occupant, as applicable, based on the registration number of the qualifying data center or qualifying large data center project.

(g) Temporary exemption dates. The exemption under this section is temporary. The exemption applies to qualifying purchases made by a qualifying owner, qualifying operator, or qualifying occupant during the exemption period applicable to the qualifying data center or qualifying large data center project.

(1) The exemption period for a qualifying data center or qualifying large data center project begins on the date the data center is certified by the comptroller.

(2) A qualifying data center's exemption period ends 10 or 15 years from the certification date, depending on the amount of capital investment made.

(A) A qualifying data center's sales tax exemption expires 10 years from the date of certification by the comptroller if the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $200 million, but less than $250 million, within the first five years after certification.

(B) A qualifying data center's sales tax exemption expires 15 years from the date of certification by the comptroller if the qualifying owner, qualifying operator, or qualifying occupant, inde-

pendently or jointly, makes a capital investment of at least $250 million within the first five years after certification.

(3) A qualifying large data center project's exemption period ends 20 years from the date of certification by the comptroller provided the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $500 million within the first five years after certification.

(4) The comptroller will audit each qualifying data center and qualifying large data center project at its five year anniversary to verify the amount of capital investment made and to verify that the jobs creation requirement has been met. The comptroller will also verify the contract for transmission capacity for operation of a qualifying large data center project.

(5) Once all jobs are created, as required under subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects, the qualifying owner, qualifying operator, or qualifying occupant, either singly or jointly, must timely notify the comptroller by providing a properly completed Qualifying Data Center or Qualifying Large Data Center Project Job Creation Report, 01-160.

(h) Exemption certificate. Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller.

(1) To claim an exemption under this section for the purchase of tangible personal property, a qualifying owner, qualifying operator, or qualifying occupant must provide to the seller of a taxable item an Exemption Certificate for Qualifying Data Centers or Qualifying Large Data Center Projects, Form 01-929. The exemption certificate does not apply to local sales and use tax for qualifying data centers. Refer to subsection (l) of this section for more information regarding local sales and use tax.

(2) To claim the exemption, a qualifying owner, qualifying operator, or qualifying occupant must properly complete all required information on the exemption certificate, including:

(A) the data center registration number;

(B) the registration number of the qualifying owner, qualifying operator, or qualifying occupant, as applicable;

(C) the address of the qualifying owner, qualifying operator, or qualifying occupant, as applicable;

(D) a description of the tangible personal property to be purchased;

(E) the signature of the purchaser; and

(F) the date of the purchase.

(3) The properly completed Exemption Certificate for Qualifying Data Centers or Qualifying Large Data Center Projects is the seller's documentation that it made a tax-exempt sale in good faith. The seller is required to keep the exemption certificate and all other financial records relating to the exempt sale, including records to document the seller's collection of the local sales and use tax for qualifying data centers. The seller must be able to match invoices of tax-exempt sales to the purchaser's exemption certificate. This may be accomplished by the seller entering the purchaser's registration number on each invoice.

(4) A seller is not required to accept an exemption certificate from a qualifying data center or qualifying large data center project. If a seller chooses not to accept an exemption certificate issued by a purchaser, the purchaser may instead request a refund of the tax paid from the comptroller. Sellers shall provide an Assignment of Right to Refund, Form 00-985, when the exemption is not provided to a qualifying owner, qualifying operator, or qualifying occupant when qualifying purchases of tangible personal property are made.

(i) Revocation. By filing an application for certification of a qualifying data center or qualifying large data center project, the qualifying owner, qualifying operator, and qualifying occupant, as applicable, commit to meeting the requirements set out in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects and certify the data center will be occupied by a single qualifying occupant over the life of the exemption. For more information, refer to subsection (d) of this section for qualifying data center requirements, subsection (e) of this section for qualifying large data center project requirements, and subsection (g) of this section for the term of the exemption.

(1) Failure to meet one or more of the certification requirements described in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects will result in termination of the certification and the revocation of all related qualifying owner, qualifying operator, and qualifying occupant exemption registration numbers.

(2) Each entity that has a registration number revoked will be liable for unpaid sales or use taxes, including penalty and interest from the date of purchase, on all items purchased tax-free under this section, back to the original date of certification of the data center as a qualifying data center or qualifying large data center project.

(3) If a formal waiver of the statute of limitations under Tax Code, §111.203 (Agreements to Extend Period of Limitation) is deemed necessary to insure against a loss of revenue to the state in the event that a data center's certification is revoked, by allowing the comptroller to verify, prior to the expiration of the statute of limitations on assessment, that each of the requirements in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects has been met, then the failure to execute a timely statutory waiver will also result in the termination of the data center's certification and the revocation of all related registration numbers.

(j) Documentation and record retention.

(1) In accordance with Tax Code, §111.0041 (Records; Burden to Produce and Substantiate Claims) and §151.025 (Records Required to be Kept), all qualifying occupants, qualifying owners, and qualifying operators of a qualifying data center or qualifying large data center project must keep complete records to document any and all tax-exempt purchases made under this exemption, and to confirm payment of the local sales and use tax on such purchases by qualifying data centers. See §3.281 of this title (relating to Records Required; Information Required) for additional guidance.

(2) In addition, each qualifying owner, qualifying operator, and qualifying occupant of a qualifying data center or qualifying large data center project must keep complete records to document the applicable capital investment made in the qualifying data center or qualifying large data center project; the creation of the required number of applicable qualifying jobs including the retention of those jobs for a period of at least five years; and documentation of the contract for the applicable transmission capacity for qualifying large data center projects. These records must be retained until the data center's certification expires. For example, a qualifying owner, qualifying operator, or qualifying occupant should keep comprehensive records of capital investment expenditures, such as contracts, invoices, and sales receipts, and employment records regarding job creation, including associated third-party employer positions.

(3) In the event the comptroller revokes the certification of a qualifying data center or qualifying large data center project, the records of all qualifying owners, qualifying operators, and qualifying occupants must be retained until all assessments have been resolved.

(k) Successor Liability. A purchaser of a qualifying owner, qualifying operator, or qualifying occupant's business or stock of goods in a qualifying data center or qualifying large data center project is subject to Tax Code, §111.020 (Tax Collection on Termination of Business).

(l) Local tax. The state sales and use tax exemption for qualifying owners, qualifying operators, or qualifying occupant of a qualifying data center does not apply to local sales and use tax. Local sales and use tax must be paid on the purchase of any tangible personal property that qualifies for exemption from state sales and use tax under this section. This subsection is not applicable to qualifying large data center projects.

(m) An entity that qualifies for the exemption under this section as a qualifying data center or qualifying large data center project is not eligible to receive a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (Texas Economic Development 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 February 27, 2017.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1205

The Comptroller of Public Accounts adopts amendments to §3.1205, concerning delivery sales of cigarettes (Health and Safety Code, Chapter 161, Subchapter R), without changes to the proposed text as published in the January 20, 2017, issue of the *Texas Register* (42 TexReg 202). This section is amended to implement Senate Bill 97, 84th Legislative Session, 2015 and related statutory provisions. The section is located in Title 34, Chapter 3, Subchapter JJ.

Throughout the section, titles are added to statutory citations as appropriate. In addition, the section is revised to use the term United States Postal Service for consistency throughout the section and to follow the terminology used in the Health and Safety Code.

Subsection (a)(1) is amended to add a definition of the term "cigarette" as described in Tax Code, §154.001. Subsequent paragraphs are re-numbered accordingly. Subsection (a)(6), defining the term "seller," is amended to follow the statutory language more closely. The definition is derived from the following sections of Health and Safety Code, §161.452(b) (Requirements for Delivery Sales), which sets out the compliance responsibilities of a "person taking a delivery sale order;" §161.453(a) (Age Verification Requirements), describing a person who both accepts a delivery sale order and mails or ships cigarettes in connection with a delivery sale order; §161.455(a) (Shipping Requirements), which applies to a person who mails or ships cigarettes in connection with a delivery sale order; and §161.455(b), which applies to a person taking delivery sale orders.

Subsection (b) is amended to address only tax permits and registration. The term "requirements" is deleted. Subsection (b)(1) is amended to delete the term "registration" and to describe the types of tax permits a seller making delivery sales must obtain. To make the amended paragraph easier to read, it is reorganized into subparagraphs. Subparagraph (A) addresses out-of-state sellers. Subparagraph (B) addresses Texas sellers. New paragraph (2) is added to implement the existing statutory requirement in Health and Safety Code, §161.456 (Registration and Reporting Requirements) that sellers making delivery sales must first register with the comptroller. The paragraph identifies the specific information that must be provided to the comptroller.

New subsection (c) is added to address seller's and purchaser's responsibilities. Subsequent paragraphs are re-lettered and re-numbered accordingly. For example, current subsection (b)(2) addressing collection and payment of taxes is amended to be subsection (c)(1).

Subsection (c)(3), currently subsection (b)(4), addressing determining a customer's age, is renamed as "Age verification" to follow the syntax of other paragraphs in the subsection. In addition, the paragraph is amended to add subparagraphs (A) and (B). Subparagraph (A) contains the information that currently appears in subsection (b)(6), and subparagraph (B) contains the information that currently appears in subsection (b)(7). Minor revisions are made to more closely follow the language of Health and Safety Code, §161.453 and to make the subparagraphs easier to read.

Subsection (c)(4), currently subsection (b)(5), is amended to identify a means by which notice may be provided to a prospective purchaser. In addition, minor revisions are made to the subsection to more closely follow the language of Health and Safety Code, §161.454 (Disclosure Requirements).

Subsection (b)(6) and (7) are deleted because the information provided in those paragraphs is now addressed in subsection (c)(3). Subsection (b)(8) is deleted because the information provided in that paragraph is now addressed in subsection (c)(4).

Current subsection (c), addressing purchaser requirements, is renumbered as subsection (b)(5). Corresponding changes are made to current paragraphs (1) - (3).

Subsection (d)(2) is amended to implement the existing statutory requirement that a seller who does not use a delivery service must still comply with the terms set out in the paragraph. See Health and Safety Code, §161.455(b). Paragraph (2)(A) is amended to remove language distinguishing between deliveries at residential and commercial locations and to more closely follow Health and Safety Code, §161.455(a). Subparagraph (A) is divided into subparagraphs (A) and (B). Current subparagraph (B) is deleted as it is unnecessary.

Subsection (e) is amended to delete the word "seller" and to add a statement that the reporting requirements apply to all sellers and persons shipping cigarettes into Texas in connection with a delivery sale. This amendment is intended to more closely follow the language of Health and Safety Code, §161.456(b). New paragraphs (1), (2), and (3) outline the filing requirements, and the exemption from the filing requirements, for sellers making delivery sales. This implements Senate Bill 97, 84th Legislature, 2015. New paragraph (1) describes the information persons engaged in delivery sales are required to file. New subparagraph (A) provides the information that must be submitted. New subparagraph (B) explains that a Texas Cigarette/E-Cigarette Delivery Sales Report will satisfy this filing requirement. New subparagraph (C) identifies due dates.

Information in current subsection (e) concerning the "Jenkins Act" is renumbered as paragraph (2), without change.

New paragraph (3) is added to implement the exemption from the delivery sale filing requirement and includes the comptroller's interpretation of Health and Safety Code, §161.456(d) to mean that sellers who commit certain violations, or are reported as having committed certain violations, lose the exemption and are required to submit delivery sale filings for two years following the violation. New subparagraph (A) provides information on the delivery sale filing requirements for a seller who commits a violation but does not have two years of prior delivery sales history. New subparagraph (B) explains the delivery sale filing requirement for a person who commits a violation.

Subsection (f), addressing violations and penalties, is amended to follow the statutory language more closely.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges that the comptroller administers under other law.

The amendments implement legislative changes to Health and Safety Code, Chapter 161, Subchapter R (Delivery Sales of Cigarettes and E-Cigarettes).

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

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §6.1, §6.2

The Texas Department of Public Safety (the department) adopts the repeal of §6.1 and §6.2, concerning General Provisions. These repeals are adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10519) and will not be republished.

The repeal of Subchapter A is filed simultaneously with proposed new Chapter 6. This repeal, and the proposal of new Chapter 6, is necessary to implement the requirements of Texas Government Code, Chapter 411 as amended by House Bill 910, 84th Legislative Session. House Bill 910 authorized a person who is licensed to carry a handgun to openly carry a handgun so this repeal and new proposed rules are necessary to remove references to "concealed" in the license to carry a handgun rules. The rules in Chapter 6 were consolidated and updated to eliminate unnecessary references and to reflect current licensing procedures applicable to applicants for a handgun license and for certification as a qualified handgun instructor.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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37 TAC §6.1

The Texas Department of Public Safety (the department) adopts new §6.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10520) and will not be republished.

The proposal of a new §6.1 is necessary to implement the requirements of Texas Government Code, Chapter 411, as amended by House Bill 910, 84th Legislative Session. House Bill 910 authorized a person who is licensed to carry a handgun to openly carry a handgun so this repeal and new proposed

rules are necessary to remove references to "concealed" in the license to carry a handgun rules. The new §6.1 removes unnecessary terms and clarifies references in current existing definitions.

No comments were received regarding the adoption of this rule.

This new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

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

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General Counsel
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SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES

37 TAC §§6.11 - 6.15

The Texas Department of Public Safety (the department) adopts the repeal of §§6.11 - 6.15, concerning Eligibility and Application Procedures. These repeals are adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10520) and will not be republished.

The repeal of Subchapter B is filed simultaneously with proposed new Chapter 6. This repeal, and the proposal of new Chapter 6, is necessary to implement the requirements of Texas Government Code, Chapter 411 as amended by House Bill 910, 84th Legislative Session. House Bill 910 authorized a person who is licensed to carry a handgun to openly carry a handgun so this repeal and new proposed rules are necessary to remove references to "concealed" in the license to carry a handgun rules. The rules in Chapter 6 were consolidated and updated to eliminate unnecessary references and to reflect current licensing procedures applicable to applicants for a handgun license and for certification as a qualified handgun instructor.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

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. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §§6.11 - 6.16

The Texas Department of Public Safety (the department) adopts new §§6.11 - 6.16, concerning Eligibility and Application Procedures for a License to Carry a Handgun. These rules are adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10521) and will not be republished.

The proposal of new §§6.11 - 6.16 is necessary to implement the requirements of Texas Government Code, Chapter 411 as amended by House Bill 910, 84th Legislative Session. House Bill 910 authorized a person who is licensed to carry a handgun to openly carry a handgun so this repeal and new proposed rules are necessary to remove references to "concealed" in the license to carry a handgun rules. The proposed §§6.11 - 6.16 are reorganized to remove unnecessary duplications, consolidate licensing requirements, remove rules no longer required by statute, clarify licensing requirements, and correct agency references.

No comments were received regarding the adoption of these rules.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

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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Texas Department of Public Safety
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SUBCHAPTER C. QUALIFIED HANDGUN INSTRUCTOR LICENSE

37 TAC §§6.31 - 6.47

The Texas Department of Public Safety (the department) adopts new §§6.31- 6.47, concerning Qualified Handgun Instructor License. These rules are adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10522) and will not be republished.

The proposal of new §§6.31 - 6.47 is necessary to implement the requirements of Texas Government Code, Chapter 411 as amended by House Bill 910, 84th Legislative Session. House Bill 910 authorized a person who is licensed to carry a handgun to openly carry a handgun so the new proposed rules are necessary to remove references to "concealed" in the license to carry a handgun rules. The proposed §§6.31 - 6.47 are reorganized to remove unnecessary duplications, consolidate licensing requirements, remove rules no longer required by statute, clarify licensing requirements, and correct agency references.

No comments were received regarding the adoption of these rules.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

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

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SUBCHAPTER D. SCHOOL SAFETY CERTIFICATION FOR QUALIFIED HANDGUN INSTRUCTORS

37 TAC §6.61, §6.62

The Texas Department of Public Safety (the department) adopts new §6.61 and §6.62, concerning School Safety Certification for Qualified Handgun Instructors. These rules are adopted with changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10525) and will be republished. Changes were made to §6.62(d) and (e) to align the rule text with current department practices. Changes were also made to §6.62(g) to eliminate confusion regarding the form provided to the student after completion of the course.

New §6.61 and §6.62 are necessary to implement the requirements of Texas Government Code, Chapter 411 as amended by Senate Bill 1857, 83rd Legislative Session.

No comments were received regarding the adoption of these rules.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer the license to carry a handgun program, and §411.1901(e) which authorizes the department to adopt rules to administer §411.1901.

§6.61. Application for School Safety Instructor Certification.

(a) A person is eligible for a school safety instructor certification if the person is currently certified by the department as a qualified handgun instructor; has no suspension, revocation or other disciplinary actions pending; and has taught at least four license to carry a handgun courses within the year prior to their application.

(b) The application fee for a school safety instructor certification is $100. This fee is nonrefundable.

(c) An applicant for certification as a school safety instructor is required to attend the course in person. If the applicant is unable to attend, the applicant may request to be rescheduled for another course. If the applicant fails to attend the second scheduled course, the application will be terminated and the applicant will be required to submit a new application to attend a course in the future.

(d) The department school safety instructor certification course must have an instructor to student ratio no greater than 1:6 and may have no more than twelve students per course.

(e) School safety instructor certification applicants are required to pass a prequalifying written examination consisting of material from the current license to carry a handgun course. A passing score of 90% or better must be achieved on the first attempt. Failing students will not be permitted to continue the training. The student must reapply as a new applicant for a future course.

(f) School safety instructor applicants who pass the prequalifying written examination will be required to demonstrate handgun proficiency using the current license to carry a handgun course of fire. A passing score of 90% or better must be achieved on the first attempt. A second attempt may be allowed at the discretion of the department if the prior failure was the result of a weapon malfunction. Students may use only one handgun, and the handgun must meet the requirements of the Act and of this chapter. Failing students will not be permitted to continue the training. The student must reapply as a new applicant for a future course.

(g) Only school safety instructor applicants who pass the prequalifying written examination and the proficiency demonstration will be allowed to attend the school safety instructor certification course which includes practical exercises. A student may be removed from the school safety instructor certification course for reasons described in §6.37 of this title (relating to Conduct During Training). Students must pass the department approved final written examination for school safety instructors with a score of 90% or better. Failing students must reapply as a new applicant for a future course.

(h) School safety instructor applicants who pass the course shall be provided a certificate in the form approved by the department.

(i) The school safety instructor certification remains valid so long as the instructor's qualified handgun instructor certification remains valid and is continuously renewed prior to expiration.

(j) In addition to the provisions of this section, a person applying for a school safety instructor certification must comply with all standards and requirements applicable to the eligibility and application procedure for a license to carry a handgun and a qualified handgun li-

cense instructor, as detailed in Subchapter B and Subchapter C of this chapter.

§6.62. Certified School Safety Courses.

(a) A certified school safety instructor may provide school safety training to employees of a school district or an open-enrollment charter school who are current holders of a license to carry a handgun.

(b) The school safety course must be taught using the department approved curriculum and examinations. The course of instruction for school safety instructors shall be 15-20 hours in length.

(c) School safety courses must have a certified school safety instructor to student ratio of no greater than 1:6 and may have no more than twelve students per course.

(d) Following the classroom portion and the practical exercises, students must pass the department approved final written examination with a score of 90% or better. Failing students will not receive a certificate of completion from the instructor. The student may reapply as a new applicant for a future course.

(e) The students will participate in 5 practical exercises. One of these exercises involves shooting a handgun. The students must participate and perform adequately to progress through the class, as determined by the instructor. The practical exercises may not be provided to students in advance, and students may not be permitted to practice.

(f) On completion of the school safety course, the certified school safety instructor who conducted the course shall submit a report within five business days to the department indicating only whether the participants in the course passed or failed. The report must be submitted in the manner determined by the department.

(g) Students who pass the course shall be provided a form approved by the department.

(h) Certified school safety instructors must comply with this chapter's rules relating to license to a qualified handgun instructor license course scheduling, reporting, and record retention unless otherwise provided in this section.

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

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SUBCHAPTER G. CERTIFIED HANDGUN INSTRUCTORS

37 TAC §§6.71 - 6.88, 6.90 - 6.92

The Texas Department of Public Safety (the department) adopts the repeal of §§6.71- 6.88, 6.90- 6.92, concerning Certified Handgun Instructors. These repeals are adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10526) and will not be republished.

The repeal of Subchapter G is filed simultaneously with proposed new Chapter 6. This repeal, and the proposal of new Chapter 6, is necessary to implement the requirements of Texas Government Code, Chapter 411 as amended by House Bill 910, 84th Legislative Session. House Bill 910 authorized a person who is licensed to carry a handgun to openly carry a handgun so this repeal and new proposed rules are necessary to remove references to "concealed" in the license to carry a handgun rules. The rules in Chapter 6 were consolidated and updated to eliminate unnecessary references and to reflect current licensing procedures applicable to applicants for a handgun license and for certification as a qualified handgun instructor.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.197 which authorizes the director to adopt rules to administer this subchapter.

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 12. COMPASSIONATE-USE/LOW-THC CANNABIS PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§12.1 - 12.4, 12.7 - 12.9

The Texas Department of Public Safety (the department) adopts amendments to §§12.1 - 12.4, 12.7, 12.8 and new §12.9, concerning General Provisions. The department initially published proposed amendments to §§12.1 - 12.4, 12.7, 12.8 and new §12.9 in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8520). In response to comments received, the department withdrew the October 28th proposal and republished proposed amendments to §§12.1 - 12.4, 12.7, 12.8 and new §12.9 in the January 13, 2017, issue of the *Texas Register* (42 TexReg 46). This proposal is adopted with changes to the proposed text as published in the January 13, 2017, issue of the *Texas Register* (42 TexReg 46) and will be republished.

These amendments are necessary to clarify and enhance certain safety and security requirements and to provide a requirement that dispensers obtain certain levels of commercial liability insurance coverage. New §12.9 provides more specific product testing and waste disposal requirements.

The department accepted comments on the proposed rules through February 13, 2017. Written comments were submitted by Texas Wellness Investment Group and GB Sciences. Additionally, the department received numerous items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: *http://dps.texas.gov/rsd/CUP/*

Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: Relating to §12.1(4), Texas Wellness Investment Group and GB Sciences suggest that an ownership threshold is needed to focus the attention on owners with voting rights who are actively involved in the business of the dispensing organization.

RESPONSE: The department agrees that an ownership threshold is needed to clarify that only shareholders who are actively involved in the affairs of the business should be required to register. The proposal has been amended accordingly.

COMMENT: Relating to §12.2(v) and 12.7(b), GB Sciences notes that it appreciates the department's clarification in previous responses to comments with regard to the department's position on testing and research. GB Sciences urges the department to consider third-party testing.

RESPONSE: At this time, the department believes the current rules are adequate and appropriate with respect to testing and research. The department will not be modifying the proposal.

This proposal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

§12.1. Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

(1) Act--Texas Health and Safety Code, Chapter 487.

(2) Application--Includes an original application for a registration or license, or an application to renew a registration or license, issued under the Act.

(3) Department--The Texas Department of Public Safety.

(4) Director--An individual involved in decisions governing the operation or daily functions of the licensed dispensing organization, and any owner, partner, or shareholder of the business with an ownership interest that exceeds 10 percent.

(5) Dispensing organization--An organization licensed to perform the regulated functions of cultivation, processing, and dispensing of low-THC cannabis.

(6) Employee--An individual engaged by or contracting with a licensee to assist with any regulated function, whether or not compensated by salary or wage.

(7) Licensee--An organization licensed under the Act.

(8) Manager--An individual employed or otherwise engaged by a dispensing organization to supervise others in any portion of the regulated functions and processes.

(9) Prescription--An entry in the compassionate-use registry that meets the requirements of Texas Occupations Code, Chapter 169.

(10) Product--Any form of low-THC cannabis that is cultivated, handled, transported, processed, or dispensed, or raw materials used in or by-products created by the production or cultivation of low-THC cannabis.

(11) Registrant--An individual registered with the department as a director, manager, or employee of a licensee; this term does not include a physician registered as a prescriber of low-THC cannabis.

(12) Regulated premises--The physical areas under the control of a licensee, in which low-THC cannabis, or production related raw materials or by-products, are cultivated, handled, transported, processed, or dispensed.

(13) SOAH--State Office of Administrative Hearings.

§12.2. Requirements and Standards.

(a) A licensee may only perform regulated functions at a department approved location. Any change in location must be approved by the department prior to operation in a regulated capacity.

(b) Licensees shall notify the department within five (5) business days of a registrant's termination of employment.

(c) All licensees shall display in a conspicuous location a copy of the department issued license and information on how to submit a complaint to the department.

(d) Licensees must establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy," and shall maintain in each registrant's file a copy of the company's policy signed or otherwise acknowledged by the registrant.

(e) Licensees and registrants must cooperate fully with any inspection or investigation conducted by the department, or by a state fire marshal, or local designee of the state fire marshal, including but not limited to the provision of any laboratory test results, employee records, inventory and destruction records, or other records required under the Act or this chapter, and the compliance with any lawfully issued subpoena.

(f) Licensees and registrants may not cultivate, process, or dispense low-THC cannabis or possess any raw material used in or by-product created by the production or cultivation of low-THC cannabis if the respective license or registration has expired, or has been suspended or revoked.

(g) Licensees and registrants may not dispense to an individual other than a patient for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code, or the patient's legal guardian.

(h) Licensees and registrants may not permit or fail to prevent the diversion of any controlled substance.

(i) Those registered with the department as directors, managers, or employees of a licensed dispensing organization may only perform functions regulated under the Act for the licensee(s) with whom they are registered.

(j) If arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor, a registrant shall within seventy-two (72) hours notify the employing licensee. When notified by the registrant or otherwise informed, the licensee shall notify the department in writing (including by email) within seventy-two (72) hours of notification. The notification shall include the name of the arresting agency, the offense, court, and cause number of the charge or indictment. The

registrant and licensee must supplement their respective notifications as further information becomes available.

(k) Registrants must carry on their person or otherwise display their department issued registration card while performing any functions regulated under the Act involving contact with or exposure to patients or the general public, including the dispensing of low-THC cannabis to patients and the transportation of low-THC cannabis on behalf of a licensee.

(l) All advertisements for functions regulated under the Act must contain the dispensing organization's license number in a font of the same size as the primary text of the advertisement.

(m) Licensees must comply with all applicable local, state and federal regulations and permitting requirements relating to air and environmental quality, advertising, business and occupancy, building, plumbing, electrical, fire safety, noise, and odor or other nuisances. This subsection does not require compliance with a regulation that conflicts with the Act or this chapter.

(n) Licensees must use applicable best practices to limit contamination of the product including but not limited to residual solvents, metals, mold, fungus, bacterial diseases, rot, pests, pesticides, mildew, and any other contaminant identified as posing potential harm.

(o) Licensees must have a plan for establishing a recall of their products in the event a product is shown by testing or other means to be, or potentially to be, defective or have a reasonable probability that their use or exposure to will cause adverse health consequences. At a minimum, the plan should include the method of identification of the products involved; notification to the processing or dispensing organization or others to whom the products were sold or otherwise distributed; and how the products will be disposed of if returned to or retrieved by the licensee.

(p) Licensees shall retain the registration card of all terminated registrants for two (2) years after termination, unless the card is seized or destroyed by department personnel.

(q) Licensees shall maintain commercial general liability insurance coverage, as described in §12.11 of this title (relating to Application for License), and maintain current proof of such insurance on file with the department.

(r) Licensees' regulated premises must annually pass an inspection conducted by the state fire marshal or local designee of the state fire marshal. Proof of the passing inspection must be submitted to the department on a form approved by the department.

(s) Licensees' regulated premises shall be protected by a fire alarm and sprinkler system that complies with local ordinances and applicable Texas Department of Insurance administrative rules, 28 TAC Chapter 34, concerning State Fire Marshal.

(t) Licensees shall install an exterior wall-mounted building key safe at the main entrance to any processing facility, to enable emergency access for fire departments and emergency medical services.

(u) To the extent there is a conflict between the requirements of this chapter, or a conflict between this chapter and the Act, the more restrictive requirement governs. To the extent any requirement of this chapter or the Act conflicts with a regulation incorporated herein, this chapter or the Act shall govern.

(v) Research or development beyond that which is necessary for the cultivation or production of low-THC cannabis is prohibited.

(w) Only low-THC cannabis may be dispensed or sold. By-products must be destroyed.

(x) Registrants must be at least twenty-one (21) years of age at the time of application.

§12.3. Criminal History Disqualifiers.

(a) Registration as a director, manager or employee of a licensed dispensing organization provides these individuals access to sensitive medical information, drugs, and the equipment and raw materials needed to produce drugs. Registration provides those predisposed to commit fraud, theft and drug related crimes with greater opportunities to engage in such conduct and escape detection or prosecution. Therefore, the department has determined that offenses of the types detailed in subsection (b) of this section directly relate to the duties and responsibilities of those who are registered under the Act. Such offenses include crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Such offenses also include those "aggravated" or otherwise enhanced versions of the listed offenses.

(b) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of either the offenses that may relate to the regulated occupation or of those independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The listed offenses are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and Texas Health and Safety Code. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described in this subsection also renders an individual unfit to hold a registration. In particular, an offense that is committed in one's capacity as a registrant under the Act, or an offense that is facilitated by one's registration under the Act, will be considered related to the regulated occupation and may render the individual unfit to hold the registration.

(1) Bribery--Any offense under the Texas Penal Code, Chapter 36.

(2) Burglary and criminal trespass--Any offense under the Texas Penal Code, Chapter 30.

(3) Fraud--Any offense under the Texas Penal Code, Chapter 32.

(4) Perjury--Any offense under the Texas Penal Code, Chapter 37.

(5) Robbery--Any offense under the Texas Penal Code, Chapter 29.

(6) Theft--Any offense under the Texas Penal Code, Chapter 31.

(7) Organized Crime--Any offense under the Texas Penal Code, Chapter 71.

(8) Any offense under Texas Health and Safety Code, Chapters 481, 482, or 483.

(9) In addition:

(A) An attempt to commit a crime listed in this subsection;

(B) Aiding and abetting in the commission of a crime listed in this subsection; and

(C) Being an accessory before or after the fact to a crime listed in this subsection.

(c) A felony conviction for an offense listed in subsection (b) of this section is disqualifying for ten (10) years from the date of the conviction.

(d) A Class A or B misdemeanor conviction for an offense listed in subsection (b) of this section is disqualifying for five (5) years from the date of conviction.

(e) Conviction for a felony or Class A offense that does not relate to the occupation for which registration is sought is disqualifying for five (5) years from the date of commission, pursuant to Texas Occupations Code, §53.021(a)(2).

(f) Independently of whether the offense is otherwise described or listed in subsection (b) of this section, a conviction for an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3g or Article 42A.054, or that is a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, is permanently disqualifying subject to the requirements of Texas Occupations Code, Chapter 53.

(g) Any unlisted offense that is substantially similar in elements to an offense listed in subsection (b) of this section is disqualifying in the same manner as the corresponding listed offense.

(h) A pending Class B misdemeanor charged by information for an offense listed in subsection (b) of this section is grounds for suspension.

(i) Any pending Class A misdemeanor charged by information or pending felony charged by indictment is grounds for suspension.

(j) In determining the fitness to perform the duties and discharge the responsibilities of the regulated occupation of an individual against whom disqualifying charges have been filed or who has been convicted of a disqualifying offense, the department may consider evidence of:

(1) The extent and nature of the individual's past criminal activity;

(2) The age of the individual when the crime was committed;

(3) The amount of time that has elapsed since the individual's last criminal activity;

(4) The conduct and work activity of the individual before and after the criminal activity;

(5) Evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) The date the individual will no longer be disqualified under the provisions of this section; and

(7) Any other evidence of the individual's fitness, including letters of recommendation from:

(A) Prosecutors or law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual; or

(B) The sheriff or chief of police in the community where the individual resides.

(k) In addition to the documentation listed in subsection (j) of this section, the applicant or registrant shall, in conjunction with any request for hearing on a criminal history based denial, suspension or revocation, furnish proof in the form required by the department that the individual has:

(1) Maintained a record of steady employment;

(2) Supported the individual's dependents;

(3) Maintained a record of good conduct; and

(4) Paid all outstanding court costs, supervision fees, fines and restitution ordered in any criminal case in which the individual has been charged or convicted.

(l) The information listed in subsection (j) and subsection (k) of this section must be submitted in conjunction with the request for hearing, following notification of the proposed action and prior to the deadline for submission of the request for hearing.

§12.4. Records.

(a) Records required under the Act or this chapter must be maintained and made available for inspection or copying for a period of two (2) years. Records may be maintained in digital form so long as a hard copy may be produced upon request of department personnel.

(b) In addition to any records otherwise required to be maintained under the Act or this chapter, licensees must specifically retain:

(1) Copies of all application materials submitted to the department or relied on in making any representation or affirmation in conjunction with the application process;

(2) Purchase, sale, and inventory records;

(3) Shipping invoices, log books, records of duty status if applicable, delivery records and manifests reflecting the recipient's acknowledgment and establishing the chain of custody, relating to the transportation of:

(A) Low-THC cannabis and any cannabis sativa plants intended for use in the processing of low-THC cannabis;

(B) Raw materials used in or by-products created by the production or cultivation of low-THC cannabis;

(C) Drug paraphernalia used in the production, cultivation or delivery of low-THC cannabis; or

(D) Waste material resulting from cultivation, processing, or dispensing of low-THC cannabis.

(4) Security records, including building access and visitor logs, video recordings, and transportation trip plans;

(5) The licensee's drug-free workplace policy;

(6) Records on all registered directors, managers, and employees, including a color photograph of the individual, a copy of the registration issued by the department, records reflecting the individual's position, assigned duties, and work schedule, and a copy of the company's drug-free workplace policy signed by the individual. These records must be maintained for two (2) years from the date employment is terminated;

(7) Records of any disposal or destruction of waste materials resulting from cultivating, processing, or dispensing low-THC cannabis;

(8) Records of any local or state regulatory inspections, including state or local fire marshal inspections; and

(9) Records of all tests conducted in compliance with §12.7 of this title (relating to Testing, Production, and Packaging).

§12.7. Testing, Production, and Packaging.

(a) Licensees must comply with all applicable provisions of the Texas Agriculture Code and the Texas Department of Agriculture's administrative rules, Title 4, Part 1.

(b) Representative samples of all processed products must be tested for the levels of tetrahydrocannabinol and cannabidiol, and for residual solvents, pesticides, fungicides, fertilizers, mold, and heavy

metals, in accordance with applicable provisions of the Texas Agriculture Code and Texas Department of Agriculture's administrative rules, Title 4, Part 1, and Code of Federal Regulations, Title 16, Part 1107.

(c) Only pesticides of minimum risk exempted under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC §136, may be used on cannabis. The pesticide's active ingredients may only be those listed in 40 CFR §152.25(f)(1). The pesticide's inert ingredients may only be those that listed in 40 CFR §152.25(f)(2); commonly consumed food commodities, animal feed items, and edible fats and oils as provided in 40 CFR §180.950(a),(b) and (c); and chemical substances listed in 40 CFR §180.950(e). All pesticide ingredients (both active and inert) must be listed on the pesticide container's label. The active ingredient(s) must be listed by label display name and percentage by weight. Each inert ingredient must be listed by label display name. The product may not bear claims to control or mitigate organisms that pose a threat to human health, or insects or rodents carrying specific diseases. The name of the producer or the company for whom the product was produced and the company's contact information must be displayed prominently on the product label. The label cannot include any false or misleading statements. The label must comply with the Texas Department of Agriculture's administrative rule, 4 TAC §7.11, relating to Label Requirements.

(d) All facilities must be inspected and approved for their use by a local fire code official, or by the state fire marshal or local designee of the state fire marshal, and must meet any required fire, safety, and building code requirements specified in:

(1) National Fire Protection Association (NFPA) standards;

(2) International Building Code (IBC);

(3) International Fire Code (IFC);

(4) Texas Department of Insurance administrative rules, 28 TAC Chapter 34, concerning State Fire Marshal; and

(5) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(e) Licensees must provide certification by a Texas licensed professional engineer that the extraction system to be used to produce low-THC cannabis products was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, such as:

(1) The American Society of Mechanical Engineers (ASME);

(2) American National Standards Institute (ANSI);

(3) Underwriters Laboratories (UL); or

(4) The American Society for Testing and Materials (ASTM).

(f) The extraction process must be continuously staffed during operations by a registered employee trained in the extraction process, the transfer of LP-gas where applicable, and all emergency procedures. All staff training records shall be maintained on-site and made available upon request by the department or local law enforcement or regulatory official.

(g) The installation, operation, repair and maintenance of electrical systems, devices, and components shall conform to the National Electrical Code, NFPA 70 as adopted by the Texas Department of Licensing and Regulation. All electrical components within the extraction room shall be interlocked with the hazardous exhaust system and when provided, the gas detection system. When the hazardous exhaust system is not operational, or the gas detection system is activated, light switches and electrical outlets shall be disabled while leaving lights on that are necessary for evacuation. The electrical systems shall include:

(1) Extraction room lighting;

(2) Extraction room ventilation system;

(3) Solvent gas detection system;

(4) Emergency alarm systems;

(5) Automatic fire extinguishing systems;

(6) Vent failure alarm system; and

(7) Emergency power backup system.

(h) For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall be no greater than 10% of the LEL/LFL limit of the materials.

(i) Signs shall be posted at the entrance to each production area using or storing carbon dioxide, indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the "skull and crossbones" emblem with the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE". NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored. The main entrance to the facility and any door to a room where storage, transfer or use of hazardous materials is conducted shall be appropriately posted with markings in accordance with NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response.

(j) Mechanical ventilation within an extraction or processing facility shall be in accordance with the applicable local ordinances or the appropriate NFPA standard as adopted by the State Fire Marshal's Office if no applicable local ordinance exists, and shall have:

(1) Mechanical ventilation in the room or area of rate of not less than 1 cubic foot per minute per square foot;

(2) Exhaust system intake from a point within 12 inches of the floor; and

(3) Ventilation operating at a negative pressure in relation to the surrounding area.

(k) Any liquid extraction process using flammable and combustible liquids in which the liquid is boiled, distilled, or evaporated must operate in compliance with this section and NFPA 30 as adopted by the State Fire Marshal's Office.

(l) Any processing equipment using a flammable or combustible vapor or liquid must meet the requirements of NFPA 30 and NRPA 70. Such equipment shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be rated for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited, with the exception that the use of a heating element not rated for flammable atmospheres may be used where documentation from the manufacturer or a nationally recognized testing laboratory indicates it is rated for heating of flammable liquids.

(m) Product extraction processes may use only potable water in compliance with Code of Federal Regulations, Title 40, Part 141.

(n) All regulated premises shall be located at least 1000 feet from any private or public school or day care center that existed prior to

the date of initial license application, measured from the closest points on the respective property lines.

(o) All final packaging for patient consumption must be in child-resistant packaging designed or constructed to be significantly difficult for children under five (5) years of age to open and not difficult for normal adults to use properly as defined by the most current version of the Code of Federal Regulations, Title 16, Part 1700 and Title 40, Part 157.2 and American Society for Testing and Materials (ASTM) D3475-15, Standard Classification of Child-Resistant Packages, ASTM International, West Conshohocken, PA, 2015.

(p) All final packaging labels must include:

(1) Physician's name;

(2) Patient's name;

(3) Dispensing organization's name, state license number, telephone number, and mailing address;

(4) Dosage prescribed and means of administration;

(5) Date the dispensing organization packaged the contents;

(6) Batch number, sequential serial number, and bar code when used, to identify the batch associated with manufacturing and processing;

(7) Potency of the low-THC cannabis product contained in the package, including the levels of tetrahydrocannabinol and cannabidiol;

(8) Statement that the product has been tested for contaminants with specific indications of all findings, and the date of testing in accordance with Code of Federal Regulations, Title 16, Part 1107; and

(9) Statement that the product is for medical use only and is intended for the exclusive use of the patient to whom it is prescribed. This statement should be in bold print.

(q) The dispensed product may contain no more than 0.5% by weight of tetrahydrocannabinols and not less than 10% by weight of cannabidiol.

(r) The storage, transfer, and use of LP- Gas shall conform to the regulations of the Texas Railroad Commission, including but not limited to NFPA 58, LP Gas Code (as amended) and the adopted standards of the State Fire Marshal's Office.

(s) The storage, use and handling of liquid carbon dioxide shall be in accordance with Chapter 13 of NFPA 55.

§12.8. Inventory Control System.

(a) A licensed dispensing organization shall use a perpetual inventory control system that identifies and tracks the licensee's stock of low-THC cannabis from the time it is propagated from seed or cutting, to the time it is delivered to either another licensee or patient or legal guardian.

(b) The inventory control system shall be capable of tracking low-THC cannabis from a patient back to the source of the low-THC cannabis in the event of a serious adverse event.

(c) The inventory control system shall be designed to promptly identify a discrepancy and interact with the department's centralized registry system.

(d) Upon receipt of raw material for cultivation, a licensee shall record in the inventory control system:

(1) The date delivered; and

(2) The number of clones or seeds delivered or the weight of the seeds for each variety in the shipment.

(e) For each plant, including any clippings to be used for propagation, a licensee shall:

(1) Create a unique identifier;

(2) Assign a batch number;

(3) Enter appropriate plant identifying information into the inventory control system;

(4) Create an indelible and tamper resistant tag made of temperature and moisture resistance material, with a unique identifier and batch number;

(5) Securely attach the tag to a container in which a plant is grown until a plant is large enough to securely hold a tag;

(f) Upon curing or drying of each batch, a licensee shall weigh the batch and enter the weight into the inventory control system database.

(g) At least monthly, a licensee shall conduct a physical inventory of the stock and compare the physical inventory of stock with inventory control system data.

(h) If a licensee discerns a discrepancy between the inventory of stock and inventory control system data outside of normal weight loss due to moisture loss and handling, a licensee shall begin an audit of the discrepancy.

(i) Within fifteen (15) business days of discovering a discrepancy, the licensee shall:

(1) Complete an audit;

(2) Amend the licensee's standard operating procedures, if necessary; and

(3) Send an audit report to the department.

(j) If a licensee finds evidence of theft or diversion, the licensee shall report the theft or diversion to the department within two (2) days of the discovery of the theft or diversion.

§12.9. Sanitation; Waste Disposal.

(a) Licensees must maintain regulated premises in a clean and sanitary condition, and shall take all reasonable measures to ensure:

(1) Litter and waste are routinely removed and waste disposal systems are routinely inspected in accordance with applicable local, state, or federal law, rule, regulation or ordinance;

(2) Fixtures, floors, walls, ceilings, buildings or other facilities are kept in good repair;

(3) Regulated premises are adequately screened and otherwise protected against the entry of pests;

(4) Refuse disposal is conducted in a manner to minimize the development of odor and the potential for breeding of pests;

(5) Contact surfaces, including utensils and equipment used for the cultivation, drying, trimming, or storage of product, are cleaned and sanitized in a manner to protect against contamination;

(6) Potentially toxic chemicals used within the cultivation facility are identified, stored, and disposed of in a manner to protect against contamination of the product, in compliance with all applicable local, state, or federal laws, rules, regulations or ordinances;

(7) Storage and transportation of product is under conditions that protect against physical, chemical, and microbial contamination;

(8) Safes, vaults, and storage rooms are in good working order, with climate control systems sufficient to prevent spoilage;

(9) Processing site is free of contamination and suitable for the safe and sanitary preparation of the product, including ensuring all equipment, counters and surfaces used for processing are food-grade and nonreactive with any solvent being used, with easily cleanable surface areas constructed in a manner to reduce the potential for development of mold or fungus;

(10) Hand-washing facilities provide effective hand-cleaning and sanitizing materials, with sanitary towel service or hand drying devices, and hot and cold running water;

(11) All persons working in direct contact with product conform to hygienic practices while on duty, including but not limited to:

(A) Maintaining adequate personal cleanliness, including washing hands thoroughly before handling product and as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;

(B) Refraining from direct contact with product if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected;

(C) Keeping fingernails trimmed and filed so that the edges and surfaces are cleanable;

(D) Unless wearing intact gloves in good repair, having no fingernail polish or artificial fingernails on the employee's fingernails;

(E) Wearing clean clothing appropriate to assigned tasks or protective apparel such as coats, aprons, gowns, or gloves to prevent contamination; and

(F) Reporting to the employer's director or manager any health condition experienced by the employee that may adversely affect the safety or quality of product with which the employee may come into contact;

(12) Prohibiting any employee with a health condition that may adversely affect the safety or quality of the product from having direct contact with any product or equipment or materials for processing low-THC cannabis, or from performing any task that reasonably might contaminate or adversely affect any product.

(b) Destruction and disposal of waste materials resulting from the cultivation or processing of low-THC cannabis must be conducted in compliance with applicable state and local laws and regulations, and Code of Federal Regulations, Title 21, Part 1317, Subpart C. Any waste materials containing low-THC cannabis or raw materials used in or by-products created by the production or cultivation of low-THC cannabis must be rendered irretrievable, as defined in Code of Federal Regulations, Title 21, Part 1300. Waste water generated during production and processing must be disposed of in compliance with applicable state and local laws.

(c) Licensees are responsible for determining whether specific waste materials or waste water constitute hazardous waste under applicable federal or state regulations and for ensuring disposal of any such waste complies with applicable disposal regulations.

(d) All waste materials must be stored on the licensee's premises prior to destruction and disposal.

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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D. Phillip Adkins
General Counsel
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SUBCHAPTER B. APPLICATION AND RENEWAL

37 TAC §§12.11, 12.14, 12.15

The Texas Department of Public Safety (the department) adopts amendments to §§12.11, 12.14, and 12.15, concerning Application and Renewal. The department initially published proposed amendments to §§12.11, 12.14, and 12.15 in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8526). In response to comments received, the department withdrew the October 28th proposal and republished proposed amendments to §§12.11, 12.14, and 12.15 in the January 13, 2017, issue of the *Texas Register* (42 TexReg 54). This proposal is adopted without changes to the proposed text as published in the January 13, 2017, issue of the *Texas Register* (42 TexReg 54) and will not be republished.

The amendments to §12.11, concerning Application for License, requires that licensed dispensers of low-THC cannabis obtain commercial liability insurance within certain coverage limits, to ensure licensees can appropriately compensate third parties injured or otherwise harmed by the product or activities of the licensee. The amendments to §12.14, concerning Application and Licensing Fees and Method of Payment, increase application and renewal fees to accurately reflect the costs of administering the program. The amendments to §12.15, concerning Denial of Application for License, amend a cross reference necessitated by the proposed amendments to §12.11, and amend the basis for which the department may deny the application for a license in order to accurately reflect the requirements of Texas Health and Safety Code, §487.104(a)(2).

The department accepted comments on the proposed rules through February 13, 2017. A written comment was submitted by GB Sciences in support of the addition of an initial application fee and the adjustment of the licensing and registration fees downward. Additionally, GB Science welcomes the shift from 24-hour DPS guards to multiple-times a week on-site inspection. As the CUP is implemented, GB Sciences urges a reviewing of the fees and inspection program for additional reductions. Pursuant to the department's agency rule review, the Compassionate-Use rules are scheduled for a review beginning February 1, 2018.

The department has also received numerous items interpreted as requests for information or questions about the meaning of

certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: *http://dps.texas.gov/rsd/CUP/*.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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. COMPLIANCE AND ENFORCEMENT

37 TAC §12.21, §12.23

The Texas Department of Public Safety (the department) adopts amendments to §12.21 and §12.23, concerning Compliance and Enforcement. These rules are adopted without changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8529) and will not be republished.

The amendments to §12.21, concerning Inspections, are necessary to clarify the authority of certain state and local regulatory agencies to inspect a licensee's premises, and to update a cross reference necessitated by the amendment to another section. The amendments to §12.23, concerning Revocation, are necessary to clarify the process by which a license may be revoked based on a dishonored or reversed payment.

No comments were received regarding the adoption of these rules. Although the department did not receive specific comments regarding provisions in this Subchapter, the department did receive some items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: *http://dps.texas.gov/rsd/CUP/*.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department to adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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SUBCHAPTER D. SECURITY

37 TAC §§12.31 - 12.34

The Texas Department of Public Safety (the department) adopts amendments to §§12.31 - 12.34, concerning Security. These rules are adopted without changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8530) and will not be republished.

The amendments to §12.31, concerning Security of Facilities, are necessary to clarify the security requirements relating to access by unauthorized individuals or the general public, to provide specific performance standards for security alarm systems, and to generally clarify the security standards for licensee's facilities. The amendments to §12.32, relating to Security of Vehicles, are necessary to add the requirement of a trip plan reflecting certain required details of the route, product to be transported, and name of responsible registrant. The amendments to §12.33, Response to Security Breach, are necessary to provide an express 24 hour deadline for licensees to notify the department of a security breach. The amendments to §12.34, Reporting of Discrepancy, Loss or Theft, adds "fire on the regulated premises" and "theft or loss of raw materials or by-products" to the events a licensee must report; and adds the requirement to report the circumstances believed to have contributed to the loss, theft, or fire.

The department accepted comment on the proposed rules through November 28, 2016. Written comments were submitted during this period by CannOrganics of Texas; Texas Cannabis; and Fields Ventures. Written comments were also submitted by State Representative Stephanie Klick with an additional 41 state representatives as cosignatories.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: *http://dps.texas.gov/rsd/CUP/*

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.31, concerning Security of Facilities, CannOrganics of Texas, Texas Cannabis and Representative Klick suggest that the requirement in §12.31(b) that cultivation take place in an enclosed, secured area be modified to allow outdoor cultivation.

RESPONSE: The proposed rule requires the licensee maintain effective controls and procedures in order to prevent unauthorized access, theft, or diversion. The department believes the requirement that cultivation take place in an enclosed, secured area is an effective security control to prevent unauthorized access, theft, or diversion. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.31, concerning Security of Facilities, Fields Ventures suggested that the limitation on mutual points of access to a facility in §12.31(h) was unnecessary.

RESPONSE: The proposed rule requires the licensee maintain effective controls and procedures in order to prevent unauthorized access, theft, or diversion. The department believes prohibiting mutual points of access to a facility is necessary for the overall security of the facility. The department disagrees with the comment and will not be modifying the proposal.

COMMENT: Relating to proposed §12.32, concerning Security of Vehicles, Fields Ventures suggested that it was unnecessary for a dispensing organization to have a delivery vehicle equipped with a securely attached and locked container as required in §12.32(a).

RESPONSE: The proposed rule requires the licensee maintain effective controls and procedures in order to prevent unauthorized access, theft, or diversion. The department believes a securely attached and locked container within a delivery vehicle is necessary to ensure the security of the licensee's facilities and any transport of products or materials to and from the facility. The department disagrees with the comment and will not be modifying the proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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

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SUBCHAPTER E. COMPASSIONATE-USE REGISTRY

37 TAC §12.41, §12.42

The Texas Department of Public Safety (the department) adopts amendments to §12.41 and §12.42, concerning Compassionate-Use Registry. These rules are adopted without changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8533) and will not be republished.

The amendments to §12.41, concerning Access to Compassionate-Use Registry, are intended to clarify the purposes for which dispensing organizations and law enforcement agencies may request access to the Compassionate-Use Registry. The amendments to §12.42, Verification of Patient Registration, are intended to clarify that it is the patient's prescription and not the registration that is to be verified, and to clarify the information to be verified.

The department accepted comment on the proposed rules through November 28, 2016. Written comments were submitted during this period by State Representative Stephanie Klick with an additional 41 state representatives as cosignatories.

Included in the comments received by the department were items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: *http://dps.texas.gov/rsd/CUP/*

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to proposed §12.42, Verification of Patient's Prescription, Representative Klick suggested that it was unnecessary for the dispensing organization to enter into the registry the amount charged for the low-THC cannabis dispensed.

RESPONSE: The proposed rule requires the dispensing organization to enter into the registry various items, including the amount charged for the low-THC cannabis dispensed. The department believes that requiring a dispensing organization to disclose the amount charged for their product will allow the department to monitor the potential for price discrimination in the regulated market and will provide the department with an indication of the degree to which registered patients have reasonable statewide access to low-THC cannabis. The department disagrees with the comment and will not be modifying the proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

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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D. Phillip Adkins
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SUBCHAPTER G. PRODUCTION LIMITS

37 TAC §12.61

The Texas Department of Public Safety (the department) adopts new §12.61, concerning Production Limits. This proposal is adopted with changes to the proposed text as published in the January 13, 2017, issue of the *Texas Register* (42 TexReg 58) and will be republished. In addition to the changes noted in response to comments received from GB Science and an individual, the department also corrected subsection references contained within subsection (j) and subsection (k).

This section is necessary to establish a statewide production limit to ensure that licensees produce only the amount of product necessary to serve the narrow population of patients living with intractable epilepsy, as defined under Occupations Code, Chapter 169.

The department accepted comments on the proposed rules through February 13, 2017. Written comments were submitted by CannOrganics of Texas; the Epilepsy Foundation of Texas and the Epilepsy Foundation of Central & South Texas; Texas Wellness Investment Group; GB Sciences; and two individuals. Additionally, the department received numerous items interpreted as requests for information or questions about the meaning of certain items, and not rule comments. These items will be addressed by either direct correspondence or website communications. Additional information pertaining to the Compassionate-Use Program can be found at: *http://dps.texas.gov/rsd/CUP/*

The substantive comments, as well as the department's responses thereto, are summarized below.

COMMENT: Relating to §12.61(a), an individual suggests limiting the amount of product that is accessible to qualified patients establishes a standard of care and creates a one size fits all dosage to calculate limits.

RESPONSE: The department believes §12.61(a) by its plain language indicates that although §12.61 limits the amount of annual statewide production by licensees to the estimated demand as calculated under the subchapter, the rule shall not be construed as adopting a standard of care for treatment involving the product. The intent of this subchapter reflects legislative intent to serve a narrow population of patients living with intractable epilepsy, as defined under Occupations Code, Chapter 169. The department will not be modifying the proposal.

COMMENT: Relating to §12.61(b)(2), the Epilepsy Foundation of Texas and the Epilepsy Foundation of Central & South Texas and an individual suggest that there is no way to quantify a "baseline" dosage requirement for any patient due to the complexities of patients with intractable epilepsy. GB Sciences suggests that there is no "scientifically accepted" "average dose" of CBD to treat intractable epilepsy.

RESPONSE: The proposed rule is necessary to ensure that licensees produce only the amount of product necessary to serve the narrow population of patients living with intractable epilepsy, as defined under Occupations Code, Chapter 169. Section 12.61(b)(2) provides a mechanism for the Department of State Health Services to report each year on the most current scientifically accepted dosage of product used to treat an average individual living with intractable epilepsy for one (1) year. The department believes the current rule is adequate and appropriate in this regard and will not be modifying the proposal.

COMMENT: Relating to §12.61(d), an individual suggests establishing production limits that will only serve 1/3 of the population is unethical and that estimating dosage establishes a standard of care. Another individual suggests market demand should dictate production capacity for each licensee.

RESPONSE: The production limit in §12.61(d) is necessary to ensure that licensees produce only the amount of product necessary to serve the narrow population of patients living with intractable epilepsy, as defined under Occupations Code, Chapter 169, that are expected to take advantage of this program. If the demand for the product is more than expected, §12.61(a) by its plain language indicates that the department will increase the established production limit if it is necessary to prevent a patient legally prescribed the product under Occupations Code, Chapter 169, from being unable to access his or her full prescription. The department will not be modifying the proposal.

COMMENT: Relating to §12.61(e), several individuals and groups including Texas Wellness Investment Group, CannOrganics and GB Sciences noted that the number of *Cannabis sativa* plants needed to produce CBD can widely vary based on a number of factors and strict limits should not be imposed. Rather than adopting production limits based on a certain number of plants, several of the comments suggest other types of production limits, including limiting the amount of low-THC cannabis oil produced or limiting the square footage of canopy space at the vegetation stage

RESPONSE: Section 12.61(e) provides the department with flexibility in determining the maximum amount of C*annabis sativa* plants needed to produce the amount of product allowed. The department will consider all relevant research and data when determining the maximum amount of plants under §12.61(e). The department believes the current rule is adequate and appropriate in this regard. The department will not be modifying the proposal.

COMMENT: Relating to §12.61(f) and (g), the individual suggests that these two provisions create a government-licensed oligopoly. CannOrganics suggests that §12.61(g) must not be construed to limit flowering and vegetative-state plants as a whole, as the two states of plants are different. CannOrganics suggest a more appropriate distinction would be to determine the amount of flowering *Cannabis sativa* plants and flowering square footage required, and limit the possession flowering *Cannabis sativa* plants rather than the total number of plants. GB Sciences suggests that limitations on the number of plants doesn't account for agricultural practices such as the trimming and thinning of plants.

RESPONSE: Section 12.61(e) provides flexibility to the department in determining the maximum amount of *Cannabis sativa* plants needed to produce the amount of product allowed. The department will consider all relevant research and data when determining the maximum amount of plants under §12.61(e), including research regarding the necessary amount of live *Cannabis sativa* plants. The department will not be modifying the proposal.

COMMENT: Relating to §12.61(h), GB Sciences suggests that the reporting of a shortage will be an insufficient safeguard for patients.

RESPONSE: The department believes §12.61(a) by its plain language indicates that the department will increase the established production limit if it is necessary to prevent a patient legally prescribed the product under Occupations Code, Chapter 169, from being unable to access his or her full prescription from a licensee. The department will not be modifying the proposal.

COMMENT: Relating to §12.61(i), the individual suggests the word "may" should be changed to "shall" removing the option for DSHS of resending the report in the event of a forecast shortage. Additionally, GB Science notes that Subchapter G consistently refers to DSHS except for §12.61(i) where HHSC is mentioned.

RESPONSE: The department believes §12.61(a) and §12.61(j) indicate the department's intent to increase production limits if necessary to address forecasted demand for product. The department will not be modifying the proposal pursuant to this individual's comment. HHSC was referred to in error in §12.61(i). The rule text has been modified to reflect the revised report will be sent from DSHS.

COMMENT: Relating to §12.61(j), the individual suggests the language be changed to read, "Upon discovery of a potential shortage, the department shall increase the amount allowed under subsection (d) to meet the forecasted demand". The individual argues the department should be required to increase production limits when a potential shortage is identified.

RESPONSE: The department believes §12.61(j) indicates the department's intent to increase production limits if necessary to address forecasted demand for product. However, Section 12.61(k) has been amended to allow the department additional flexibility in addressing an increase in demand for the product.

The new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

§12.61. Production Limits.

(a) This subchapter limits the amount of annual statewide production by licensees to the estimated demand as calculated under this subchapter but shall not be construed as adopting a standard of care for treatment involving the product. The intent of this subchapter reflects legislative intent to serve a narrow population of patients living with intractable epilepsy, as defined under Occupations Code, Chapter 169. The subchapter includes a provision allowing the department to increase the established production limit. This provision shall be executed if ever necessary to prevent the subchapter from ever being the cause of a patient legally prescribed the product under Occupations Code, Chapter 169, from being unable to access his or her full prescription from a licensee.

(b) On the first of every September or in accordance with subsection (i) of this section, the Department of State Health Services shall provide a report to the department with:

(1) a current estimate of people living with intractable epilepsy, as defined by Occupations Code, Chapter 169, in Texas; and

(2) the most current scientifically accepted dosage of product used to treat an average individual living with intractable epilepsy for one (1) year.

(c) Any information reported under subsection (b) of this section:

(1) may be extrapolated from the number of beneficiaries receiving state public assistance treating individuals with intractable epilepsy;

(2) is strictly for the purpose of estimating a limit on production under this chapter; and

(3) shall not be construed as the Department of State Health Services adopting a standard of care for treating intractable epilepsy.

(d) Upon receipt of the report required under subsection (b), the department shall determine the maximum amount of product allowed to be produced statewide, which shall be limited to:

(1) an amount required to treat one third of the population described in subsection (b)(1) of this section with each individual receiving the dosage determined by subsection (b)(2) of this section, if prior to September 1, 2018; or

(2) the amount of product demand from the previous twelve (12) month period grown by a percent equal to the growth over the same previous twelve (12) month period in the population described by subsection (b)(1), if after September 1, 2018.

(e) The department shall determine a maximum amount of cannabis sativa plants needed to produce the amount of product described in subsection (d) and subsection (j) of this section, if applicable.

(f) Except as provided in subsection (j), each licensee shall not annually produce more than an amount of product described by subsection (d) divided by the number of licensees.

(g) In any fiscal year, licensees shall not have more live cannabis sativa plants than an amount authorized by the department in subsection (e) in this section divided by the number of licensees.

(h) Licensees may report a forecasted shortage of product once in any quarter of the fiscal year to the department, which shall forward the report to the Department of State Health Services.

(i) The Department of State Health Services may resend a revised report under subsection (b) at any time upon receipt of reliable information that conflicts with the most recently released report under subsection (b).

(j) The department may increase the amount allowed under subsection (d) upon notice from the Department of State Health Services under subsection (i). An increase under this subsection is limited to meeting the forecasted demand for product in Texas for the remainder of the current twelve (12) month period ending on the last day of August.

(k) After the department makes a determination under subsection (j), each licensee may increase their maximum production allowed under subsection (f) of this section by the amount of the increase divided by the number of licensees or as otherwise determined by the department.

(l) On March 1, 2018, the Department of State Health Services shall release updated population and dosage amounts required under subsection (b) that will determine the maximum amount of product allowed statewide under subsection (d)(1) of this subsection until September 1, 2018.

(m) Subsection (l) expires on September 1, 2018.

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 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) adopts amendments to §15.25, concerning Address. This rule is adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10527) and will not be republished.

This amendment removes the requirement for a commercial driver license (CDL) holder to provide a mailing address. The 84th Texas Legislature removed this requirement based on changes to Federal Motor Carrier Safety Administration rules.

No comments were received regarding the adoption of this rule.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.141, 521.142, and 522.030.

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 February 23, 2017.

TRD-201700726
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2017
Proposal publication date: December 30, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) adopts amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. This rule is adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10528) and will not be republished.

These amendments are intended to clarify a motorcycle course completion certificate will only be valid for 24 months from the date of issuance. The language has been revised and reorganized for easier understanding and clarity.

No comments were received regarding the adoption of this rule.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.141, 521.142, and 522.030.

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 February 23, 2017.

TRD-201700727
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2017
Proposal publication date: December 30, 2016
For further information, please call: (512) 424-5848

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37 TAC §15.62

The Texas Department of Public Safety (the department) adopts the repeal of §15.62, concerning Additional Requirements. This repeal is adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10529) and will not be republished.

The repeal of this rule is filed simultaneously with proposed new §15.62 and is necessary to inform the public of changes to the Impact Texas Drivers (ITD) program and the requirements for completion of ITD for issuance of a Texas Driver License.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.142, 521.1601, and 521.165.

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 February 23, 2017.

TRD-201700728
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2017
Proposal publication date: December 30, 2016
For further information, please call: (512) 424-5848

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37 TAC §15.62

The Texas Department of Public Safety (the department) adopts new §15.62, concerning Additional Requirements. This rule is adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10530) and will not be republished.

This rule is necessary to inform the public of changes to the Impact Texas Drivers (ITD) program and the requirements for all applicants to complete an ITD program prior to taking the skills examination for a Texas driver license.

No comments were received regarding the adoption of this rule.

This new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.142, 521.1601, and 521.165.

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 February 23, 2017.

TRD-201700729
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2017
Proposal publication date: December 30, 2016
For further information, please call: (512) 424-5848

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CHAPTER 16. COMMERCIAL DRIVER LICENSE
SUBCHAPTER B. APPLICATION REQUIREMENTS AND EXAMINATIONS

37 TAC §16.31

The Texas Department of Public Safety (the department) adopts new §16.31, concerning Third-Party Skills Testing Program. This rule is adopted without changes to the proposed text as published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10531) and will not be republished.

The proposed rule is necessary to implement the provisions of Texas Transportation Code, §522.023(d), and to clarify the procedures for conducting commercial driver license skills testing procedures by third party testers.

The department accepted comments on the proposed new rule through January 30, 2017. A written comment was submitted by Texas Trucking Association (TXTA) in support of the rule.

This new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.023(d).

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

Filed with the Office of the Secretary of State on February 23, 2017.

TRD-201700730
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2017
Proposal publication date: December 30, 2016
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER K. FEES

37 TAC §35.132

The Texas Department of Public Safety (the department) adopts amendments to §35.132, concerning Subscription Fees. This rule is adopted without changes to the proposed text as published in the January 13, 2017, issue of the *Texas Register* (42 TexReg 59) and will not be republished.

The amendments to §35.132 reduce certain subscription fees imposed on private security registrants under the authority of Texas Government Code §2054.252(g). The reductions arise from an amendment to the vendor contract relating to online licensing services.

No comments were received regarding the adoption of this rule.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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 February 23, 2017.

TRD-201700731
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2017
Proposal publication date: January 13, 2017
For further information, please call: (512) 424-5848

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE
DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9535

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9535, concerning the Phoenix Program, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6965).

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the section will be the availability of an up-to-date rule that conforms to current laws and that more accurately reflects TJJD's current operational practices.

SUMMARY OF CHANGES

The amended rule clarifies that youth in the Phoenix Program receive educational instruction each school day in accordance with the master school schedule (rather than a minimum number of hours each day).

The amended rule also removes the word "substantial" from the term "assault causing substantial bodily injury to staff" in order to match the definition in §380.9503.

The amended rule also clarifies that the division responsible for monitoring and inspections conducts an annual comprehensive review of the Phoenix Program files and may also conduct random reviews of program files.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking actions.

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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 February 23, 2017.

TRD-201700733
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: March 15, 2017
Proposal publication date: September 9, 2016
For further information, please call: (512) 490-7278

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.3

The Texas Department of Transportation (department) adopts amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act. The amendments to §9.3 are adopted without changes to the proposed text as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9451) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department previously adopted §9.3 to provide a procedure for vendors to protest purchases made by the department. Revisions to this section are necessary to reflect organizational changes and to change the division name of the Comptroller of Public Accounts procurement function.

Amendments to §9.3 update the title of the department employee responsible for the receipt and processing of protests related to the applicable purchases. All references to Chief of Procurement and Field Support Operations are removed throughout the section and are replaced with Chief Administrative Officer. The amendments also correct the name of a division in the comptroller's office from the Comptroller of Public Accounts Texas Procurement and Support Services Division to the Statewide Procurement Division.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2155.076, which provides the department with the authority to develop rules for protest procedures associated with the State Purchasing and General Services Act.

CROSS REFERENCE TO STATUTE

Government Code, §2155.076 and Transportation Code, §201.101.

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 February 23, 2017.

TRD-201700742
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: March 15, 2017
Proposal publication date: December 2, 2016
For further information, please call: (512) 463-8630

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CHAPTER 26. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER B. CREATION OF A REGIONAL MOBILITY AUTHORITY

43 TAC §26.15

The Texas Department of Transportation (department) adopts amendments to §26.15, concerning the creation of a regional mobility authority. The amendments to §26.15 are adopted without changes to the proposed text as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9452) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as the result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing 43 TAC Chapter 26, the department determined that need for the rules in Chapter 26 continues to exist and that they reflect the procedures and processes currently being used, but the department identified a non-substantive change that needs to be made to correct an error in the rules.

Amendments to §26.15, Creation, correct the rule citation in subsection (b) of the section. Subsection (b) refers to §26.11(6). The correct citation is §26.11(a)(6) and the amendment makes that change.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which authorizes the commission to adopt rules governing the creation of a regional mobility authority.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 370, Subchapter B.

Filed with the Office of the Secretary of State on February 23, 2017.

TRD-201700743
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: March 15, 2017
Proposal publication date: December 2, 2016
For further information, please call: (512) 463-8630

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CHAPTER 30. AVIATION
SUBCHAPTER C. AVIATION FACILITIES DEVELOPMENT AND FINANCIAL ASSISTANCE RULES

43 TAC §§30.203 - 30.205, 30.214

The Texas Department of Transportation (department) adopts amendments to §§30.203 - 30.205, and 30.214 concerning aviation facilities development and financial assistance rules. The amendments to §§30.203 - 30.205, and 30.214 are adopted without changes to the proposed text as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9453) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as the result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing 43 TAC Chapter 30, the department determined that need for the rules in Chapter 30 continues to exist and that the rules reflect the procedures and processes currently being used, but the department identified several non-substantive changes that need to be made to correct errors in the rules.

The Texas Legislature codified former Article 46c-1 et seq., Revised Statutes, as Transportation Code, Chapter 21, and in doing so, deleted the short title assigned to those former articles. The amendments change the statutory references in the rules from the specified provisions of Revised Statutes to the appropriate provisions of Chapter 21.

Amendments to §30.203, Definitions, delete the definitions of "Act" and "agent." Because the term "Act" is used only in §30.205, rather than updating the statutory reference in the definition, the amendments delete the defined term and provide the appropriate statutory reference in §30.205, as described below. The definition of "agent" does not define the term, but rather lists the purposes for which the department may act as an agent for a governmental agency that receives financial aid under the Texas Aviation Facilities Development Program. The amendments delete the definition as unnecessary and redundant of the operative provisions of the rules.

Finally, amendments to the definition of "Aviation Advisory Committee" in §30.203 provide a reference to Transportation Code, §21.003, which specifies the composition of and qualifications for the committee, and delete the description of the committee, as unnecessary.

Amendments to §30.204, Facilities Development Program, update the references to the statutes that provide the specified duties of the Texas Transportation Commission (commission) and department relating to the program.

Amendments to §30.205, Eligibility for Financial Assistance, replace "the Act" with a reference to Transportation Code, Chapter 21, Subchapter C, which provides the requirements for and conditions of financial assistance for aviation facility development.

Amendments to §30.214, Grant and Loan Agreement Payments, update the reference to Article 46d-1 et seq., Revised Statutes, as Transportation Code, §22.054.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 21, Subchapter C.

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 February 23, 2017.

TRD-201700744
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: March 15, 2017
Proposal publication date: December 2, 2016
For further information, please call: (512) 463-8630

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 70, Technology-Based Instruction, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 70 are organized under Subchapter AA, Commissioner's Rules Concerning the Texas Virtual School Network (TxVSN).

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 70, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 70, Subchapter AA, begins March 10, 2017, and ends April 10, 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-201700770
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 27, 2017

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Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 207, §§207.1 - 207.32 "Telecommunications Services." The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register.* Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201700749
Martin Zelinsky
General Counsel
Department of Information Resources
Filed: February 24, 2017

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Texas Department of Public Safety

Title 37, Part 1

Pursuant to Government Code, §2001.039, the Texas Department of Public Safety (the department) files this notice of intent to review and consider for readoption, amendment, or repeal the following chapters in Title 37 of the Texas Administrative Code: Chapter 4 (Commercial Vehicle Regulations and Enforcement Procedures); Chapter 6 (License to Carry Handguns); Chapter 7 (Division of Emergency Management); Chapter 13 (Controlled Substances); Chapter 28 (DNA, CODIS, Forensic Analysis and Crime Laboratories); Chapter 31. Standards for an Approved Motorcycle Operator Training Course; Chapter 33 (All-Terrain Operator Education and Certification Program); and Chapter 34 (Negotiation and Mediation of Certain Contract Disputes).

The department will determine 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 changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.*

Comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register.* Comments should be directed to: Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comment should be labeled as such. Comments should include proposed alternative language as appropriate.

TRD-201700786
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: February 28, 2017

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Adopted Rule Reviews

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291, (§§291.120, 291.121, 291.123, 291.125, 291.127, 291.129, 291.131, 291.133), concerning Services Provided by Pharmacies, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10678).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201700768
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Filed: February 27, 2017

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The Texas State Board of Pharmacy adopts the review of Chapter 291, (§§291.151, 291.153, 291.155), concerning Other Classes of Pharmacy, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10678).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201700767
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Filed: February 27, 2017

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The Texas State Board of Pharmacy adopts the review of Chapter 297, (§§297.1 - 297.11), concerning Pharmacy Technicians and Pharmacy Technician Trainees, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 30, 2016, issue of the *Texas Register* (41 TexReg 10678).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201700769
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Filed: February 27, 2017

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TABLES & GRAPHICS

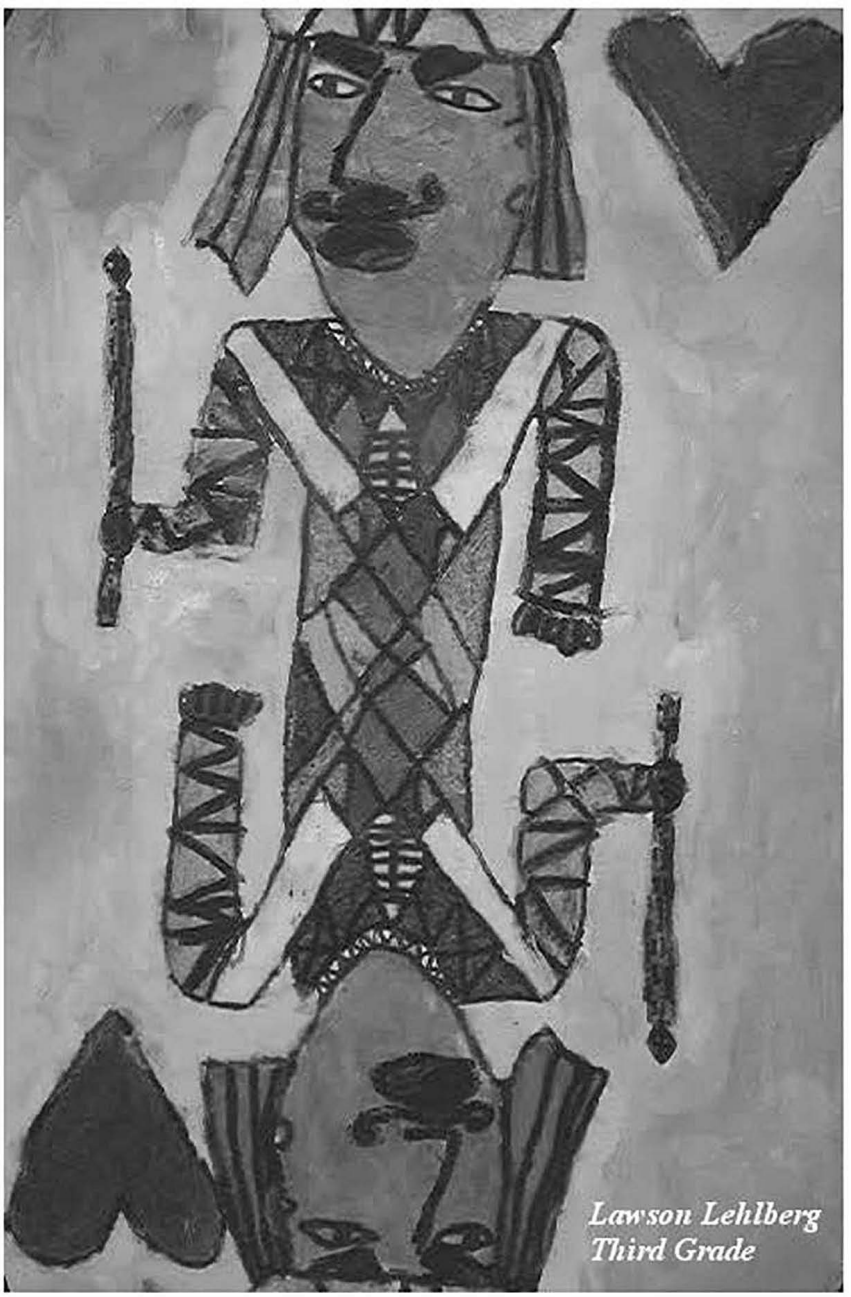
Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

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: 22 TAC §139.35(b)

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTIONS
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation / $5,000.00
	Failure to exercise care and diligence in the practice of engineering	§§137.55(b), 137.63(b)(6)	1 year suspension / $2,500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension / $5,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension / $5,000.00
	Felony conviction with incarceration	§ 139.43(a)	Revocation / $5,000.00
Licensing	Fraud or deceit in obtaining a license	§§1001.452(2) 1001.453	Revocation/$5,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year suspension/$2,500.00
	Enter into a business relationship which is in violation of 137.77(Firm Compliance)	§137.51(d)	1 year suspension / $1,500.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year suspension / $4,000.00
	Failure to design a structure associated with windstorm insurance that complies with cited windstorm code design criteria	§137.63(b)(1)	1 year suspension / $3,000.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful	§§137.57(a) and 137.57(b)(1) or (2)	2 year suspension / $4,000.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§§137.57(a) and 137.57(b)(3)	1 year suspension / $1,500.00
	Conflict of interest	§137.57(c), (d)	2 year suspension / $4,000.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year suspension / $4,000.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year suspension / $4,000.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year suspension / $4,000.00
	Offer or practice engineering while license is expired or inactive	§§137.7(a) and 137.13(a) and (h)	1 year suspension / $750.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year suspension / $2,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand / $2,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year suspension / $2,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year suspension / $2,500.00
	Aiding and abetting unlicensed practice or other assistance	§§137.63(b)(3), 137.63(c)(1)	3 year suspension / $5,000.00
	Failure to report violations of others	§137.55(c)	Reprimand / $2,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand / $2,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand / $2,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year suspension / $2,500.00

	Competitive bidding with governmental entity	§137.53	Reprimand / $2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§§137.17(p)(2), (3), 137.63(a)	2 year suspension / $4,000.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
	Failure to provide plans and/or specs to TDLR/RAS for assessment within 20 days of issuance	§§1001.452(5), 137.63(b)(1) and (2)	Informal Reprimand / $750.00
Improper use of Seal	Failure to safeguard seal and/or electronic signature.	§137.33(d)	Reprimand / $1,500.00
	Failure to sign, seal, date, or include firm identification on work	§§137.33(e), (f), (h), (n), 137.35(a), (b)	Reprimand / $750.00
	Alter work of another	§§137.33(i), 137.37(a)(3)	1 year suspension / $2,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand / $1,500.00
	Practice or affix seal with expired or inactive license	§§1001.401(c), 137.13(h), 137.37(a)(2)	1 year suspension / $750.00
	Practice or affix seal with suspended license	§137.37(a)(2)	Revocation / $5,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year suspension / $2,500.00
	Sealing work endangering the public	§137.37(a)(1)	Revocation / $5,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand / $750.00
	Improper use of standards	§137.33(c)	Reprimand / $750.00
Administrative	Failure to return seal imprint and/or portrait	§§133.97(e), (f); 137.31(a)	Reprimand / $250.00
	Failure to report: change of address or employment, or of any criminal convictions, or legal name change	§137.5(a), (b), and/or (c)	Reprimand / $150.00
	Failure to respond to board communications	§137.51(c)	Reprimand / $750.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand / $500.00


Lawson Lehlberg
Third Grade

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

Request for Applications for the Other Victim Assistance Grant Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting local and statewide applications for projects that provide victim-related services or assistance. The purpose of the OAG Other Victim Assistance Grant (OVAG) program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.

Applicable Funding Source for OVAG:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, non-profit agencies with 26 U.S.C. 501(c)(3) status and state agencies, including universities, are eligible to apply.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/cvs/grants-and-contracts. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: Online registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding. To register go to: https://www.texasattorneygeneral.gov/cvs/grants-and-contracts.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG. The OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the filing instructions, as provided in the Application Kit, is required.

The OAG will **not** consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amount for a local program is $42,000 per fiscal year. The maximum amount for a statewide program is $175,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2017 through August 31, 2018, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Limited Volunteer Requirements: All non-governmental OVAG Applicants must have a volunteer component.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or by phone at (512) 936-1278.

TRD-201700810
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 28, 2017

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Request for Applications for the Sexual Assault Prevention and Crisis Services-State Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from local and statewide programs that provide services to victims of sexual assault.

Applicable Funding Source: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent

upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Sexual Assault Programs and State Sexual Assault Coalitions as defined by Texas Government Code, Section 420.003 and Statewide Programs as defined in the Application Kit.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/cvs/grants-and-contracts. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: Online registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding. To register go to: https://www.texasattorneygeneral.gov/cvs/grants-and-contracts.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG. The OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the filing instructions, as provided in the Application Kit, is required.

The OAG will **not** consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding for all programs is $65,000 per fiscal year. The maximum amounts of funding are as follows: new sexual assault program, statewide programs, and sexual assault coalitions $65,000 per fiscal year; currently funded sexual assault programs $210,000 per fiscal year; currently funded statewide programs $75,000; and state sexual assault coalitions $300,000 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the Sexual Assault Prevention and Crisis Services (SAPCS)-State funds it received in fiscal year (FY) 2017. The award amount is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

A currently funded program is one that has an active grant contract for FY 2017. Previous grantees that were not funded in FY 2017, or that de-obligated their contracts in FY 2017, will be considered new applicants for this Application Kit.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2017 through August 31, 2018, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Volunteer Requirements: All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel (Sexual Assault Programs Only), dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or (512) 936-1278.

TRD-201700812
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 28, 2017

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Request for Applications for the Victim Coordinator and Liaison Grant Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications for projects that provide victim-related services or assistance. The purpose of the OAG Victim Coordinator and Liaison Grant (VCLG) program is to fund the victim assistance coordinator and crime victim liaison positions for the purposes set forth in the Texas Code of Criminal Procedure, Article 56.04.

Applicable Funding Source for VCLG:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: A local criminal prosecutor, defined as a district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases, may apply for a grant to fund a victim assistance coordinator (VAC) position. A local law enforcement agency, defined as the police department of a municipality or the sheriff's department of any county, may apply for a grant to fund a crime victim liaison (CVL) position.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner

and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/cvs/grants-and-contracts. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: Online registration is required to apply for a grant. The deadline to register will be stated in the Application Kit. If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding. To register go to: https://www.texasattorneygeneral.gov/cvs/grants-and-contracts.

Application Deadline: The applicant must submit its application, including all required attachments to the OAG. The OAG must receive the submitted application and all required attachments by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the filing instructions, as provided in the Application Kit, is required.

The OAG will **not** consider an Application if it is not filed by the due date as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amount for a local program is $42,000 per fiscal year.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2017 through August 31, 2018, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, out of state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or (512) 936-1278.

TRD-201700811
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 28, 2017

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 54, Subchapters F and H, Texas Education Code; and Chapters 2155 and 2156, Subchapter A, Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 219h ("RFP") for Actuarial Services for the Board. The Board desires to obtain the services of a qualified, independent firm or individual to assist the Board in administering the Board's actuarial activities related to the Texas Guaranteed Tuition Plan ("TGTP") and the Texas Tuition Promise Fund℠ ("TTPF"), which are qualified tuition programs organized under Section 529 of the Internal Revenue Code; referred to collectively as the "Funds". As of August 31, 2016, TGTP had approximately 60,000 active contracts and assets of approximately $821 million, and TTPF had sold approximately 32,000 contracts and had approximately $819 million in assets. The selected respondent or respondents, if any, will be expected to begin performance of the contract on or about May 22, 2017, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Vicki Rees, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the *Electronic State Business* Daily ("ESBD") at: http://esbd.cpa.state.tx.us after 10:00 a.m. Central Time ("CT") on Friday, March 10, 2017.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Monday, March 17, 2017. **Questions received after the deadline will not be considered.** Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, March 24, 2017, the Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. CT, on Friday, April 7, 2017. **Proposals received after this date and time will not be considered. Respondents shall be solely responsible for ensuring timely receipt of their proposals in the Issuing Office.**

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from the RFP. Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - March 10, 2017, after 10:00 a.m. CT; Questions Due - March 17, 2017, 2:00 p.m. CT; Official Responses to Questions posted - March 24, 2017; Proposals Due - April 7, 2017, 2:00 p.m. CT; Contract Execution - May 17, 2017, or as soon thereafter as practical; Commencement of Work - May 22, 2017. Comptroller reserves

the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201700826
Vicki L. Rees
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 1, 2017

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/06/17 - 03/12/17 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/06/17 - 03/12/17 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201700789
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 28, 2017

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Credit Union Department

Corrections to Notice of Final Action Taken

As submitted by the department, the Notice of Final Action Taken published in the February 24, 2017, issue of the *Texas Register* (42 TexReg 778) included incorrect dates for the *Texas Register* issues referenced.

The corrected dates are as follows:

Application to Expand Field of Membership - Approved

First Basin Credit Union, Odessa, Texas - See *Texas Register* issue dated February 26, 2016.

Neighborhood Credit Union, Dallas, Texas - See *Texas Register* issue dated July 24, 2015.

TRD-201700813
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 28, 2017

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the 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 April 10, 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 April 10, 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: Anita Lewis and Cody Brent Lewis; DOCKET NUMBER: 2017-0011-PWS-E; IDENTIFIER: RN102697794; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(1)(A)(ii) and (i)(7) and §290.122(b)(2)(A) and (f), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the July 1, 2012 - December 31, 2012, monitoring period in which the system exceeded the copper action level and by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to perform and submit a corrosion control study; PENALTY: $61; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2016-1778-AIR-E; IDENTIFIER: RN100825249; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Federal Operating Permit Number O2151, Special Terms and Conditions Number 25, New Source Review Permit Numbers 22690 and PSDTX751M1, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,038; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(3) COMPANY: City of Bardwell; DOCKET NUMBER: 2016-1933-MWD-E; IDENTIFIER: RN101721199; LOCATION: Bardwell, Ellis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013675001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent lim-

itations; PENALTY: $4,050; ENFORCEMENT COORDINATOR: Christopher Chick, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(4) COMPANY: City of Brady; DOCKET NUMBER: 2016-1646-MWD-E; IDENTIFIER: RN101613693; LOCATION: Brady, McCulloch County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination Permit Number WQ0010132001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $5,437; Supplemental Environmental Project offset amount of $4,350; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035.

(5) COMPANY: City of Bridge City; DOCKET NUMBER: 2016-1965-PWS-E; IDENTIFIER: RN103778536; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average and failing to timely provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for TTHM during the second quarter of 2016; PENALTY: $351; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830.

(6) COMPANY: City of Carbon; DOCKET NUMBER: 2016-2011-PWS-E; IDENTIFIER: RN101391985; LOCATION: Carbon, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; PENALTY: $315; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833.

(7) COMPANY: Community Services, Incorporated; DOCKET NUMBER: 2016-1924-PST-E; IDENTIFIER: RN101567063; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: inactive underground storage tank (UST); RULES VIOLATED: 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(8) COMPANY: Connell Oil Corp. dba Mr. C Food Store 5; DOCKET NUMBER: 2016-1958-PST-E; IDENTIFIER: RN101549699; LOCATION: Willow Park, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for all underground and/or totally or partially submerged metal components of an UST system; PENALTY: $11,625; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(9) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2016-2109-AIR-E; IDENTIFIER: RN102549359; LOCATION: Gruver, Hansford County; TYPE OF FACILITY: natural gas compression station; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2504, General Terms and Conditions, by failing to submit a deviation report within 30 days after the end of the reporting period; PENALTY: $2,888; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933.

(10) COMPANY: Dimitrios N. Manetas dba Dimitri's Cabaret; DOCKET NUMBER: 2016-1750-PWS-E; IDENTIFIER: RN102318227; LOCATION: La Marque, Galveston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c)(6) and §290.122(c)(2)(A) and (f), by failing to monitor for nitrate for the 2014 and 2015 monitoring periods and by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to monitor for nitrate for the 2014 monitoring period; PENALTY: $437; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(11) COMPANY: Duran Apartment Management Incorporated dba Evetts Apartments; DOCKET NUMBER: 2016-0425-PWS-E; IDENTIFIER: RN101442234; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(m), by failing to enclose each water treatment plant and all appurtenances by an intruder-resistant fence with the gates locked during periods of darkness and when the plant is unattended; 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tank with a pressure release device; 30 TAC §290.110(d)(1), by failing to provide current reagents for the color comparator used to measure the free chlorine residual throughout the distribution system; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 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 §290.121(a) and (b), by failing to develop 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 public water system will use to comply with the monitoring requirements; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (D)(vii), by failing to properly maintain water works operation and maintenance records and make them available for review to commission personnel during the investigation; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 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 easily located during emergencies; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; 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; 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, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well; PENALTY:

$2,767; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(12) COMPANY: Flint Hills Resources, Port Arthur, LLC; DOCKET NUMBER: 2016-1763-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1317, Special Terms and Conditions Number 24, and Flexible Permit Numbers 16989 and PSDTX794, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(13) COMPANY: Harlingen CISD; DOCKET NUMBER: 2017-0220-PST-E; IDENTIFIER: RN101686533; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: school; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; 30 TAC §334.8(c), by failing to submit initial/renewal underground storage tank (UST) Registration and Self-certification form; and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once every month; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1302; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247.

(14) COMPANY: Intercontinental Terminals Company, LLC; DOCKET NUMBER: 2016-1727-IWD-E; IDENTIFIER: RN100210806; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: wastewater facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001984000, Effluent Limitations and Reporting Requirements Number 1, Outfall Number 002, by failing to comply with permitted effluent limitations; PENALTY: $18,300; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(15) COMPANY: Jesse R. Hernandez; DOCKET NUMBER: 2016-1057-WOC-E; IDENTIFIER: RN104515127; LOCATION: Pettus, Bee County; TYPE OF FACILITY: municipal utility district; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839.

(16) COMPANY: Jose Luis Simental dba Simental Stone Yard; DOCKET NUMBER: 2016-1218-SLG-E; IDENTIFIER: RN106147234; LOCATION: Graham, Young County; TYPE OF FACILITY: sludge transporter business; RULES VIOLATED: 30 TAC §312.142(d), by failing to renew the sludge transporter registration biennially; and 30 TAC §312.9 and TWC, §5.702, by failing to pay Sludge Transporter fees and associated late fees for TCEQ Financial Administration Account Number 0804399H for Fiscal Year 2012 to current; PENALTY: $2,619; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833.

(17) COMPANY: Justin D. Dodson; DOCKET NUMBER: 2017-0218-LII-E; IDENTIFIER: RN109411603; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: landscape; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933.

(18) COMPANY: MUNSON POINT PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2016-2062-PWS-E; IDENTIFIER: RN103128161; LOCATION: Denison, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(1)(A)(ii) and (i)(7) and §290.122(b)(2)(A) and (f), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the July 1, 2014 - December 31, 2014 monitoring period in which the system first exceeded the copper action level and by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to perform and submit a corrosion control study; PENALTY: $75; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(19) COMPANY: Neptune International Incorporated; DOCKET NUMBER: 2016-1088-PST-E; IDENTIFIER: RN101892891; LOCATION: Humble, 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: $4,687; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(20) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2016-2046-PWS-E; IDENTIFIER: RN106532179; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(1)(A)(ii) and (i)(7) and §290.122(b)(2)(B) and (f), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the January 1, 2015 - June 30, 2015, monitoring period in which the system first exceeded the lead and copper action levels, and by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to perform and submit a corrosion control study; PENALTY: $60; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839.

(21) COMPANY: SEGUIN BUSINESS, L.L.C. dba Park Place 1; DOCKET NUMBER: 2016-1498-PST-E; IDENTIFIER: RN102008588; LOCATION: Seguin, Guadalupe 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: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(22) COMPANY: SOUTHWESTERN PUBLIC SERVICE COMPANY; DOCKET NUMBER: 2016-2029-WDW-E; IDENTIFIER: RN100224641; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: electric power plant; RULES VIOLATED: 30 TAC §331.63(c) and §331.64(c), 40 Code of Federal Regulations §146.69(a)(2) and Underground Injection Control Permit Number Waste Disposal Well 342, Permit Provision VII.B, Operating Parameters, by failing to maintain an operating wellhead injection pressure that does not exceed the permitted maximum; PENALTY: $3,713; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933.

(23) COMPANY: Thalia Water Supply Corporation; DOCKET NUMBER: 2016-1860-PWS-E; IDENTIFIER: RN101454569; LO-

CATION: Crowell, Foard 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 average; PENALTY: $172; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833.

(24) COMPANY: Universal Services Fort Hood, Incorporated; DOCKET NUMBER: 2016-1948-MWD-E; IDENTIFIER: RN102185410; LOCATION: Fort Hood, Bell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013358001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826.

TRD-201700782
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 28, 2017

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment Permit Number WQ0011060001

APPLICATIONAND PRELIMINARY DECISION. City of Buda and Guadalupe-Blanco River Authority, P.O. Box 1218, Buda, Texas 78610, have applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011060001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,500,000 gallons per day to an annual average flow not to exceed 2,000,000 gallons per day at Outfall 001; and the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day at new Outfall 002, with a combined total discharge of 3,500,000 gallons per day at Outfalls 001 and 002. TCEQ received this application on January 26, 2016.

The facility is located at 575 County Road 236, in Hays County, Texas 78610. The treated effluent is discharged via Outfall 001 to an unnamed tributary; thence to Andrews Branch; thence to Porter Creek; thence to Soil Conservation Service (SCS) Site 6 Reservoir; thence to Porter Creek; thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The treated effluent will also be discharged via Outfall 002 to an unnamed tributary; thence to an unnamed lake; thence to an unnamed tributary; thence to SCS Site 11 Reservoir; thence to an unnamed tributary; thence to SCS Site 12 Reservoir; thence to Brushy Creek; thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water uses for Outfall 001 are limited aquatic life use for the unnamed tributary and Andrews Branch. The unclassified receiving water uses for Outfall 002 are minimal aquatic life use for the unnamed tributary (above the unnamed lake), limited aquatic life use for the unnamed lake, and limited aquatic life use for the unnamed tributary (below the unnamed lake), and high aquatic life use for SCS Site 11 Reservoir. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection and high aquatic life use. The aquifer protection use does not apply to this permit as the outfalls are downstream of the Edwards Aquifer contributing, recharge, and transition zones.

In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in SCS Site 11 Reservoir, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Basil Anthony Moreau Memorial Library (Buda Public Library), 303 Main Street, Buda, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.08932&lng=-97.84144&zoom=13&type=r.

CHANGE IN LAW: The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in law.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, March 21, 2017 at 7:00 p.m.

Buda Elementary (Upper Campus) Kunkel Room

300 N. San Marcos Street

Buda, Texas 78610

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Citizens are encouraged to submit written public comments and public meeting requests to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

AGENCY CONTACTS AND INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov.

Further information may also be obtained from City of Buda and Guadalupe-Blanco River Authority at the address stated above or by calling Mr. Michael Urrutia, Director of Water Quality Services, Guadalupe-Blanco River Authority, at (830) 379-5822.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-201700817
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2017

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Notice of Hearing

Beacon Estates Water Supply Corporation

SOAH Docket No. 582-17-2770

TCEQ Docket No. 2016-1704-MWD

Permit No. WQ0014963001

APPLICATION.

Beacon Estates Water Supply Corporation, 513 West Navigation Street, Brookshire, Texas 77423, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014963001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. TCEQ received this application on December 23, 2015.

The facility is located approximately 800 feet east of the Farm-to-Market Road 359; approximately three miles north of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 1458, in Waller County, Texas 77423. The treated effluent is discharged to Bessies Creek; thence to Brazos River Below Navasota River in Segment No. 1202 of the Brazos River Basin. The unclassified receiving water use is intermediate aquatic life use for Bessies Creek. The designated uses for Segment No. 1202 are high aquatic life use, public water supply, and primary contact recreation. All determinations are preliminary and subject to additional review and/or revisions.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Brookshire-Pattison Library, 3815 Sixth Street, Brookshire, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/in-

dex.html?lat=29.870099&lng=-96.00006&zoom=12&type=r>. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - April 10, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on January 25, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

A person whose hearing request is denied by the Commission may still seek to be admitted as a party under 30 Texas Admin. Code §80.109, if any hearing request is granted on the application. To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

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 our web site at http://www.tceq.texas.gov/.

Further information may also be obtained from Beacon Estates Water Supply Corporation at the address stated above or by calling Ms. Jan Shelton at (281) 934-3931.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: February 22, 2017

TRD-201700815

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 1, 2017

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), 7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 10, 2017.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 10, 2017.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: ANNU GOLDEN, INC.; DOCKET NUMBER: 2016-0809-PST-E; TCEQ ID NUMBER: RN104990957; LOCATION: 18818 Highway 290 East, Elgin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; 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: $28,815; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201700784

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 28, 2017

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **April 10, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 10, 2017.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Antex Investments LLC d/b/a Super Stop; DOCKET NUMBER: 2016-1105-PST-E; TCEQ ID NUMBER: RN101446680; LOCATION: 2517 North Chadbourne Street, San Angelo, Tom Green County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; 30 TAC §334.7(d)(1)(A) and (B) and (3) and §334.54(e)(2), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the date of the occurrence of the change or addition; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $5,627; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: City of Fort Worth; DOCKET NUMBER: 2016-1647-WQ-E; TCEQ ID NUMBER: RN100942259; LOCATION: 4500 Wilma Lane, Arlington, Tarrant County; TYPE OF FACILITY: sewage treatment facility; RULE VIOLATED: TWC, §26.121(a)(2) and (3), by discharging chemicals or other substances into or adjacent to any water in the state, which in itself or in conjunction with any other discharge or activity caused, continued to cause, or would cause pollution of any water in the state; PENALTY: $11,250; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Olke Andries Jongsma; DOCKET NUMBER: 2015-1824-AGR-E; TCEQ ID NUMBER: RN101516045; LOCATION: 248 County Road 4310, Winnsboro, Wood County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §321.31(a) and §321.40(d) and Texas Pollutant Discharge Elimination System General Permit Number TXG920068, Part III, (A)(12)(c)(1) and (6), by failing to prevent the discharge of agricultural waste into or adjacent to water in the state; PENALTY: $7,500; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: PIONEER GROCERY #ONE, INC. d/b/a Pioneer Grocery 2; DOCKET NUMBER: 2016-1812-PST-E; TCEQ ID NUMBER: RN102345527; LOCATION: 2518 West Marshall Drive, Grand Prairie, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,375; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: POSSUM KINGDOM WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1872-PWS-E; TCEQ ID NUMBER: RN103129078; LOCATION: off of Farm-to-Market Road 2951, one mile east on PK Road 36 near Johnson Peak, Palo Pinto, Palo Pinto County; TYPE OF FACILITY: public water system; 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 trihalomethanes based on the locational running annual average; PENALTY: $630; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201700783
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 28, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Jack Turner d/b/a Cherokee Mobile Home Park

SOAH Docket No. 582-17-2706

TCEQ Docket No. 2016-0427-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 23, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 12, 2016 concerning assessing administrative penalties against and requiring certain actions of Jack Turner d/b/a Cherokee Mobile Home Park, for violations in Kerr County, Texas, of: 30 Texas Admin. Code §§290.39(e)(1) and (h)(1), 290.41(c)(1)(F), 290.45(b)(1)(F)(i), 290.45(b)(1)(F)(iii) and TCEQ Agreed Order Docket No. 2013-1996-PWS-E, Ordering Provisions Nos. 2.c.ii., 2.e.i., 2.e.ii., and 2.e.iii.

The hearing will allow Jack Turner d/b/a Cherokee Mobile Home Park, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Jack Turner d/b/a Cherokee Mobile Home Park, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Jack Turner d/b/a Cherokee Mobile Home Park to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Jack Turner d/b/a Cherokee Mobile Home Park, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Health & Safety Code ch. 341 and 30 Texas Admin. Code chs. 70 and 290; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Admin. Code §§ 70.108 and 70.109 and ch. 80, and 1 Texas Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 23, 2017

TRD-201700816
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2017

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Notice of Water Quality Applications

The following notices were issued on February 22, 2017, through February 23, 2017.

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 (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

MOUNTAIN CREEK POWER, LLC, which operates Mountain Creek Steam Electric Station, has applied to the TCEQ for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001250000 to update the sampling plan for Outfall 002, revise the temperature monitoring requirement at Outfall 001, revise the flow monitoring requirement at Outfall 001, clarify the weekly chlorine concentration reporting requirement for Outfall 001, eliminate internal Outfall 101, and update the definition of low-volume waste sources in Other Requirement No. 9. The draft permit authorizes the discharge of once-through cooling water and stormwater at a daily average flow not to exceed 927,000,000 gallons per day via Outfall 001, and low-volume waste and stormwater runoff on an intermittent and flow-variable basis via Outfall 002. The facility is located at 2233 Mountain Creek Parkway, Suite A, in the City of Dallas, Dallas County, Texas 75211.

JOHAN RUDIE STOKER AND MARTEN SIETSE STOKER has applied for a minor amendment of TPDES Permit No. WQ0003238000, for a Concentrated Animal Feeding Operation, to authorize the applicant to add a freestall barn to the production area of the dairy facility. The facility is located on the north side of County Road 185, approximately 1.5 miles east of the intersection of County Road 185 and U.S. Highway 281 in Erath County, Texas. The offsite land management units are located on the east side of County Road 185, approximately 4 miles east of the intersection of County Road 185 and U.S. Highway 281 in Erath County, Texas.

CITY OF ROGERS has applied for a minor amendment to TPDES Permit No. WQ0010804001 to authorize the use of chlorination for disinfection. The facility is south of the City of Rogers, immediately west of Farm-to-Market Road 437 and approximately 3/4 mile south of the intersection of U.S. Highway 190 and Farm-to-Market Road 437, in Bell County, Texas 76569.

TRD-201700814

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2017

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

Deadline: 30-Day Pre-Election Report due October 5, 2015 for Candidates and Officeholders

Michael E. Holdman, 15826 Cardinal Point, Selma, Texas 78154-3489

Deadline: 30-Day Pre-Election Report due October 11, 2016 for Candidates and Officeholders

Joy Dawson-Thomas, 12941 North Freeway, Ste. 602, Houston, Texas 77060-1240

Deadline: 8-Day Pre-Election Report due October 31, 2016 for Candidates and Officeholders

Frank J. Castro, 2911 Winter Gorge, San Antonio, Texas 78259-1204

Deadline: Monthly Report due December 5, 2016 for Committees

Keith A. Houser, Citizens For Property Rights, P.O. Box 93476, Southlake, Texas 76092-0114

Adam Pacheco, Associated General Contractors of El Paso PAC, 810 E. Yandell Dr., El Paso, Texas 79902-5332

Thomas D. Ray, Orange County Sheriff's Office Employee's Association Political Action Committee, 5508 Hidden Meadows, Orange, Texas 77632

TRD-201700710
Seana Willing
Executive Director
Texas Ethics Commission
Filed: February 22, 2017

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 1, 2017, through February 27, 2017. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, March 3, 2017. The public comment period for this project will close at 5:00 p.m. on Saturday, April 1, 2017.

FEDERAL AGENCY ACTIONS:

Applicant: Intercontinental Terminals Company, LLC

Location: The project site is located in the Houston Ship Channel, at 1030 Ethyl Road, in Pasadena, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: TX-PASADENA, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.74213, -95.16521

Project Description: The applicant proposes to hydraulically dredge a ship berth from the previously authorized depth of -20 feet mean sea level (msl) to a depth of -40 feet msl (with a 2-foot over dredge for advanced maintenance). The applicant is also requesting authorization for periodic maintenance dredging for the ship berth for a period of 10 years. The applicant is requesting permission to place the dredge material into the following dredge material placement areas: Adloy, Lost Lake, Peggy Lake, Alexander Island, Spilman Island, Pinto Lion (Glandville), East/West Jones, Rosa Allen, House Tract, Filter Bed, Glendale, East Clinton, West Clinton, and Avera.

CMP Project No: 17-1132-F1

Applicant: City of Port Neches

Location: The project site is located in the Neches River, along Lee Avenue, in Port Neches, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Arthur North, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.997772, -93.952609

Project Description: The applicant proposes to removed existing derelict structures and pilings, mechanically excavate approximately 1,373 cubic yards of material and discharge dredged and/or fill material into the Neches River for the purpose of constructing a breakwater, creating 0.57 acres of intertidal marsh behind the breakwater, and construct a recreational boardwalk, on the breakwater at the edge of the created marsh.

CMP Project No: 17-1129-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at *federal.consistency@glo.texas.gov*. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201700825
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: March 1, 2017

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Texas Department of Housing and Community Affairs

Notice of Funding Availability

Release for Program Year 2017 Community Services Block Grant Discretionary Funds for Native American and Migrant Seasonal Farm Worker Populations

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of $300,000 in Community Services Block Grant Discretionary ("CSBG-D") funding for migrant seasonal farm worker and Native American population education and employment initiatives. Each year the Department sets aside 5% of its

annual CSBG allocation for state discretionary use. Each year funds from CSBG-D are used for specific identified efforts that the Department supports and other ongoing initiatives such as employment and education programs for migrant and seasonal farm workers and Native Americans. This year, $300,000 has been targeted for migrant and seasonal farm worker and Native American populations for employment and education programs for which the Department is issuing this Notice of Funding Availability ("NOFA"). The Department will release funds competitively.

The Department's anticipated contract period for Program Year ("PY") 2017 CSBG-D migrant seasonal farm worker and Native American initiatives is June 1, 2017, through May 31, 2018.

Interested applicants must meet the requirements set forth in the application and must submit a complete application through the established system described in the NOFA by Friday, March 31, 2017, 5:00 p.m. Austin local time.

The application forms contained in this packet and submission instructions are available on the Department's web site at http://www.tdhca.state.tx.us/community-affairs/nofas.htm. Should you have any related questions, please contact Gavin Reid at (512) 936-7828 or gavin.reid@tdhca.state.tx.us.

TRD-201700819
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 1, 2017

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Notice of Public Comment Period and Public Hearing on the Draft 2017 Department of Energy State Plan

The Texas Department of Housing and Community Affairs ("TDHCA") will hold a 14-day public comment period from Friday, March 10, 2017, through Friday, March 24, 2017, at 12:00 p.m. Austin local time, to obtain public comment on the draft 2017 Department of Energy ("DOE") State Plan.

The DOE State Plan offers weatherization assistance for low income persons. Funding provides for the installation of weatherization measures to increase energy efficiency of a home including caulking; weather stripping; adding ceiling, wall, and floor insulation; patching holes in the building envelope; duct work; and repair or replacement of energy inefficient heating and cooling systems. Additionally, the funds allow subgrantees to complete financial audits, household energy audits, outreach and engagement activities, and program administration. Also, the funding provides for state administration and state training and technical assistance activities. During the public comment period, a public hearing will take place as follows:

Wednesday, March 22, 2017

3:00 p.m. Austin local time

Texas Department of Housing and Community Affairs State Office Building, Room 116

221 East 11th Street

Austin, Texas 78701

Anyone may submit comments on the draft 2017 DOE State Plan in written form or oral testimony at the public hearing. Written comments during the public comment period may be submitted to Texas Department of Housing and Community Affairs, Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: gavin.reid@tdhca.state.tx.us.

The full text of the draft 2017 DOE State Plan may be viewed at the Department's website: http://www.tdhca.state.tx.us/public-comment.htm. The public may also receive a copy of the draft 2017 DOE State Plan by contacting Gavin Reid at (512) 976-7828.

Individuals who require auxiliary aids or services for the public hearing should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least five (5) days before the hearings so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearings should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least five (5) days before the hearings so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201700820
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 1, 2017

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Notice of Public Comment Period on the 2016 National Housing Trust Fund Allocation Plan, Substantially Amended 2015 - 2019 Consolidated Plan, and Substantially Amended 2016 One Year Action Plan

The Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") previously prepared and released a draft 2016 State of Texas National Housing Trust Fund ("NHTF") Allocation Plan ("Plan") along with a draft Substantially Amended 2015 - 2019 Consolidated Plan, and draft Substantially Amended 2016 One Year Action Plan ("OYAP") in July 2016, in accordance with 24 CFR §91.320. The draft Plan was published in the *Texas Register* and public comment was received through August 15, 2016. No changes were made to the Plan as a result of comments received. The Plan reflected the intended uses of NHTF funds received by the State of Texas from the U.S. Department of Housing and Urban Development ("HUD") in Program Year 2016. The Plan also illustrated the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2015 - 2019 State of Texas Consolidated Plan and 2016 OYAP. The Plan and all other required amendments and attachments were submitted to HUD on September 14, 2016, and subsequently disapproved by HUD on October 27, 2016. The Department submitted corrective documentation and held several discussions with HUD. As a result, it is the State's conclusion that rehabilitation will not be an eligible activity under NHTF in Program Year 2016 given the fact that the rehabilitation standards requirements are above and beyond the requirements for any other multifamily program that TDHCA administers. Additionally, refinancing of existing debt will not be permitted and funds will not be used for homeownership housing. Finally, additional justification for the State adopting the Section 234 Condominium Housing as its maximum per-unit development limits has been included.

The amended Plan reflects the intended uses of the NHTF allocation from HUD for the State of Texas for Program Year 2016. The Program Year begins on February 1, 2016, and ends on January 31, 2017. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the Substantially Amended 2015 - 2019 State of Texas Consolidated and the Substantially Amended 2016 OYAP.

The documents may be accessed from TDHCA's Public Comment Web page at: http://www.tdhca.state.tx.us/public-comment.htm. The public comment period for the Plan will be open from Wednesday, March 1, 2017, through Thursday, March 30, 2017. Written comments concerning the Plan may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than March 30, 2017, at 6:00 p.m. Austin local time.

TRD-201700823
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 1, 2017

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Texas Department of Insurance

Company Licensing

Application for THE DOCTORS' LIFE INSURANCE COMPANY, a foreign life, accident and/or health company, to change its name to COMPANION LIFE INSURANCE COMPANY OF CALIFORNIA. The home office is in San Francisco, California.

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-201700818
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: March 1, 2017

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Company Licensing

Application for QUANTA INDEMNITY COMPANY, a foreign fire and/or casualty company, to change its name to GREYHAWK INSURANCE COMPANY. The home office is in Denver, Colorado.

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-201700822
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: March 1, 2017

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Texas Lottery Commission

Scratch Ticket Game Number 1838 "Instant Millionaire"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1838 is "INSTANT MILLIONAIRE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1838 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1838.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: SINGLE CHERRY SYMBOL, GOLD BAR SYMBOL, BANANA SYMBOL, DICE SYMBOL, DIAMOND SYMBOL, SPADE SYMBOL, PINEAPPLE SYMBOL, BELL SYMBOL, SUN SYMBOL, ANCHOR SYMBOL, APPLE SYMBOL, HORSESHOE SYMBOL, LIGHTNING BOLT SYMBOL, LEMON SYMBOL, HEART SYMBOL, STRAWBERRY SYMBOL, CLUB SYMBOL, POT OF GOLD SYMBOL, FOUR LEAF CLOVER SYMBOL, WISHBONE SYMBOL, 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 10X SYMBOL, CROWN SYMBOL, MONEY BAG SYMBOL, $20.00, $25.00, $50.00, $100, $200, $500, $1,000, $10,000, $25,000, $1,000,000 and $2,500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1838 - 1.2D

PLAY SYMBOL	CAPTION
SINGLE CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
BANANA SYMBOL	BANANA
DICE SYMBOL	DICE
DIAMOND SYMBOL	DIAMOND
SPADE SYMBOL	SPADE
PINEAPPLE SYMBOL	PNAPLE
BELL SYMBOL	BELL
SUN SYMBOL	SUN
ANCHOR SYMBOL	ANCHOR
APPLE SYMBOL	APPLE
HORSESHOE SYMBOL	HRSHOE
LIGHTNING BOLT SYMBOL	BOLT
LEMON SYMBOL	LEMON
HEART SYMBOL	HEART
STRAWBERRY SYMBOL	STRWBY
CLUB SYMBOL	CLUB
POT OF GOLD SYMBOL	GOLD
FOUR LEAF CLOVER SYMBOL	CLOVER
WISHBONE SYMBOL	WISHBN
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN

19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
10X SYMBOL	WINX10
CROWN SYMBOL	WINX2
MONEY BAG SYMBOL	WIN
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$200	TOHN

$500	FVHN
$1,000	ONTH
$10,000	10TH
$25,000	25TH
$1,000,000	1MILL
$2,500,000	TPPZ

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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1838), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1838-0000001-001.

H. Pack - A Pack of the "INSTANT MILLIONAIRE" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

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 Ticket Game, Scratch Ticket or Ticket - Texas Lottery "INSTANT MILLIONAIRE" Scratch Ticket Game No. 1838.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "INSTANT MILLIONAIRE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 65 (sixty-five) Play Symbols. BONUS QUICK WIN PLAY AREA: If a player reveals 2 (two) matching symbols in the same BONUS QUICK WIN play area, the player wins the PRIZE for that BONUS QUICK WIN play area. MAIN PLAY AREA: If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "CROWN" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 65 (sixty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 65 (sixty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket will win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to twenty-eight (28) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of $1,000,000 and $2,500,000 will each appear at least once, except on Tickets winning twenty-eight (28) times.

E. BONUS QUICK WIN PLAY AREA: A Ticket can win up to one (1) time in each of the three (3) BONUS QUICK WIN play areas.

F. BONUS QUICK WIN PLAY AREA: A BONUS QUICK WIN Play Symbol will not be used more than one (1) time per Ticket across all three (3) BONUS QUICK WIN play areas, unless used in a winning combination.

G. BONUS QUICK WIN PLAY AREA: Winning combinations across all three (3) BONUS QUICK WIN play areas will be different.

H. BONUS QUICK WIN PLAY AREA: No matching BONUS QUICK WIN Prize Symbols will appear on a Ticket unless required by the prize structure.

I. MAIN PLAY AREA: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

J. MAIN PLAY AREA: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

K. MAIN PLAY AREA: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

L. MAIN PLAY AREA: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and $20, 25 and $25, 50 and $50).

M. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

N. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

O. MAIN PLAY AREA: The "MONEY BAG" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. MAIN PLAY AREA: The "MONEY BAG" (WIN) Play Symbol will never appear more than once on a Ticket.

Q. MAIN PLAY AREA: The "MONEY BAG" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

R. MAIN PLAY AREA: The "CROWN" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. MAIN PLAY AREA: The "CROWN" (WINX2) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

T. MAIN PLAY AREA: The "CROWN" (WINX2) Play Symbol will never appear more than once on a Ticket.

U. MAIN PLAY AREA: The "CROWN" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

V. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

W. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

X. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

Y. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT MILLIONAIRE" Scratch Ticket Game prize of $20.00, $25.00, $50.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $150, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT MILLIONAIRE" Scratch Ticket Game prize of $1,000, $10,000, $25,000, $1,000,000 or $2,500,000 the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery,

payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT MILLIONAIRE" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "INSTANT MILLIONAIRE" 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 "INSTANT MILLIONAIRE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 34,080,000 Scratch Tickets in Scratch Ticket Game No. 1838. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1838 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20	3,635,200	9.38
$25	3,635,200	9.38
$50	2,044,800	16.67
$100	974,120	34.99
$150	156,200	218.18
$200	184,600	184.62
$500	11,200	3,042.86
$1,000	6,450	5,283.72
$10,000	800	42,600.00
$25,000	100	340,800.00
$1,000,000	40	852,000.00
$2,500,000	10	3,408,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.20. 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. 1838 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. 1838, 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-201700781
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 28, 2017

♦ ♦ ♦

Scratch Ticket Game Number 1853 "Money"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1853 is "MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1853 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1853.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 10X SYMBOL, CROWN SYMBOL, COIN SYMBOL, $20.00, $25.00, $50.00, $100, $200, $500, $1,000, $10,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1853 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
10X SYMBOL	WINX10
CROWN SYMBOL	WINX2
COIN SYMBOL	WIN
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$1,000,000	TPPZ

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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1853), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1853-0000001-001.

H. Pack - A Pack of the "MONEY" Scratch Ticket Game contains 025 fanfolded, perforated Tickets per Pack in one (1) Ticket per strip. The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

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 "MONEY" Scratch Ticket Game No. 1853.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 66 (sixty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "COIN" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "CROWN" Play Symbol, the player wins

DOUBLE the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 66 (sixty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 66 (sixty-six) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $10,000 and $1,000,000 will each appear at least once, except on Tickets winning thirty (30) times.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and $20, 25 and $25, 50 and $50).

I. On all Tickets, a Prize Symbol will not appear more than five (5) times except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "COIN" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

L. The "COIN" (WIN) Play Symbol will never appear more than once on a Ticket.

M. The "COIN" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

N. The "CROWN" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "CROWN" (WINX2) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

P. The "CROWN" (WINX2) Play Symbol will never appear more than once on a Ticket.

Q. The "CROWN" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

R. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

T. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

U. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY" Scratch Ticket Game prize of $20.00, $25.00, $50.00, $70.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $70.00, $100, $150, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY" Scratch Ticket Game prize of $1,000, $10,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY" 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 "MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 1853. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1853 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20	755,200	9.38
$25	472,000	15.00
$50	708,000	10.00
$70	124,195	57.01
$100	220,955	32.04
$150	34,515	205.13
$200	3,363	2,105.26
$500	106	66,792.45
$1,000	50	141,600.00
$10,000	16	442,500.00
$1,000,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1853 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. 1853, 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-201700780
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 28, 2017

♦ ♦ ♦

Scratch Ticket Game Number 1874 "Big Money"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1874 is "BIG MONEY". The play style is "key symbol match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1874 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1874.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, BIG SYMBOL, DOLLAR SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1874 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
BIG SYMBOL	WINALL
DOLLAR SYMBOL	WIN
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$

$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1874), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1874-0000001-001.

H. Pack - A Pack of the "BIG MONEY" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Ticket 125 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

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 Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BIG MONEY" Scratch Ticket Game No. 1874.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BIG MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 20 (twenty) Play Symbols. In the play area, if a player reveals a "DOLLAR" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "BIG" Play Symbol, the player wins ALL 10 PRIZES. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. The "BIG" (WINALL) Play Symbol will only appear as dictated by the prize structure.

E. On Tickets that contain the "BIG" (WINALL) Play Symbol, the "DOLLAR" (WIN) Play Symbol will not appear.

F. Non-winning Play Symbols will all be different.

G. Non-winning Prize Symbols will never appear more than two (2) times.

H. No prize amount in a non-winning location will correspond with the Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100 a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG MONEY" Scratch Ticket Game prize of $1,000 or $30,000 the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG MONEY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BIG MONEY" 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 "BIG MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 1874. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1874 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	576,000	12.50
$4	748,800	9.62
$5	115,200	62.50
$10	86,400	83.33
$20	57,600	125.00
$50	37,710	190.93
$100	4,650	1,548.39
$1,000	90	80,000.00
$30,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.43. 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. 1874 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. 1874, 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-201700779

Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 28, 2017

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Public Utility Commission of Texas

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 24, 2017, to amend a certificate of convenience and necessity for a service area exception within Lubbock County, Texas.

Docket Style and Number: Application of South Plains Electric Cooperative, Inc. and Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Service Area Exception in Lubbock County. Docket Number 46892.

The Application: South Plains Electric Cooperative, Inc. and Southwestern Public Service Company (SPS) filed an application for a service area boundary exception to allow South Plains to provide service to a specific customer located within the certificated service area of SPS. SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 17, 2017 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 46892.

TRD-201700777
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 2017

♦ ♦ ♦

Petition for Reduction of Retail Public Water Utility Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition for reduction of retail public water utility service in Jasper County.

Docket Style and Number: Petition of Westwood Water Supply Corporation for Reduction of Retail Public Water Utility Service in Jasper County, Docket Number 46875.

The Application: On February 21, 2017, Westwood Water Supply Corporation filed a petition for reduction of retail public water utility service in Jasper County. Specifically, Westwood seeks to discontinue retail public water utility service to seven Concord Ridge Subdivision ratepayers that currently reside within Upper Jasper County Water Authority's certificated service area and effect an orderly transfer of the ratepayers to Upper Jasper. Westwood requested such relief by July 1, 2017.

Persons wishing to intervene or 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 (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 46875.

TRD-201700711
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2017

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Advertising in Texas Department of Transportation's *Texas State Travel Guide*

Advertising in Texas Department of Transportation *Texas State Travel Guide,* both in print and in digital. 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, both in print and in digital, list acceptable and unacceptable subjects for advertising in department travel literature, 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 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 ba sis. 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 rate card information for potential advertisers in the *Texas State Travel Guide,* originally published in the *Texas Register* on December 9, 2016, (41 TexReg 9797), has been amended and is included in this notice.

TEXAS STATE TRAVEL GUIDE

Space Closing: October 5, 2017
Materials Due: October 12, 2017
First Distribution: January 2018

Advertising Rates

ROP:	Gross
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♦ ♦ ♦

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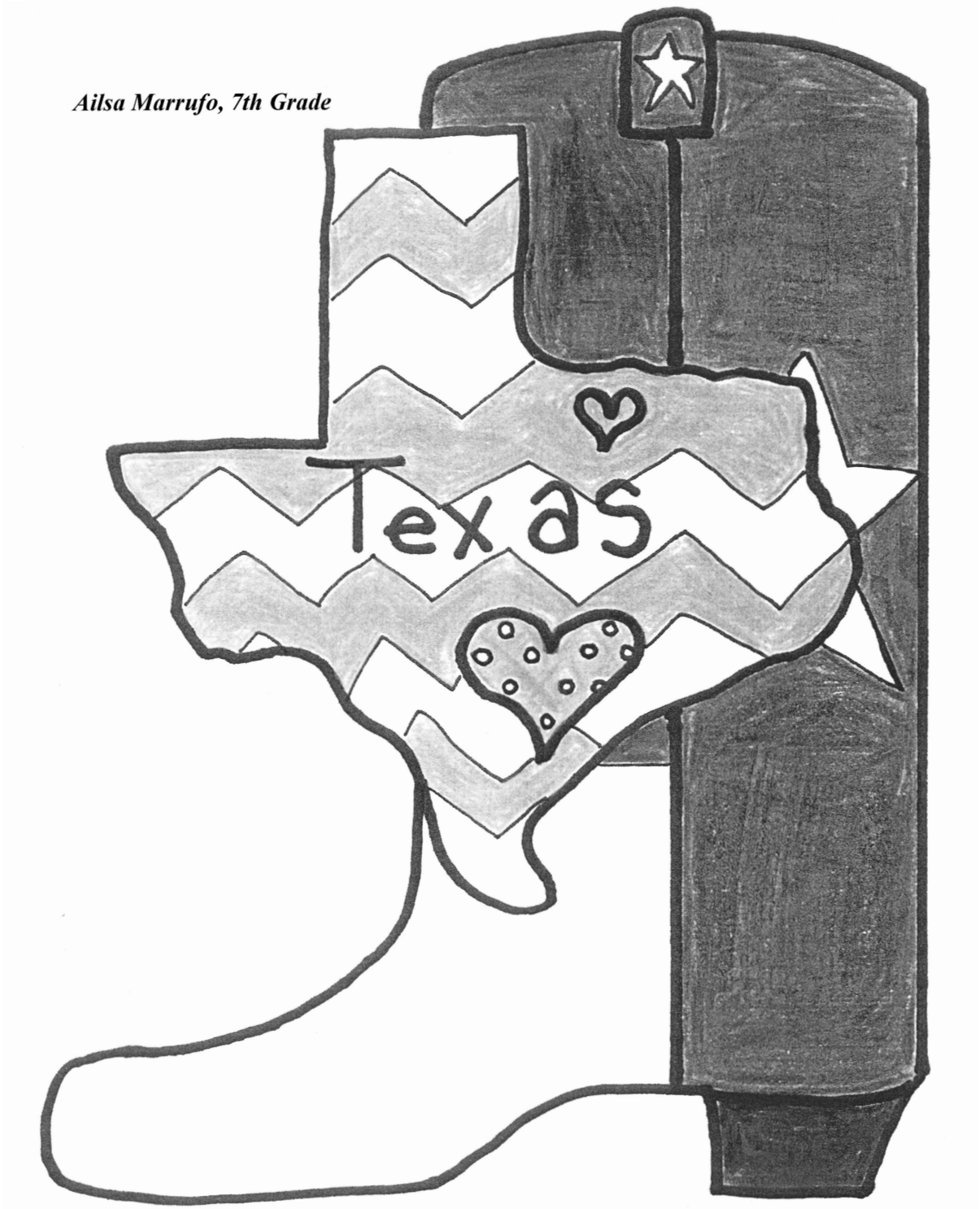
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 28, 2017

Ailsa Marrufo, 7th Grade



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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