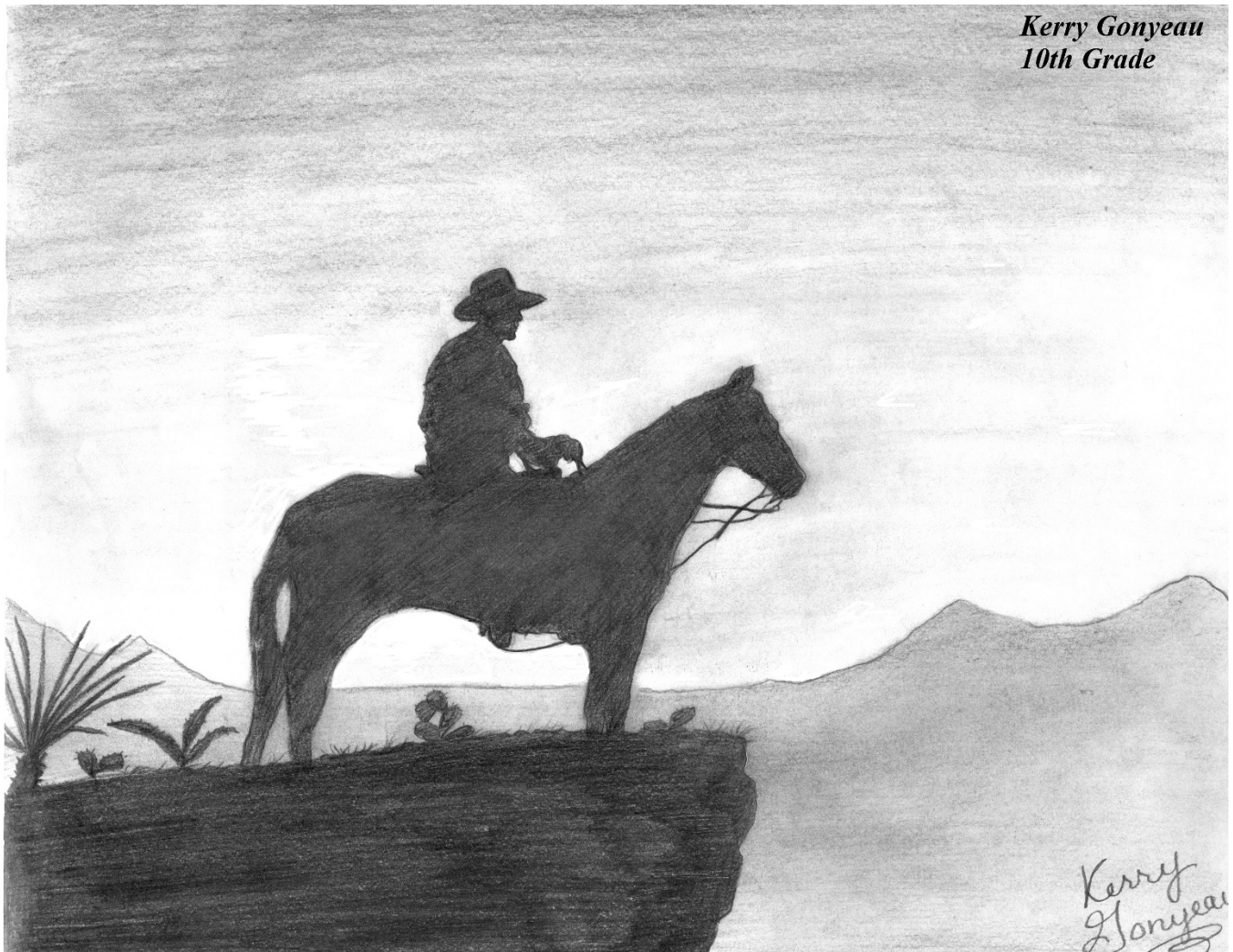

TEXAS REGISTER

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Pages 1193 - 1287



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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<http://www.sos.state.tx.us>
register@sos.texas.gov

Secretary of State - Rolando B. Pablos

Director - Robert Summers

Staff

Leti Benavides
Belinda Kirk
Deana Lackey
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Barbara Strickland
Tami Washburn

IN THIS ISSUE

GOVERNOR

Appointments.....1197

ATTORNEY GENERAL

Requests for Opinions.....1199

PROPOSED RULES

DEPARTMENT OF INFORMATION RESOURCES

GENERAL ADMINISTRATION

1 TAC §201.4, §201.9.....1201

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.112.....1206

1 TAC §355.723.....1208

1 TAC §355.308.....1210

RAILROAD COMMISSION OF TEXAS

PRACTICE AND PROCEDURE

16 TAC §§1.1 - 1.10.....1216

16 TAC §§1.21 - 1.30.....1217

16 TAC §§1.41 - 1.49.....1217

16 TAC §§1.61 - 1.65.....1218

16 TAC §§1.81 - 1.87.....1218

16 TAC §§1.101 - 1.108.....1218

16 TAC §§1.121 - 1.130.....1218

16 TAC §§1.141 - 1.152.....1219

16 TAC §§1.1 - 1.10.....1219

16 TAC §§1.21 - 1.27.....1221

16 TAC §§1.31 - 1.38.....1223

16 TAC §§1.41 - 1.45.....1225

16 TAC §§1.51 - 1.57.....1227

16 TAC §§1.61 - 1.68.....1228

16 TAC §§1.101 - 1.112.....1230

16 TAC §§1.121 - 1.131.....1233

16 TAC §1.301.....1236

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

ADMINISTRATION

22 TAC §7.11.....1236

GENERAL LAND OFFICE

GENERAL PROVISIONS

31 TAC §3.30.....1237

TEXAS JUVENILE JUSTICE DEPARTMENT

RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

37 TAC §380.8595.....1238

TEXAS FORENSIC SCIENCE COMMISSION

DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

37 TAC §651.7.....1240

WITHDRAWN RULES

TEXAS ETHICS COMMISSION

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

1 TAC §20.56.....1243

1 TAC §20.61.....1243

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

RESIDENTIAL MORTGAGE LOAN SERVICERS

7 TAC §79.30.....1243

TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

7 TAC §80.302.....1243

MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

7 TAC §81.302.....1243

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §354.1432.....1245

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ADMINISTRATION

10 TAC §1.23.....1245

TEXAS EDUCATION AGENCY

ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §89.1050, §89.1055.....1248

19 TAC §89.1195.....1251

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

REGISTERED INTERIOR DESIGNERS

22 TAC §5.5.....1252

22 TAC §5.34.....1252

STATE BOARD OF DENTAL EXAMINERS

CONTINUING EDUCATION	
22 TAC §104.6.....	1252
DENTAL BOARD PROCEDURES	
22 TAC §107.400.....	1253
TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS	
LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS	
22 TAC §801.2.....	1255
22 TAC §§801.44, 801.48, 801.57, 801.58.....	1255
22 TAC §801.115.....	1256
22 TAC §801.142, §801.143.....	1256
22 TAC §801.204.....	1256
22 TAC §801.235, §801.236.....	1256
TEXAS DEPARTMENT OF PUBLIC SAFETY	
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES	
37 TAC §4.12.....	1257
IN ADDITION	
Central Texas Council of Governments	
Due Notice of Election.....	1259
Comptroller of Public Accounts	
Certification of the Average Closing Price of Gas and Oil - February 2017.....	1259
Local Sales Tax Rate Changes Effective April 1, 2017.....	1259

Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	1262
Texas Commission on Environmental Quality	
Agreed Orders.....	1262
Enforcement Orders.....	1267
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Jerry Ung d/b/a Ku Food Mart	1270
Texas Facilities Commission	
Request for Proposals #303-8-20597.....	1271
Request for Proposals #303-8-20598.....	1271
Department of State Health Services	
Schedules of Controlled Substances.....	1271
Texas Lottery Commission	
Scratch Ticket Game Number 1878 "Cash on the Spot".....	1280
Public Utility Commission of Texas	
Notice of Application for Approval of the Provision of Non-Emergency 311 Service.....	1284
Notice of Application to Amend a Water Certificate of Convenience and Necessity.....	1284
Notice of Joint Petition for Declaratory Order.....	1285
Texas Department of Transportation	
Aviation Division - Request for Qualifications for Professional Engineering Services.....	1285
Texas Water Development Board	
Applications for January and February, 2017.....	1286

THE GOVERNOR

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

Appointments

Appointments for February 28, 2017

Appointed to the Texas State Council for Interstate Adult Offender Supervision, for a term to expire February 1, 2021, Pamela "Pam" Alexander-Schneider of Lubbock (replacing Linda White of Magnolia whose term expired).

Appointed to the Texas State Council for Interstate Adult Offender Supervision, for a term to expire February 1, 2023, David G. Gutierrez of Belton (Chairman Gutierrez is being reappointed).

Appointments for March 3, 2017

Appointed to the Specialty Courts Advisory Council, for a term to expire February 1, 2023, Jarvis L. Anderson of San Antonio (replacing Denise D. Bradley of Cypress whose term expired).

Appointed to the Specialty Courts Advisory Council, for a term to expire February 1, 2023, Ruben G. Reyes of Lubbock (Judge Reyes is being reappointed).

Appointed to the Specialty Courts Advisory Council, for a term to expire February 1, 2023, Raymond G. "Ray" Wheless of Allen (Judge Wheless is being reappointed).

Appointments for March 7, 2017

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Kim Hayes of Lubbock (replacing Dallas Jackson Barrington of Silsbee).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Hennessey C. Herrera of Austin (replacing Brittany Baxter Long of Houston).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Charles Mills of Houston (replacing Magdalena "Maggie" Manzano of Houston).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Jordan Myers of Pflugerville (replacing Joel Moreno of Austin).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Quintin "Wayne" Sneed of Austin (replacing Gregory E. "Greg" Wilhelm of Midlothian).

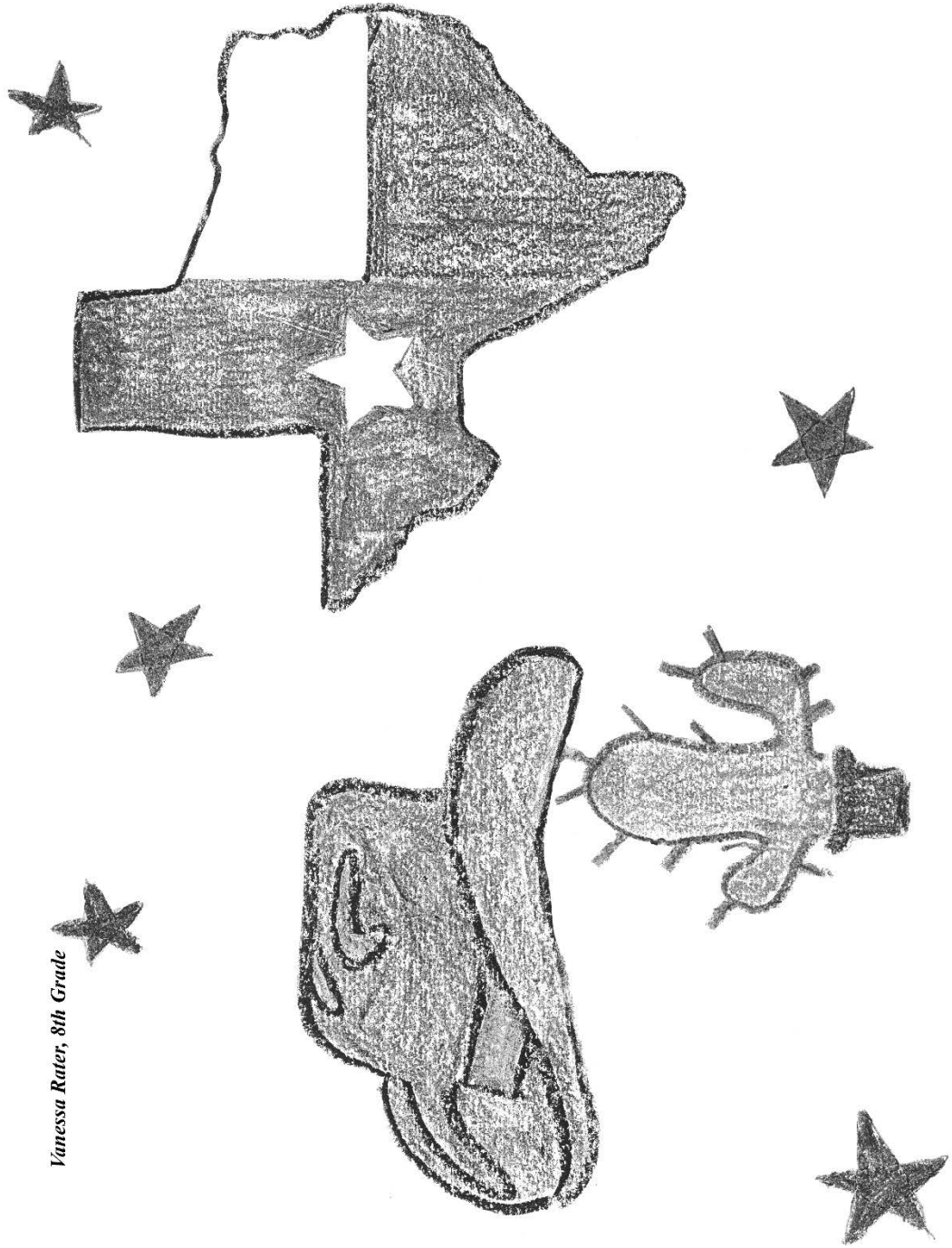
Appointed to the Juvenile Justice Advisory Board, as Ex-Officio Member, for a term to expire at the pleasure of the Governor, Camille Cain of Austin.

Greg Abbott, Governor

TRD-201700874



Vanessa Rater, 8th Grade



THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0152-KP

Requestor:

Mr. Tony Sims

Chambers County Auditor

Post Office Box 910

Anahuac, Texas 77514

Re: Whether a commissioners court may fund the county fire marshal and safety coordinator through revenue generated by a sales and use tax imposed pursuant to chapter 324 of the Tax Code. (RQ-0152-KP)

Briefs requested by April 3, 2017

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

TRD-201700860

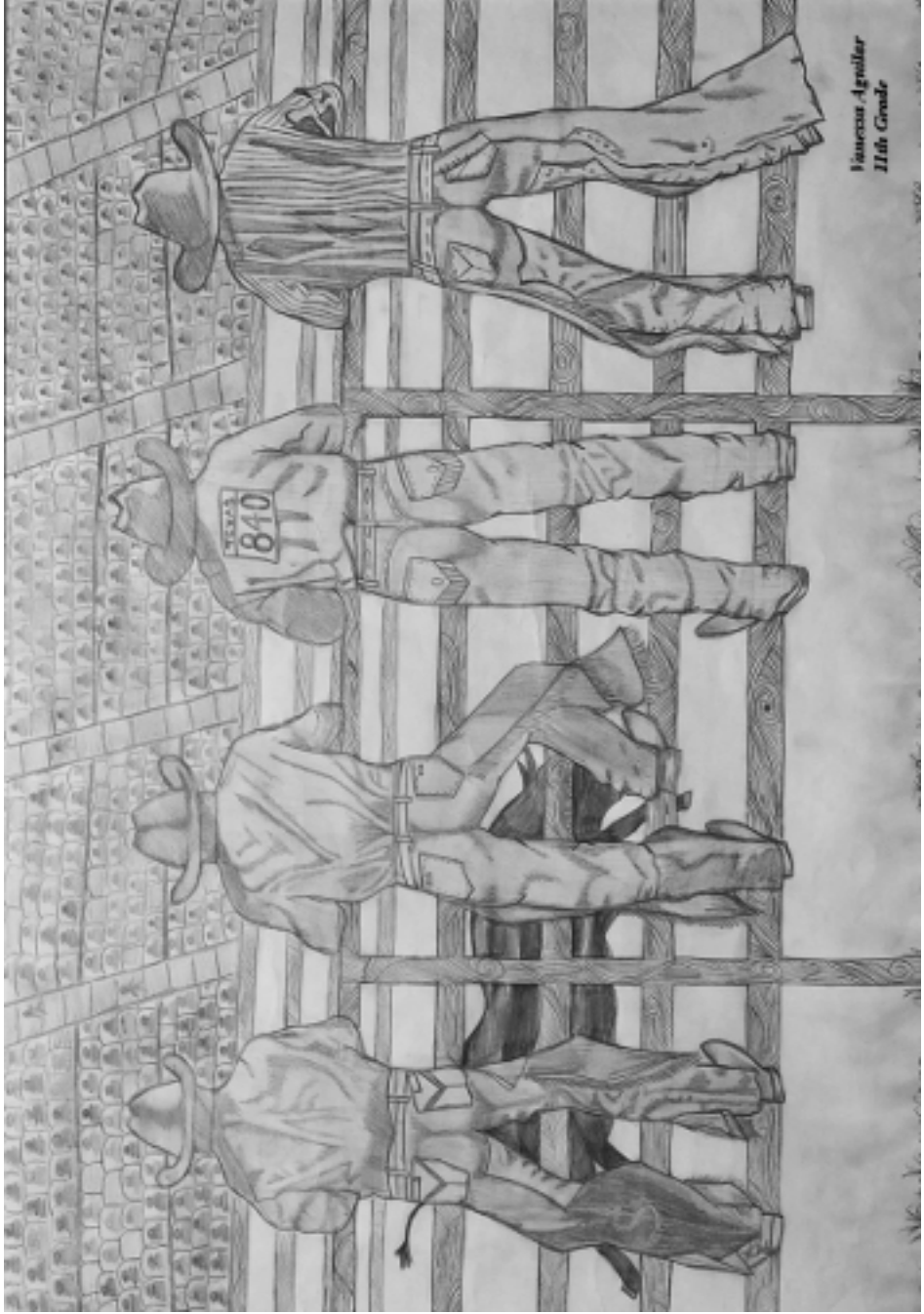
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: March 7, 2017





Vasecus Agollar
11th Grade

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. GENERAL ADMINISTRATION

1 TAC §201.4, §201.9

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 201, §201.4, and §201.9 to ensure the rules accurately reflect the department's policies and procedures.

In 1 TAC §201.4, the Department proposes an amendment to require agency employees and officials involved in procurement or contract management to disclose potential conflicts of interest with respect to contracts with private vendors; prohibit the department from entering into contracts with vendors with whom certain department employees or officials have a financial interest; and defines the prohibited financial interest.

In 1 TAC §201.9, the Department proposes correcting a technical error.

The changes to the chapter apply to DIR and will have no effect on state agencies and institutions of higher education. The assessment of the impact of the proposed 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.

Martin Zelinsky, General Counsel, has determined that during the first five-year period following the amendments to 1 TAC Chapter 201 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Mr. Zelinsky has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 201 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rules.

Written comments on the proposed amendments may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; 2255.01, Texas Government Code, which authorizes state agencies to develop rules; and §2001.021(b), Texas Government Code, which authorizes state

agencies to, by rule, prescribe the form of a petition under the section.

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

§201.4. Board Policies.

(a) The executive director is hereby delegated authority by the board to grant a requesting state agency a compliance waiver from administrative rule, statewide standards, or other board policies. A state agency may request a compliance waiver from administrative rule, statewide standards or other board policy. The agency must clearly demonstrate to the department through written justification any performance or cost advantages to be gained and that the overall economic interests of the state are best served by granting the compliance waiver. The executive director of the department will notify the board when requests for waivers are received.

(b) The executive director is hereby delegated authority by the board to establish a sick leave pool program for employees of the department. The program must be consistent with the requirements of state law regarding state employee sick leave pools. The executive director is hereby appointed as the sick leave pool administrator. The executive director may designate another employee of the department to serve as the pool administrator under the supervision of the executive director. The pool administrator shall prescribe procedures relating to the operation of the sick leave pool program.

(c) In compliance with Chapter 2255, Texas Government Code, this subsection establishes the criteria, procedures and standards of conduct governing the relationship between the department and its officers and employees and private donors. This subsection authorizes the department to accept gifts and donations the department determines it is in the public interest to accept as a result of an emergency, including both natural and manmade disasters. The department is authorized to accept gifts and donations the department determines it is in the public interest to accept as a result of technology benefit including education, assessment or innovation.

(1) A private donor may make donations, including gifts, to the department to be spent or used for public purposes during times of emergency, including times of manmade and natural disasters or for any public purpose related to the duties of the department. Use by the department of the donation must be consistent with the mission and duties of the department. If the donor specifies the purpose for which the donation may be spent, the department must expend the donation only for that purpose.

(2) Monetary donations must be spent in accordance with the State Appropriations Act and shall be deposited in the state treasury unless statutorily exempted.

(3) The executive director is hereby delegated authority to coordinate all donations and may accept donations that do not exceed \$250,000 in value on behalf of the department. Each donation accepted by the executive director must be acknowledged by the board at the

board meeting following acceptance of the donation by the department. Donations that exceed \$250,000 in value must be approved by the board prior to acceptance.

(4) Acceptance of the donation by either the board or the executive director of the department must be recorded in the board minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation.

(5) Donations may be accepted only if the executive director or board, as applicable, determines the donation will further the department's mission or duties, provide significant public benefit and not influence or reasonably appear to influence, the department in the performance of its duties.

(6) Execution of a donation agreement is required if the value of the donation exceeds \$10,000 or if a written agreement is necessary, in the opinion of the department, to:

(A) indemnify the department as to ownership;

(B) prevent potential claims that could result from use of the donation, including access to confidential information;

(C) document donation terms or conditions;

(D) describe how the donation will further the department's mission or duties, provides a significant public benefit and is not made in an effort to influence action on the part of the department; or

(E) delete any information on a device donated to the department.

(7) Each donation agreement must include:

(A) a description of the donation, including a determination of its value;

(B) donor attestation of ownership rights in the donation;

(C) any restrictions or terms of use of the donation imposed by the donor;

(D) contact information for the donor;

(E) a statement that the department takes no position regarding and is not responsible for any tax-related representations by the donor and all value determinations are the responsibility of the donor and do not constitute affirmation of that value by the department[-]; and

(F) the signature of the executive director and the donor or an authorized representative of the donor if it is an entity rather than an individual.

(d) The board shall set a strategic direction for the department by:

(1) establishing a subcommittee for each major program area to monitor activities, major outsourced contracts, and new initiatives for and service offerings by the department;

(2) evaluating and approving new initiatives for, or categories of, services offered by the department under the department's various programs.

(e) The board shall regularly evaluate the extent to which the department fulfills the department's information resources technology mission by providing cost-effective services and meeting customer needs.

(f) The board shall regularly evaluate department operations, including an evaluation of analytical data and information regarding

trends in department revenue and expenses, as well as performance information.

(g) The board shall maintain an audit subcommittee of the board. The subcommittee shall oversee the department's internal auditor and any other audit issues that the board considers appropriate. The subcommittee shall evaluate whether the internal auditor has sufficient resources to perform the auditor's duties and ensure that sufficient resources are available.

(h) A department employee may not:

(1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by the department; or

(2) in any manner, including by rebate or gift, directly or indirectly accept or receive from a person to whom a contract may be awarded anything of value or a promise, obligation, or contract for future reward or compensation.

(3) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

~~(4)~~ [(3)] A department employee who violates paragraph (1), ~~(2)~~, or (3) of this subsection is subject to disciplinary action, including dismissal.

~~(5)~~ [(4)] The department shall train staff in the requirements of this subsection and Government Code, Chapter 572, and incorporate the requirements into the contract management guide and the department's internal policies, including employee manuals.

(i) The department will not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following department employees or officials have a financial interest:

(1) a member of the board;

(2) the executive director, general counsel, chief procurement officer, or procurement director of the department; or

(3) a family member related to an employee or official described by paragraph (1) or (2) of this subsection within the second degree by affinity or consanguinity.

(j) A department employee or official has a financial interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

(k) A financial interest prohibited by this section does not include a retirement plan not under direct control of a department employee or official (e.g. mutual funds), a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

§201.9. *Petition for the Adoption of a Rule.*

(a) Purpose. This section provides procedures for any interested person (petitioner) to request the department to adopt a rule.

(b) Content of Petition.

(1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided.

(2) The petition must contain the following:

(A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;

(B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;

(D) a statement on the department's authority to adopt the proposed rule;

(E) the proposed text of a new rule, or proposed changes to an existing rule; and

(F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.

(c) Submission. A petition is submitted on the date it is received by the department. The petition must be mailed to the department, or hand delivered to the department in Austin, Texas.

(d) Review. The department will review the petition for compliance with the requirements of this section.

(e) Decision to Deny or Accept. The department will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is submitted.

(1) The department will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.

(2) The department will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.

(f) Repetitive petitions. The department may refuse to bring a petition for rulemaking to the board [commission] if, within the preceding year, the board [commission] has considered a previously submitted petition for the same rule.

(g) Board Petition Report. Prior the end of each fiscal year, the department will present to the board a report of all petitions received during the fiscal year. The report shall contain a summary of the petitions and the status or final determination of the petition review process.

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-201700776

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 936-7577

◆ ◆ ◆
**PART 15. TEXAS HEALTH AND
HUMAN SERVICES COMMISSION**

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.112, concerning Attendant Compensation Rate Enhancement, and §355.723, relating to Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

Background and Justification

Methods of Communication between HHSC and Contracted Providers

Section 355.112 outlines procedures for the Attendant Compensation Rate Enhancement program. The Rate Enhancement program is an optional program that offers contracted providers the option to receive increased payments if they meet certain spending requirements. HHSC offers contracted providers the opportunity annually to enroll in the program. During the enrollment period, contracted providers who have never been participants in the enhancement program, or who are current or prior participants and have met the spending requirements outlined in §355.112(s), may request enrollment at any level ("open enrollment"). Contracted providers who are current or prior participants and did not meet the spending requirements are limited to a certain level of participation, due to a failure to meet the spending requirements. Currently, the rules defining the enrollment procedures require that HHSC notify contracted providers of the open enrollment period and their limitation level (if any) by letter via the United States Postal Service.

Contracted providers who are subject to an enrollment limitation may request a revision to their enrollment limitation. The request may result in a change to or elimination of the enrollment limitation. Currently, the rules require contracted providers to request a revision to their enrollment limitation by submitting a written request via hand delivery, the United States Postal Service, or special delivery mail.

HHSC notifies contracted providers who did not meet spending requirements of the amount that will be recouped. Currently, the rules state that HHSC Rate Analysis will notify contracted providers of the recoupment amount in writing. Beginning with the cost reports collected for the 2015 cost report period, HHSC Rate Analysis implemented a new data collection system, the State of Texas Automated Information Reporting System (STAIRS), which provides electronic notification of recoupments.

Contracted providers who are subject to recoupment due to a failure to meet spending requirements are allowed to request that HHSC recalculate the recoupment by combining the cost data on multiple reports. Currently, the rules require a provider to request a recalculation via hand delivery, the United States Postal Service, or special delivery mail.

The proposed amendments will allow HHSC to notify contracted providers of the open enrollment period, their enrollment limita-

tions (if any), and recoupments due to failure to meet spending requirements (if any) electronically or by other appropriate means as determined by HHSC. The proposed amendments will also allow contracted providers to submit requests for revisions or recalculations electronically or by other appropriate means as determined by HHSC. This will allow for the use of a broad array of communication methods by HHSC staff for enrollment, limitation notifications, recoupment notifications, and provider requests for revisions and recalculations.

Aligning Certain Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) Rates with Costs and Rates for Similar Services

TxHmL is projected to be carved-in to Medicaid managed care under STAR+PLUS effective September 1, 2018; and HCS is projected to be carved-in effective September 1, 2021. Currently, STAR+PLUS covers attendant and habilitation services for individuals with disabilities through STAR+PLUS Community First Choice (CFC), including services for individuals with intellectual and developmental disabilities (IDD). When TxHmL and HCS are carved-in to Medicaid managed care, attendant care and habilitation services will be provided through STAR+PLUS CFC. There will be no differential between individuals receiving additional waiver benefits and those receiving only CFC services with respect to those services.

Currently, payment rates for TxHmL Community Support Services (CSS) and HCS Supported Home Living (SHL) services are higher than the STAR+PLUS CFC rate and the costs of providing these services. In preparation for the managed care carve-ins of these services, HHSC is proposing amendments to rules governing their rate determination to more closely align them with the STAR+PLUS CFC rate.

As outlined in §355.112(l), the attendant compensation rate component for nonparticipating contracts is frozen at the rates in effect on August 31, 2010, for the HCS and TxHmL programs. Currently, §355.112(l) requires the attendant compensation rate component for nonparticipating contracts to remain constant over time, except in the case of increases mandated by the Texas Legislature or necessitated by an increase in the federal minimum wage. HHSC proposes amending this rule to indicate that the attendant compensation rate component for nonparticipating contracts for HCS SHL and TxHmL CSS is equal to \$14.52 per hour, which is the level currently justified by HCS and TxHmL provider cost reports.

Section 355.723 establishes the rate methodology for all other HCS SHL and TxHmL CSS cost components. HHSC proposes amending this rule to align its rate methodology for these cost components with rate methodologies for similar services. Specifically, HHSC proposes tying the HCS SHL and TxHmL indirect cost component (also known as the administration and facility cost component) to the administrative and facility cost component of the Community Living Assistance and Support Services (CLASS) waiver program residential habilitation service, and deleting the other direct service staffing cost component. The CLASS residential habilitation service has similar requirements for these cost areas and was incorporated in the calculation of the STAR+PLUS CFC proxy rate as described in §355.9090, relating to Reimbursement Methodology for Community First Choice. Specifically, §355.9090(b)(1) states that the STAR+PLUS CFC rate will be equal to a weighted average of rates established for CLASS habilitation services and proxy rates for attendant services under the Community Based Alternatives waiver prior to its termination.

Rate Methodology for HCS High Medical Needs Services and Correction to Rate Methodology for HCS Nursing Services

As indicated above, §355.723 establishes the reimbursement methodology for the HCS and TxHmL waiver programs. Additional proposed amendments to this rule include: (1) adding the new HCS High Medical Needs Support, High Medical Needs Registered Nurse (RN), and High Medical Needs Licensed Vocational Nurse (LVN) services to the list of non-variable rates; (2) adding the rate methodology for the new HCS High Medical Needs Support Services; and (3) correcting an error in the projected weighted units calculation for Nursing Services.

High Medical Needs Support, High Medical Needs RN, and High Medical Needs LVN are being added as new services to the HCS program. These services will provide additional support for eligible persons who have medical needs that exceed the service specification for existing HCS services and need additional support in order to remain in a community setting.

The indirect cost component per unit of service for each HCS service is determined by calculating the projected weighted units of service for each service type, and then using the projected weighted units to allocate administration and operation costs to the specific service type. These weights are codified in the reimbursement methodology; however, the weighting factor for Nursing Services is incorrect in the rule and does not match the weighting factor used in the calculation of the rates. The proposed rule amendment corrects this error.

Other Changes

The proposed amendments to §355.112 also correct punctuation and outdated rule references. References to Title 40 of the Texas Administrative Code (TAC) §49.15 (relating to Contract Assignment) are replaced with 40 TAC §49.210 (relating to Contractor Change of Legal Entity).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.112(e) adds language to indicate that HHSC will notify contracted providers of the open enrollment period by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type.

The proposed amendment to §355.112(g) removes language that refers to "mailing" of a notification.

The proposed amendment to §355.112(j) corrects punctuation.

The proposed amendment to §355.112(l)(2) adds subparagraph (D), which indicates that the attendant compensation rate component for nonparticipating contracts for HCS SHL and TxHmL CSS is equal to \$14.52 per hour.

The proposed amendment to §355.112(t) changes the name of the subsection to make it clear that it refers to notifications of recoupment and requests for recalculation. The proposed amendment divides the subsection into paragraphs (1) and (2), and further subdivides paragraph (2) into subparagraphs (A) and (B). Substantively, the proposed amendment provides that notices of recoupment, both initial and adjusted, will be made available through STAIRS, and providers will be notified by e-mail to the entity contact when such information is available. With regard to requests for recalculation, the proposed amendment adds e-mail as a method by which such requests can be submitted to HHSC Rate Analysis.

The proposed amendment to §355.112(u) adds a paragraph relating to notifications of enrollment limitations. Such notifications will be made available through STAIRS, and providers will be notified by e-mail to the entity contact when that limitation information is available for review. With regard to provider requests for revision of enrollment limitations, the proposed amendment removes the requirement that such requests be delivered to HHSC by hand, U.S. mail, or special delivery mail. As revised, such requests must be received by HHSC Rate Analysis no later than the deadline indicated in the notification of open enrollment specified in subsection (e).

The proposed amendment to §355.112(w)(1) updates references to 40 TAC §49.15 with 40 TAC §49.210 (relating to Contractor Change of Legal Entity).

The proposed amendment to §355.723(b)(2) adds High Medical Needs Support, High Medical Needs RN, and High Medical Needs LVN services to the list of non-variable rates. The proposed amendment also adds Registered Nurse and Licensed Vocational Nurse to the existing acronyms RN and LVN.

The proposed amendment to §355.723(c) creates three subsections, with existing language in new subsection (1), a new reimbursement methodology for HCS SHL and TxHmL CSS effective July 1, 2017, in new subsection (2), and a reimbursement methodology for the new High Medical Needs Support service in new subsection (3).

The proposed amendment to §355.723(d)(5) corrects punctuation.

The proposed amendment to §355.723(d)(5)(D) applies the methodology for determining projected weighted units of service for HCS SHL and TxHmL CSS to the new High Medical Needs Support service.

The proposed amendment to §355.723(d)(5)(J) corrects the weighting factor for Nursing Services to 0.25 and adds High Medical Needs Nursing.

The proposed amendment to §355.723(d)(10) adds HCS High Medical Needs Support and TxHmL CSS to the paragraph and sets the administration and operation cost component per unit of service equal to the administrative and facility cost component for Residential Habilitation Services under the CLASS Waiver Program effective July 1, 2017.

Fiscal Note

David Cook, HHSC Deputy Chief Financial Officer, has determined that, for each year of the first five-years the amended rules are in effect, there will be a cost savings to state government of \$4,624,334 (\$1,708,448 General Revenue (GR) and \$2,915,886 Federal) for fiscal year (FY) 2017, \$27,331,280 (\$9,923,438 GR and \$17,407,842 Federal) for FY 2018, \$28,803,637 (\$10,321,235 GR and \$18,482,402 Federal) for FY 2019, \$28,804,071 (\$10,309,937 GR and \$18,494,134 Federal) for FY 2020, and \$28,804,515 (\$10,310,159 GR and \$18,494,356 Federal) for SFY 2021. There are no fiscal implications for local governments as a result of enforcing or administering the rules.

Public Benefit AND COST

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rules are in effect, the public benefits expected as a result of adopting the rules will be: that costs and staff time will be reduced as a result of no longer

sending enrollment and limitation notifications by certified mail, and that contracted providers will have more options to request a revision to an enrollment limitation; that HHSC can calculate and adopt rates for the new HCS services High Medical Needs Support, High Medical Needs RN, and High Medical Needs LVN; and that the HCS SHL and TxHmL CSS rates more closely align with costs and rates for similar services in preparation for the carve-in of these services to STAR+PLUS managed care.

Ms. McDonald has also determined that there are no probable economic costs to persons required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

Small Business and Micro-Business Impact Analysis

HHSC has determined that the proposed amendments to the rate methodologies for HCS SHL and TxHmL CSS will have an adverse economic effect on small businesses and micro-businesses.

Under §2006.002 of the Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses. The purpose of the amended rules is to more closely align the rates for HCS SHL and TxHmL CSS with costs and rates for similar services in preparation for the carve-in of these services to STAR+PLUS managed care.

In 2015, approximately 630 entities provided HCS services to Department of Aging and Disability Services consumers. Based on 2014 Texas Medicaid cost reports for the HCS and TxHmL programs (the most recent, audited data available), of these entities, approximately 482 were small businesses, of which approximately 353 were micro-businesses.

HHSC considered four alternatives to more closely align the rates for HCS SHL and TxHmL CSS with costs and rates for similar services in preparation for the carve-in of these services to STAR+PLUS managed care.

Alternative 1: Alternative 1 aligns the HCS SHL and TxHmL CSS attendant compensation rate component with HCS and TxHmL providers' actual attendant compensation costs as captured by provider cost reports and aligns the non-attendant compensation part of the rate with the non-attendant part of the CLASS rate, the higher of the two rates used in determining the STAR+PLUS CFC rate. The resulting rate of \$17.73 is lower than the current HCS SHL and TxHmL CSS base rate of \$22.41 but higher than the current STAR+PLUS CFC base rate of \$12.69 and the current CLASS residential habilitation base rate of \$13.85.

Alternative 2: Under Alternative 2, HHSC would reduce the HCS SHL and TxHmL CSS base rate of \$22.41 to be equal to the CLASS residential habilitation base rate of \$13.85.

Alternative 3: Under Alternative 3, HHSC would reduce the HCS SHL and TxHmL CSS base rate of \$22.41 to be equal to the STAR+PLUS CFC rate of \$12.69.

Alternative 4: Under Alternative 4, HHSC would increase the STAR+PLUS CFC rate of \$12.69 to be equal to the current HCS SHL and TxHmL CSS base rate of \$22.41.

HHSC selected the methodology in Alternative 1. Alternative 1 begins the necessary process of more closely aligning the HCS SHL and TxHmL CSS rates with costs and the STAR+PLUS CFC rates, while avoiding the more significant rate reductions laid out under Alternatives 2 and 3. Alternative 4 was not selected because it would result in inefficient rates by: 1) maintaining existing HCS SHL and TxHmL CSS rates that exceed reported provider costs of providing these services; and 2) increasing base rates for STAR+PLUS CFC above the levels currently required to meet STAR+PLUS network adequacy requirements.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on this proposal may also be submitted to Sarah Hambrick, Senior Rate Analyst, by mail to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200; by fax to (512) 730-7475; or by e-mail to RAD_LTSS@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

PUBLIC HEARING

HHSC will conduct a public hearing on April 6, 2017, at 9:00 a.m. to receive comments on the proposal. The public hearing will be held in the Public Hearing Room of the John H. Winters Building at 701 West 51st Street, Austin, Texas. Entry is through security at the main entrance of the building facing West 51st Street. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

Statutory Authority

These amendments are proposed 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 Government Code §531.021(b), which establishes

HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The proposed amendments implement Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.112. *Attendant Compensation Rate Enhancement.*

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

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. HHSC notifies providers of open enrollment by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If open enrollment has been postponed or cancelled, [unless] the Texas Health and Human Services Commission (HHSC) will notify [notified] providers by e-mail before the first day of July [that open enrollment has been postponed or cancelled]. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) (No change.)

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS' signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days [of the mailing] of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) - (i) (No change.)

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all

Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. For the ICF/IID program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.457 of this title. For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title.

(k) (No change.)

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) (No change.)

(2) For ICF/IID DH, ICF/IID residential services, HCS SL/RSS, HCS DH, HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL community supports, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID, the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature; and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(D) The attendant compensation rate component for nonparticipating contracts for HCS supported home living and TxHmL community supports is equal to \$14.52 per hour.

(m) - (s) (No change.)

(t) Notification of recoupment and request for recalculation.

(1) Notification of recoupment. The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and accountability reports. STAIRS will generate an e-mail to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable

to the provider's contract or ownership type. [Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC, or its designee.] If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified by e-mail to the entity contact that [in writing of] the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification [letter]. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

(2) Request for recalculation. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's next full-year cost report. The request [must be in writing and] must be received by HHSC Rate Analysis [by hand delivery, United State (U.S.) mail, or special mail delivery] no later than 30 days after the date on the e-mail [written] notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the [written] request will be accepted.

(A) The request must be made by e-mail to the e-mail address specified in STAIRS, hand delivery, United States (U.S.) mail, or special mail delivery. An e-mail request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by e-mail to HHSC.

(B) The [written] request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will notify [issue a notification letter that informs] a provider [in writing] of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in STAIRS. STAIRS will generate an e-mail to the entity contact, indicating that the provider's enrollment limitation level is available for review.

(2) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis [by hand delivery, United States mail, or special delivery mail] no later than the deadline indicated in the notification of open enrollment specified in subsection

(e) of this section [30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted]. A request for revision that is not received by the stated deadline and that is not submitted as [on the form] specified by HHSC will not be accepted, and the enrollment limitation specified in the notification [letter] will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification of open enrollment [letter], which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification [letter] indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC [in the notification letter] and requests that fail to support an attendant compensation level different from what is indicated in the notification [letter] will result in a rejection of the request, and the enrollment limitation specified in the notification [letter] will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification [letter] will apply.

(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(3) [(2)] Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(4) [(3)] New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from

one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(5) [(4)] New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) (No change.)

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.210 (relating to Contractor Change of Legal Entity) [§49.15 (relating to Contract Assignment)].

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.210 [§49.15].

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.210 [§49.15].

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) - (4) (No change.)

(x) - (hh) (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 March 3, 2017.

TRD-201700836

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 707-6066



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

Statutory Authority

These amendments are proposed 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 Government Code §531.021(b), which establishes

HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The proposed amendments implement Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need for the following services: Residential Support Services, Supervised Living, Foster/Companion Care, and HCS Day Habilitation.

(2) Non-variable rates. Rates do not vary by level of need for the following services: Supported Home Living, High Medical Needs Support, Community Support Services, Supported Employment, Employment Assistance, Respite, Registered Nurse (RN) [RN], Licensed Vocational Nurse (LVN) [LVN], High Medical Needs RN, High Medical Needs LVN, Dietary, Behavioral Support, Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, Cognitive Rehabilitative Therapy, and Social Work. Rates for TxHmL Day Habilitation will be equal to HCS level of need five Day Habilitation rates.

(c) Recommended rates.

(1) Rate Models. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by level of need to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter [title] (relating to Attendant Compensation Rate Enhancement).

(2) Supported Home Living and Community Support Services. Effective July 1, 2017, the recommended modeled rates for HCS Supported Home Living and TxHmL Community Support Services include the following cost components: direct care worker staffing costs, and administration and operation costs. The modeled rates for these two services do not include a cost component for other direct service staffing costs. The determination of the administration and operation cost component is calculated as specified in subsection (d)(10) of this section. The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter.

(3) High Medical Needs Support. Payment rates for High Medical Needs Support are developed based on payment rates determined for other programs that provide similar services. If payment

rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.

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

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows:

(A) Supervised Living and Residential Support Services in HCS. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00. [;]

(B) Day Habilitation in HCS and TxHmL. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25. [;]

(C) Foster/Companion Care in HCS. Projected weighted units of service for Foster/Companion Care equal projected Foster/Companion Care units of service times a weight of 0.50. [;]

(D) Supported Home Living in HCS, High Medical Needs Support in HCS, and Community Support Services in TxHmL. For each service, projected [Projected] weighted units of service [for Supported Home Living] equal projected [Supported Home Living] units of service times a weight of 0.30. [;]

(E) Respite in HCS and TxHmL. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20. [;]

(F) Supported Employment in HCS and TxHmL. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25. [;]

(G) Behavioral Support in HCS and TxHmL. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18. [;]

(H) Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy in HCS and TxHmL. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy equal projected Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy units of service times a weight of 0.18. [;]

(I) Social Work in HCS. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18. [;]

(J) Nursing in HCS and TxHmL and High Medical Needs Nursing in HCS. Projected weighted units of service for Nursing and High Medical Needs Nursing equal projected Nursing and High Medical Needs Nursing units of service times a weight of 0.25. [0-18;]

(K) Employment Assistance in HCS and TxHmL. Projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25. [; and]

(L) Dietary in HCS and TxHmL. Projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

(6) - (9) (No change.)

(10) Step 10. Effective July 1, 2017 [September 1, 2014], the administration and operation cost component per unit of service for Supported Home Living in HCS, Community Support Services in TxHmL, and High Medical Needs Support in HCS is equal to the administrative and facility cost component of Habilitation Services in the Community Living Assistance and Support Services (CLASS) program as specified in §355.505 of this title (relating to Reimbursement Methodology for the Community Living and Support Services Waiver Program) [five dollars].

(11) Step 11. For fiscal years 2012 and 2013, the foster/companion care coordinator component of the foster/companion care rate will be remodeled using a consumer to foster/companion care coordinator ratio of 1:20. This remodeling will be performed after the administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as described in paragraph (9) of this subsection.

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

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 707-6066



SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.308, concerning Direct Care Staff Rate Component.

Background and Justification

Section 355.308 outlines procedures for the Nursing Facility Direct Care Staff Enhancement program. The Direct Care Staff Enhancement program is an optional program that offers contracted nursing facility providers the option to receive increased payments if they meet certain staffing and spending requirements. HHSC offers contracted providers the opportunity annually to enroll in the program. During the enrollment period, contracted providers who have never been participants in the enhancement program, or who are current or prior participants and have met the spending requirements outlined in §355.308(o), may request enrollment at any level ("open enrollment"). Contracted providers who are current or prior participants and did not meet the spending requirements are limited to a certain level of participation, due to a failure to meet the spending and staffing requirements. Currently, the rules defining the enrollment procedures require that HHSC notify contracted providers of the open

enrollment period and their limitation level (if any) by letter via the United States Postal Service (USPS).

Contracted providers who are subject to an enrollment limitation may request a revision to their enrollment limitation. The request may result in a change to or elimination of the enrollment limitation. Currently, the rules require contracted providers to request a revision to their enrollment limitation by submitting a written request via hand delivery, USPS, or special delivery mail.

HHSC notifies contracted providers who did not meet the spending and staffing requirements of the amount that will be recouped. Currently, the rules state that HHSC Rate Analysis will notify contracted providers of the recoupment amount in writing. Beginning with the cost reports collected for the 2015 cost report period, HHSC Rate Analysis began using a new data collection system, the State of Texas Automated Information Reporting System (STAIRS), which provides electronic notification of recoupments.

Contracted providers who are subject to recoupment due to a failure to meet the spending and staffing requirements are allowed to request that HHSC recalculate the recoupment by combining the cost data on multiple reports. Currently, the rules require a provider to request a recalculation via hand delivery, USPS, or special delivery mail.

The proposed amendment will allow HHSC to notify contracted providers of the open enrollment period, their enrollment limitations (if any), and recoupments due to failure to meet the spending and staffing requirements (if any) electronically or by other appropriate means as determined by HHSC. This proposed amendment also allows contracted providers to submit requests for revisions or recalculations electronically or by other appropriate means as determined by HHSC. This will allow for the use of a broad array of communication methods by HHSC staff for enrollment, limitation notifications, recoupment notifications, and provider requests for revisions and recalculations.

Section-by-Section Summary

The proposed amendment to §355.308(a) deletes unnecessary language.

The proposed amendment to §355.308(c) adds language to indicate that HHSC will notify contracted providers of the open enrollment period by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type.

The proposed amendment to §355.308(e) removes language that refers to "mailing" of a notification.

The proposed amendment to §355.308(f) deletes unnecessary language.

The proposed amendment to §355.308(h) corrects punctuation and deletes unnecessary language.

The proposed amendment to §355.308(i) adds a paragraph relating to notifications of enrollment limitations. Such notifications will be made available through STAIRS and nursing facilities will be notified by e-mail to the Entity Contact when that limitation information is available for review. With regard to facility requests for revision of enrollment limitations, the proposed amendment removes the requirement that such requests be delivered to HHSC by hand, U.S. mail, or special delivery mail. As revised, such requests must be received by HHSC Rate Analysis no later than the deadline indicated in the notification of open enrollment specified in subsection (c).

The proposed amendment to §355.308(k)(4) corrects a cross reference to another rule.

The proposed amendment to §355.308(p)(4) deletes unnecessary language.

The proposed amendment to §355.308(s) changes the name of the subsection to make it clear that it refers to notifications of recoupment and requests for recalculation. The proposed amendment divides the subsection into paragraphs (1) and (2), and further subdivides paragraph (2) into subparagraphs (A) and (B). Substantively, the proposed amendment provides that notices of recoupment, both initial and adjusted, will be made available through STAIRS, and nursing facilities will be notified by e-mail to the entity contact when such information is available. With regard to requests for recalculation, the proposed amendment adds e-mail as a method by which such requests can be submitted to HHSC Rate analysis.

Fiscal Note

David Cook, HHSC Deputy Chief Financial Officer, has determined that, for each year of the first five-years the amended rule is in effect, there will be a cost savings to state government of \$6,792 (\$3,396 General Revenue (GR) and \$3,396 Federal Funds) for state fiscal year (SFY) 2017, \$6,946 (\$3,473 GR and \$3,473 Federal) for SFY 2018, \$7,104 (\$3,552 GR and \$3,552 Federal) for SFY 2019, \$7,266 (\$3,633 GR and \$3,633 Federal) for SFY 2020, and \$7,430 (\$3,715 GR and \$3,715 Federal) for SFY 2021. There are no fiscal implications for local governments as a result of enforcing or administering the rule.

Public Benefit and cost

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule is in effect, the public benefits expected as a result of adopting the rule will be that costs and staff time will be reduced as a result of no longer sending enrollment and limitation notifications by certified mail, and that contracted providers will have more options to request a revision to an enrollment limitation.

Ms. McDonald has also determined that there are no probable economic costs to persons required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rule, as it will not require any changes in practice or result in any additional cost to a contracted provider.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 730-7401. Written comments on this proposal may be submitted to Ms. Hambrick by mail to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200; by fax to (512) 730-7475; or by e-mail to RAD.LTSS@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

Statutory Authority

This amendment is proposed 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 Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The proposed amendment implements Texas Government Code, Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.308. *Direct Care Staff Rate Component.*

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title [~~relating to Specifications for Allowable and Unallowable Costs~~] to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

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

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(3) of this title [~~relating to Specifications for Allowable and Unallowable Costs~~].

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 40 TAC §19.901(14)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in

§355.307(b)(3)(E) of this title [~~relating to Reimbursement Setting Methodology~~], Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) - (9) (No change.)

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined. HHSC notifies providers of open enrollment by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If open enrollment has been postponed or cancelled, [unless] the Texas Health and Human Services Commission (HHSC) will notify [notified] providers by e-mail prior to the first day of July [that open enrollment has been postponed or cancelled]. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) (No change.)

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the ~~mailing of~~ notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements.

(1) Annual Staffing and Compensation Report. For services delivered on or before August 31, 2009, providers must file Staffing and Compensation Reports as follows. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) - (C) (No change.)

(D) Participating facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title [~~relating to General Reporting and Documentation Requirements, Methods and Procedures~~] will replace the Staffing and Compensation Report with the following exceptions:

(A) - (G) (No change.)

(3) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(4) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC receives an acceptable report.

(A) Participating facilities that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title [~~relating to General Reporting and Documentation Requirements, Methods and Procedures~~], will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(B) Participating facilities with an ownership change or contract termination that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent and if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended accountability reports and cost reports functioning as Staffing and Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs; ~~;~~ Specifications for Allowable and Unallowable Costs; ~~;~~ Revenues; ~~;~~ and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title ~~[(relating to General Principles of Allowable and Unallowable Costs)]~~.

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report. HHSC will notify ~~[issue a notification letter that informs]~~ a facility ~~[in writing]~~ of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and accountability reports. STAIRS will generate an e-mail to the entity contact, indicating that the facility's enrollment limitation level is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type.

(2) ~~[(4)]~~ Requests for revision. A facility may request a revision of its enrollment limitation if the facility's most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report does not represent its current staffing levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis ~~[by hand delivery, United States mail, or special delivery mail]~~ no later than the deadline indicated in the notification of open enrollment specified in subsection (c) [30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted]. A request for revision that is not received by the stated deadline ~~[and that is not submitted on the form specified by HHSC]~~ will not be accepted and the enrollment limitation specified in STAIRS ~~[the notification letter]~~ will apply.

(B) A facility that requests a revision of its enrollment limitation must submit documentation that ~~;~~ ~~in the form specified by HHSC in the notification letter, which]~~ shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the facility met a higher staffing level than STAIRS ~~[the notification letter]~~ indicates. In such cases, the facility's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider ~~[facility]~~ to render all required documentation at the time of its request for revision. Requests ~~[not in the form specified by HHSC in the notification~~

~~letter and requests]~~ that fail to support a staffing level different than indicated in STAIRS ~~[the notification letter]~~ will result in a rejection of the request and the enrollment limitation specified in STAIRS ~~[the notification letter]~~ will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider ~~[facility]~~ or legally authorized to bind the facility, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted and the enrollment limitation specified in STAIRS ~~[the notification letter]~~ will apply.

(D) - (E) (No change.)

(3) ~~[(2)]~~ New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined in accordance with subsection (y) of this section. A new owner will not be subject to enrollment limitations based upon the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(4) ~~[(3)]~~ New facilities. A new facility's enrollment will be determined in accordance with subsection (e) of this section.

(j) (No change.)

(k) Determination of direct care staff base rate.

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

(4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(b)(3)(C) of this title (relating to Reimbursement Setting Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will remain constant except for adjustments for inflation from paragraph (2) of this subsection. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(l) - (o) (No change.)

(p) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

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

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title ~~[(relating to Cost Finding Methodology)]~~. If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For

purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) - (7) (No change.)

(q) - (r) (No change.)

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report and request for recalculation.

(1) Notification of recoupment. The estimated amount to be recouped is indicated in STAIRS. STAIRS will generate an e-mail to the entity contact, indicating that the facility's estimated recoupment is available for review. [Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee.] If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified by e-mail to the entity contact that [in writing of] the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the initial or subsequent notification [letter].

(2) Request for recalculation. Providers notified of a recoupment based on an Annual Staffing and Compensation Report described in subsection (f)(2)(A) or (f)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Annual Staffing and Compensation Report with the provider's next cost report or Staffing and Compensation Report, as appropriate. The request [must be in writing and] must be received by HHSC Rate Analysis [by hand delivery, United States mail, or special mail delivery] no later than 30 days after the date on the e-mail [written] notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the [written] request will be accepted.

(A) The request must be made by e-mail to the e-mail address specified in STAIRS, by hand delivery, United States (U.S.) mail, or special mail delivery. An e-mail request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by e-mail to HHSC.

(B) The [written] request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(t) - (ee) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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 March 3, 2017.
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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 16, 2017
For further information, please call: (512) 707-6066



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE

The Railroad Commission of Texas proposes the repeal of rules in Chapter 1, Subchapters A through H, §§1.1 - 1.10, 1.21 - 1.30, 1.41 - 1.49, 1.61 - 1.65, 1.81 - 1.87, 1.101 - 1.108, 1.121 - 1.130, 1.141 - 1.152, and simultaneously proposes the following new subchapters and rules in Chapter 1: in new subchapter A, new §§1.1 - 1.10, relating to Definitions and General Provisions; in new subchapter B, new §§1.21 - 1.27, relating to Initiation of Contested Case Proceeding; in new subchapter C, new §§1.31 - 1.38, relating to Pleadings, Motions, and Other Documents; in new subchapter D, new §§1.41 - 1.45, relating to Notice and Service; in new subchapter E, new §§1.51 - 1.57, relating to Discovery; in new subchapter F, new §§1.61 - 1.68, relating to Evidence; in new Subchapter G, new §§1.101 - 1.112, relating to Hearings; and in new Subchapter H, §§1.121 - 1.131, relating to Decision; and in new Subchapter J, new §1.301, relating to Rulemaking.

The Commission proposes the repeals and new sections to reorganize and update the rules in this chapter to clarify current Commission practice and procedures and reflect changes in statutory requirements. In preparation for this proposal, Commission staff circulated an informal draft and received several comments, some of which are summarized below.

One comment stated the proposed definition of "affected party or person" in §1.2 could conflict with definitions in existing law and rules that the Commission has applied in the past. The comment also stated that the term "party" is already defined in the Administrative Procedure Act, but "affected party" is not.

Because the terms "affected person" or "affected party" no longer appear in Chapter 1, the definition has been removed.

The same commenter stated that the definition of "Commission," which is already defined in the Texas Natural Resources Code, could devalue the authority of a single Commissioner, because it potentially lessens his or her ability to speak on policy and matters of interest to the Commission. The comment also said the addition of the delegated authority to an employee is unnecessary and elevates an employee above a single Commissioner.

Commission staff disagrees with these comments. The Commission as an agency may only exercise its authority through a quorum of Commissioners in an open meeting, or through an employee of the Commission that has been delegated authority. If one Commissioner acts in his or her individual capacity, it is not an act of the Commission.

One comment stated that the phrase "The whole or a part of" is unnecessary in the definition of "license."

Commission staff notes that its definition of license comes from Texas Government Code, §2001.003.

One comment regarding §1.7 suggested that a service list should be included with a certificate of service.

Commission staff notes that §1.45 requires a service list as part of the certificate of service, but in the informal draft, §1.45 referred to "certification" instead of "certificate of service." The wording is corrected in this proposal.

Two comments on §1.21 stated that a document should not be considered filed with the Commission unless it meets the requirements in Chapter 1.

Staff understands this concern and has modified §1.21 to allow the Commission to reject a document if it does not comply with applicable requirements.

One comment regarding §1.22 noted that the presumption of filing at or before 5:00 p.m. in subsection (d) is not appropriate if an examiner requires the filings to be made by a certain time such as 10:00 a.m.

The proposal includes wording to contemplate alternative filing deadlines imposed by an examiner.

One comment addressed both §1.23(c)(1) and §1.35(b); the comment suggested that the time the respondent has to file a response to a complaint should be consistent in both rules. The comment also suggested a change to clarify that the time runs from the date the complainant serves the complaint on the respondent, rather than from the date of the Commission's notice of the complaint. The same clarification should be made in §1.35(b).

Commission staff agrees that the deadline should be consistent, but disagrees that the time for filing a response should run from the date the complainant serves the complaint. The rule has been modified to allow 20 days from the date of the Commission's letter notifying the respondent of the complaint.

A comment stated that the word "shall" in §1.23(f) should be changed to "may" so the rule does not appear to bind the Commissioners to the opinion of an examiner. The proposal has been modified to address this concern.

One comment suggested adding new subsection (g) to §1.23 to read: "(g) Retail customers served by a gas utility as defined in Texas Utilities Code, §§101.003(7), 101.003(8), and 121.001 - 121.006, must first attempt an informal resolution pursuant to §7.45(B)(C) before pursuing a claim against a gas utility under this section."

Commission staff is aware that other laws or rules may address the same topics as Chapter 1 and/or may provide exceptions to the general practices required by Chapter 1. Thus, proposed §1.1 includes the general rule of construction that when a general provision conflicts with a special provision, and the conflict is irreconcilable, the special provision controls. Therefore, if a special provision such as §7.45(B) applies in a specific context, and that provision creates an irreconcilable conflict, the special provision will govern over the general provision in §1.23.

A comment on §1.24(a) stated that classifying a case as a show-cause proceeding shifts the burden of proof to the party seeking to maintain the status quo or otherwise resisting the relief sought; the rule does not have any standards that guide or bind the agency as to when the significant decision to change the burden of proof is justified. The comment suggested that factors be included in the rule.

Commission staff disagrees that the rule should limit the Commission to certain factors.

One comment noted that §1.36 limits the filing of motions to before the contested case is included in an open meeting or conference agenda, which is typically seven days before conference. The comment also noted that this limitation is not currently in place and suggested that the rule should include a good cause exception to contemplate that there might be reasonable situations when the restriction on filing motions is not workable.

The proposal does not include the suggested change. The intent of the proposed amendment is to implement a firm deadline after which motions cannot be filed.

A comment on §1.36(a) regarding the sentence "Notice of action on any motion shall be served promptly on all parties" stated that the word "promptly" is too vague.

The Commission currently provides same-day notice if possible; therefore, this change is not necessary.

A comment on §1.38(d)(5) stated that the phrase "...or the examiner may grant a stay of the interim ruling" should be changed to "...or the examiner may issue a stay of the interim ruling."

The proposal includes this change.

One comment concerned §1.42, which is proposed for repeal and does not have a corresponding new rule. The comment stated that for purposes of completeness, transparency, and accuracy, the rule wording regarding notice of proposed rulemaking should be retained.

Commission staff notes that §1.1 states the Commission will comply with the APA and finds it unnecessary to include in its rules each statute that governs Commission action.

A comment on §1.43 stated that notice of publication was previously limited to oil and gas, and surface mining and reclamation non-rulemaking proceedings, but it is unclear if the new rule would apply to statement of intent proceedings as well.

Commission staff notes the statement of intent statutes and §1.43 apply in different situations. Section 1.43 only applies when a party is unable to identify the address of any person who is required to be notified.

A comment on §1.44 stated that the phrase "a notice of protest may be filed" should be changed to "shall be filed."

Commission staff disagrees that "shall" is appropriate because a notice of protest is not required.

A comment regarding §1.45 stated that Commission service lists always contain and are sometimes dominated by agency personnel; thus, the Commission should encourage the use of email service by allowing Commission staff to be served by email.

Commission staff does not agree with this change should be incorporated into the rule, but will work with divisions to ensure that only essential staff members are included on the service list.

A comment on §1.62 suggested that the rule allow official notice to be taken of Commission records, and documents or records of other state agencies.

Commission staff notes that the rule wording comes from the APA, Texas Government Code, §2001.090.

A comment on §1.65 suggested that copies of exhibits be furnished to the court reporter in addition to examiners and parties.

The proposal includes this modified wording.

A comment on §1.68(c) regarding filing confidential materials with the Commission stated that the new rule is appropriate for the process of filing, but does not seem to grant any exception or justification for the agency to release documents that are confidential by law. The comment stated that the rule may give a false sense of compliance to agency staff and an unwarranted opportunity by third parties to submit everything as "confidential."

Commission staff agrees that the new rule does not expand the Commission's authority or exempt it from the Public Information Act (PIA) requirements in Texas Government Code Chapter 552. The new rule merely defines the process for filing confidential materials so that the Commission can notify the filer if the Commission receives a request for that information and the filer can pursue appropriate action with the Office of the Attorney General. Materials filed pursuant to §1.68 are subject to the PIA and are not exempt from disclosure merely because marked confidential.

One comment suggested that the title of §1.101 be changed to "Examiner's Responsibilities and Duties."

Commission staff disagrees with this suggestion.

A comment stated §1.121(f), which allows an examiner can make clerical or typographical corrections to a previously served proposal for decision (PFD) without serving the correction on the parties, seems problematic because the examiner may correct something he or she deems clerical or typographic, but the parties may consider substantive. The commenter stated that all parties should be notified when any corrections are made to a PFD, as is the current process.

The proposal is modified to require notice of any change to a PFD, but also notes that a clerical change will not create an opportunity for additional exceptions or replies.

A comment on §1.128 stated that the APA, §2001.146(i) requires a subsequent motion for rehearing to be filed within 20 days of the date the order disposing of the original motion for rehearing was signed, not within 25 days as the proposed wording stated.

Commission staff notes that this comment is incorrect; the statute was amended in 2015 to allow 25 days.

Another comment on §1.128(b) stated that a reply to a motion for rehearing is due 40 days after a decision or order, and in accordance with subsection (a), a motion for rehearing is due 25 days after the order or decision, making the reply due 15 days after the original motion is filed. Subsection (b) shrinks the time to 10 days in the event the timing has been extended by an agreement or by Commission order. The comment suggested that 15 days should still be the reply time for consistency. The same commenter also stated that subsection (d) and (e) may have similar time period conflicts.

Commission staff notes that the rule wording is taken directly from the APA.

A separate comment on §1.128 stated that when a motion for rehearing or response to a motion for rehearing is served, the rule should require a service list to be included.

Commission staff notes that any filing, including motions, must be served with a certificate of service and service list, as required in §1.45.

A comment on current §1.146 stated that the Commission should maintain current subsection (b), which is not included in

the proposed new rule and provides a time period by which the Commission must issue a final decision or order. The comment stated that removal of subsection (b) is inconsistent with the APA, §2001.143, which states that an agency should sign a decision or order that may become final in a contested case within 60 days of the date on which the hearing closed, except for the same circumstances outlined in current rule §1.146(b).

Commission staff disagrees and declines to include this wording. The Texas Supreme Court has interpreted §2001.143 as directory, not mandatory.

Randall Collins, Director, Hearings Division, has determined that for each year of the first five years the repeals and new rules will be in effect, there will be no fiscal implications for state or local governments as a result of the repeals and new rules. In addition, there is no anticipated cost for persons required to comply with the proposed rules.

Mr. Collins has determined that for each year of the first five years the proposed repeals and new rules will be in effect, the anticipated public benefit will be consistency with the Administrative Procedure Act and increased clarity for those with contested cases before the Commission.

The Commission has determined that the proposed repeals and new rules will not have an adverse economic effect on small businesses or micro-businesses. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed repeals and new rules will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the repeals and new rules do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposed repeals and new rules may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, May 1, 2017, which is 45 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Randall Collins at (512) 463-5928. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

16 TAC §§1.1 - 1.10

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules

of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.1. *Purpose, Scope, and Conflict with Special Rules.*

§1.2. *Definitions.*

§1.3. *Suspension of Rules and Waiver of Fees.*

§1.4. *Violation of Procedural Rules.*

§1.5. *Conduct and Decorum.*

§1.6. *Ex Parte Communications.*

§1.7. *Testimony under Oath or Affirmation.*

§1.8. *Computation and Extensions of Time.*

§1.9. *Exceptions.*

§1.10. *Commissioner Conduct.*

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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Rules Attorney, Office of General Counsel

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SUBCHAPTER B. PLEADINGS

16 TAC §§1.21 - 1.30

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.21. *Petition for Adoption of Rules.*

§1.22. *Classification of Pleadings.*

§1.23. *Institution of Nonrulemaking Proceedings.*

§1.24. *Filings with the Legal Division.*

§1.25. *Form and Content of Pleadings.*

§1.26. *Correction of Pleadings.*

§1.27. *Motions.*

§1.28. *Responsive Pleadings and Emergency Action.*

§1.29. *Amended or Supplemental Pleadings.*

§1.30. *Interim Rulings and Appeals of Interim Rulings.*

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

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SUBCHAPTER C. DOCKETING, NOTICE, AND SERVICE

16 TAC §§1.41 - 1.49

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.41. *Docketing.*

§1.42. *Notice of Rulemaking Proceedings.*

§1.43. *Notice of Application in Nonrulemaking Proceedings.*

§1.44. *Transportation Docketing and Transportation Notice of Hearing for Nonrulemaking Proceedings.*

§1.45. *Notice of Hearing in Nonrulemaking Proceedings.*

§1.46. *Notice by Publication in Oil and Gas and Surface Mining and Reclamation Nonrulemaking Proceedings.*

§1.47. *Show Cause Proceedings.*

§1.48. *Service in Protested Contested Cases.*

§1.49. *Service of Process; Notice of Hearing; Default; and Motions for Rehearing in Oil and Gas Contested Cases Brought by the Legal Enforcement Section.*

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

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SUBCHAPTER D. PARTIES AND INTERVENTION

16 TAC §§1.61 - 1.65

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.61. *Classification and Alignment of Parties.*

§1.62. *Parties Defined.*

§1.63. *Notice of Protest in Nonrulemaking Proceedings.*

§1.64. *Intervention.*

§1.65. *Representative Appearances.*

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

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SUBCHAPTER E. DISCOVERY

16 TAC §§1.81 - 1.87

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.81. *Forms and Scope of Discovery in Protested Contested Cases.*

§1.82. *Service and Filing of Discovery Requests and Responses.*

§1.83. *Deadlines for Responses to Discovery Requests.*

§1.84. *Requests for Admission.*

§1.85. *Discovery Orders.*

§1.86. *Alignment of Municipal Intervenors for Purposes of Discovery.*

§1.87. *Limitations on Discovery Requests.*

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

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SUBCHAPTER F. EVIDENCE IN CONTESTED CASES

16 TAC §§1.101 - 1.108

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.101. *Rules of Evidence.*

§1.102. *Official Notice.*

§1.103. *Witnesses To Be Sworn.*

§1.104. *Documentary Evidence.*

§1.105. *Written Testimony.*

§1.106. *Exhibits.*

§1.107. *Formal Exceptions Not Required.*

§1.108. *Offers of Proof.*

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

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SUBCHAPTER G. HEARINGS

16 TAC §§1.121 - 1.130

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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- §1.121. *Presiding Officer.*
- §1.122. *Prehearing Conferences.*
- §1.123. *Stipulations.*
- §1.124. *Continuances.*
- §1.125. *Consolidation and Joint Hearings.*
- §1.126. *Dismissal.*
- §1.127. *Place and Nature of Hearings.*
- §1.128. *Hearing Procedures.*
- §1.129. *Reporters and Transcripts.*
- §1.130. *Telephonic Proceedings.*

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SUBCHAPTER H. DECISION

16 TAC §§1.141 - 1.152

The Commission proposes the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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- §1.141. *Proposals for Decision.*
- §1.142. *Filing of Exceptions and Replies.*
- §1.143. *Commission Action.*
- §1.144. *Oral Argument before the Commission.*
- §1.145. *Interim Orders.*
- §1.146. *Final Decisions and Orders.*
- §1.147. *Effective Date.*
- §1.148. *Permit Decision Time Period Reviews.*
- §1.149. *Rehearing.*
- §1.150. *Effect of Order Granting Rehearing.*
- §1.151. *Administrative Finality.*
- §1.152. *Administrative Record.*

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SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

16 TAC §§1.1 - 1.10

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.1. Purpose, Scope, and Conflict with Other Rules.

(a) This chapter establishes a system for practice and procedure before the Railroad Commission of Texas to enable the just disposition of proceedings and public participation in contested case proceedings pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(b) This chapter governs the institution, conduct, and determination of Commission proceedings required or permitted by law, whether instituted by order of the Commission or by filing an application, complaint, petition, or other pleading. This chapter does not and shall not be construed to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person or agency.

(c) This chapter sets forth the general rules of practice and procedure for proceedings before the Commission. If a general provision of these rules conflicts with a statutory or other special provision governing the same proceeding, and the conflict is irreconcilable, then the special provision controls.

§1.2. Definitions.

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

(1) Agency--A board, commission, department, or other entity created under Texas law that has statewide jurisdiction and makes rules or determines contested cases, other than an agency wholly funded by federal appropriations, the legislature, the courts, and institutions of higher education.

(2) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001, as it may be amended.

(3) Applicant--A person who by written application, including appeals, seeks a remedy from the Commission.

(4) Authorized representative--The individual designated in writing as representing any person or party before the Commission pursuant to these rules, including an attorney authorized to practice law in the State of Texas.

(5) Business day--A calendar day that is not a Saturday, Sunday, or official state or federal holiday.

(6) Commission--The Railroad Commission of Texas acting through a majority of the Commissioners or through a Commission employee to whom the Commissioners have delegated authority.

(7) Commissioner--One of the elected or appointed members of the Railroad Commission of Texas.

(8) Complainant--A person who files a complaint with the Commission as specified in §1.23 of this title (relating to Complaint Proceedings), regarding an act or omission of the Commission or a person subject to the Commission's jurisdiction.

(9) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission pursuant to the APA after an opportunity for adjudicative hearing, as specified in Subchapter G of this chapter (relating to Hearings).

(10) Director--The individual appointed by the Commission who is in charge of a division or section within the Commission. Subject to Commission directive or other Commission rules, a director may delegate the director's authority to another Commission employee.

(11) Division--An operating or administrative unit of the Commission.

(12) Docket--To assign a docket number to and create a file for a contested case.

(13) Docket number--A reference number assigned by the appropriate division or the Hearings Division to a contested case and used to identify that case.

(14) Docket Services Section--The section within the Hearings Division, under the supervision of the Hearings Director, that administers docketed cases pursuant to this chapter.

(15) Examiner or hearings examiner--An individual appointed by the Commission to conduct hearings, including an administrative law judge, a technical examiner, and other designated employees of the Commission.

(16) Final order--The Commission's final written disposition of a contested case, whether affirmative, negative, injunctive, or declaratory.

(17) Hearings Division--The division responsible for scheduling, conducting, and preparing recommendations on hearings concerning matters within the Commission's jurisdiction.

(18) Intervenor--A person, other than an applicant, complainant, petitioner, protestant, or respondent, who is admitted as a party to a contested case pursuant to §1.37 of this title (relating to Intervention).

(19) License--The whole or a part of a permit, certificate, approval, registration, or similar form of permission issued or granted by the Commission.

(20) Office of General Counsel--The division responsible for providing legal advice to the Commission, comprising the Enforcement Section and the General Counsel Section.

(21) Party--A person named or admitted as an applicant, complainant, petitioner, intervenor, protestant, or respondent in a contested case before the Commission.

(22) Person--An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(23) Petitioner--A person who by written petition, including appeals, seeks a remedy from the Commission.

(24) Pleading--A written document submitted in a contested case by a person or authorized representative setting forth allegations of fact, legal arguments, claims, requests for relief, or other matters. Pleadings may take the form of applications, petitions, complaints, protests, exceptions, replies, motions, responses or answers, or other requests for action.

(25) Proceeding--A formal hearing, investigation, inquiry, rulemaking, or other fact-finding or decision-making process.

(26) Protestant--A person opposing an application or petition submitted to the Commission.

(27) Protested contested case--A contested case in which a party appears and contests or opposes the relief sought, including relief sought in applications, petitions, show-cause proceedings, or complaints.

(28) Register--The Texas Register established by Acts of 1975, 64th Legislature, codified in Texas Government Code, Chapter 2002.

(29) Respondent--A person against whom any complaint has been filed, who is under formal investigation by the Commission, or who is the subject of a show-cause proceeding.

(30) Rule--A Commission statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the Commission's procedure or practice requirements. The term includes a newly adopted rule and the amendment or repeal of an existing rule but does not include statements concerning only the internal management or organization of the Commission and not affecting private rights or procedures.

(31) Rulemaking--The process to adopt a new rule or to amend or repeal an existing rule pursuant to Texas law.

(32) Show-cause proceeding--A formal opportunity for a respondent to present evidence challenging allegations made against the respondent or to oppose a proposed action concerning the respondent.

(33) Telephony--Includes conventional telephonic communication, Voice over Internet Protocol (VoIP) communication, and all forms of digital audio and audio/video tele-conferencing.

§1.3. Exceptions and Suspension of Rules.

(a) The Commission, the Hearings Director, or the examiner may grant exceptions to the provisions of this chapter upon a showing of good cause and if necessary in the interest of justice.

(b) The Commission may suspend the operation of one or more of its general or special rules of practice and procedure if it finds that there exists a public emergency or imperative public necessity.

(c) The Commission may waive any fee established by one or more of its general or special rules of practice and procedure for good cause shown, except those fees required by statute.

§1.4. Violation of Procedural Rules.

In addition to any other penalties authorized by law or by Commission rule, the violation of any general or special rule of practice and procedure shall be sufficient cause for the Commissioners, after notice and hearing, to enter an order holding the offender in contempt or subjecting the offender to just, reasonable, and lawful disciplinary action.

§1.5. Conduct and Decorum.

Parties, authorized representatives, witnesses, and other participants in Commission proceedings shall conduct themselves with proper dignity, courtesy, civility, and respect for the Commission, the director,

the examiner, and all other participants. Disorderly conduct will not be tolerated. A violator of this rule may be excluded from the proceeding by the examiner for such period as is just and may be subject to such other just, reasonable, and lawful disciplinary action as the Commission may prescribe.

§1.6. Recording and Broadcasting of Hearings.

Coverage of a hearing through broadcasting, televising, recording, live-streaming, or photographing is permitted upon prior approval of the Hearings Director. The request for approval shall specify the type of coverage to be conducted at the hearing. Requests may be denied or approved with restrictions if the Hearings Director finds coverage will unduly distract participants, interfere with the hearings process, or impair the dignity of the hearing.

§1.7. Ex Parte Communications.

(a) Ex parte communications are prohibited in contested cases as provided in the APA and other applicable rules including the Texas Disciplinary Rules of Professional Conduct.

(b) Each party shall provide all other parties with a copy of all documents submitted to an examiner.

(1) The attachment of a certificate of service stating that a document was served on a party creates a rebuttable presumption that the named party was provided a copy.

(2) Failure to provide a copy to all other parties may result in rejection and return of the document without consideration.

§1.8. Testimony under Oath or Affirmation.

Testimony in all contested cases shall be presented under oath or affirmation administered by an examiner, Commissioner, or court reporter.

§1.9. Computation and Extensions of Time in Contested Cases.

(a) In computing any period of time prescribed or permitted by the Hearings Director, the examiner, a rule or an order of the Commission, or any applicable statute:

(1) the day of the act, event, or default from which the period of time begins to run shall not be included;

(2) the last day of the period being computed shall be included, unless it is a Saturday, Sunday, weekday on which the Commission has officially closed prior to 5 p.m. due to weather or other exigency, or an official state or federal holiday, in which event the period shall continue to run until 5 p.m. on the next business day except as otherwise provided by statute; and

(3) Saturdays, Sundays, and official state or federal holidays shall not be counted for any purpose in any time period of five days or less in these rules.

(b) Unless otherwise provided by statute or special rule, the time for filing any pleading or other document may be extended upon the granting of a motion for extension of time. The motion shall:

(1) be filed with the Docket Services Section prior to the applicable deadline;

(2) show that there is good cause for an extension of time and that the need for the extension is not caused by the negligence, indifference, or lack of diligence of the person, party, or authorized representative filing the motion; and

(3) be served in accordance with §1.45 of this title (relating to Service in Protested Contested Cases).

§1.10. Commissioner Private Interest in Decision.

(a) A Commissioner with a personal or private interest in a measure, proposal or decision pending before the Commission shall publicly disclose the fact to the Commission in an open meeting. The Commissioner may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) In this section, "personal or private interest" has the same meaning as is given to it under Texas Government Code, §572.058.

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

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SUBCHAPTER B. INITIATION OF CONTESTED CASE PROCEEDING

16 TAC §§1.21 - 1.27

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.21. Filings with Commission Division Directors.

(a) All applications, petitions, complaints, and other documents relating to any proceeding to be initiated before the Commission shall be filed with the appropriate division director in accordance with that division's filing requirements and any applicable statute or regulation. Such documents, including notices of protest and answers, shall be presumed filed on the date they are actually received only if accompanied by any required filing fee. The Commission may decline to accept a document for filing if it does not comply with applicable requirements.

(b) If an application, petition, complaint, or other document requires further consideration after division processing but prior to final Commission action, the division shall transfer the matter to the Hearings Division.

§1.22. Filings with the Hearings Division.

(a) Once a party has notice that a division has transferred a contested case to the Hearings Division, the party shall file all subsequent pleadings and other documents related to the case with the Docket Services Section.

(b) Pleadings and related documents filed with the Hearings Division shall be deemed filed only when they are actually received by

the Docket Services Section and are accompanied by any required filing fee. The time and date of filing shall be determined by the file stamp affixed on the pleading or related document by the Docket Services Section.

(c) Except as provided in subsection (e) of this section, pleadings shall be filed as follows:

(1) If the pleading contains 10 or fewer pages including exhibits, it may be filed by fax, email, or other approved electronic transmission with the Docket Services Section. If a party or authorized representative elects to file a pleading by email, the party or authorized representative agrees to be served by email and affirmatively consents to the release and disclosure of the email address.

(2) Pleadings longer than 10 pages shall be filed in hard copy with the Docket Services Section, unless the examiner or Hearings director informs the parties in writing that they may file all documents pursuant to paragraph (1) of this subsection.

(d) Unless the examiner sets the filing deadline at a time earlier than 5 p.m., pleadings and related documents shall be considered timely filed if received and file stamped by the Docket Services Section on or before 5 p.m. of the filing deadline. Pleadings filed after 5 p.m. local time of the Commission shall be deemed filed the following business day. Pleadings filed by fax, email, or other approved electronic transmission shall be considered filed at or before 5 p.m. local time if the complete pleading is received at or before 5 p.m. local time. If the examiner sets the filing deadline at a time earlier than 5 p.m., pleadings and related documents shall be considered filed at the time indicated by the file stamp.

(e) Exceptions and replies, and motions for rehearing and replies to motions for rehearing shall be filed pursuant to §1.122 of this title (relating to Filing of Exceptions and Replies) and §1.128 of this title (relating to Motions for Rehearing), respectively.

(f) The Hearings Division may decline to accept a transferred case, docket a case, accept a filing, or set a hearing in instances where there has been a failure to substantially conform to the rules in this chapter.

§1.23. Complaint Proceedings.

(a) Filing of complaint. Complaints relating to matters within the Commission's jurisdiction shall be in writing and contain a detailed description of the allegations against the respondent. The complainant shall serve the complaint on the respondent and simultaneously file it with the applicable division of the Commission. The division receiving the complaint shall transfer it to the Hearings Division. If the complainant amends the complaint, the complainant shall serve the amended complaint on the respondent and simultaneously file it with the Docket Services Section.

(b) Burden of proof. The complainant in a complaint proceeding shall have the burden of proof which is a preponderance of the evidence. In the interest of justice, the examiner may modify the burden of proof pursuant to §1.110 of this title (relating to Burden of Proof).

(c) Notice of complaint. When a complaint is filed, the Commission shall forward the complaint to the respondent and attach a letter stating:

(1) the respondent has 20 days from the date of the letter to either file an answer or request a hearing to contest the allegations of the original complaint; and

(2) that a default order may be entered against the respondent if the respondent fails to answer, request a hearing, or appear at the hearing, if a hearing is requested.

(d) Respondent's answer.

(1) The respondent shall answer the complaint in writing, by either specifically denying the material allegations of the complaint or alleging an affirmative defense. Alternatively, the respondent may request a hearing which shall serve as a general denial of the allegations in the original complaint.

(2) If the complaint is thereafter amended, the time period for the filing and service of the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original answer shall be considered as the answer to the amended complaint unless a new answer is filed in response to the amended complaint.

(e) Default order. If the respondent fails to answer, request a hearing, or appear at the hearing, the examiner may find the respondent to be in default and prepare a default final order to be presented to the Commission without further notice.

(f) Dismissal for lack of jurisdiction of Commission or standing of complainant.

(1) If the Commission finds, either on the face of the complaint or after motion of the respondent, that the Commission lacks jurisdiction or the complainant lacks standing, the Hearings Director or the Commissioners shall dismiss the complaint as to such allegation or complainant.

(2) Any dismissal order entered by the Hearings Director is subject to review by an appeal to the Commissioners. The appeal shall follow the same requirements set forth in §1.38(e) of this title (relating to Interim Rulings and Appeals of Interim Rulings).

§1.24. Show-Cause Proceedings.

(a) In response to a written complaint or on the Commission's own motion, the Commission or the Hearings Director may issue a notice commanding a person subject to the Commission's jurisdiction to appear at a public hearing and show cause why the person should not be compelled to do the act required, or refrain from doing an act, or why the Commission should not take the proposed action.

(b) The respondent in a show-cause proceeding shall have the burden of proof which is a preponderance of the evidence.

(c) On the respondent's failure to appear at the hearing or meet its burden of proof, the respondent may be compelled to do the act required or to refrain from doing an act, or the Commission may take the proposed action.

§1.25. Contested Cases Brought by the Enforcement Section.

(a) Commencement of a contested case.

(1) Enforcement contested cases are commenced when a division of the Commission refers the matter to the Enforcement Section of the Office of General Counsel and the Enforcement Section assigns a docket number to the case. Before filing a complaint, the Commission may offer to settle the case through an agreed order.

(2) If the Commission does not offer to settle, or the terms of the offer are not timely met by the respondent, the Commission will send the original complaint to the respondent by certified and regular first-class mail. In cases against foreign or non-resident respondents, the complaint will also be sent to the resident agent listed on the respondent's most recently filed Organization Report (Form P-5). The complaint will be accompanied by a letter alleging that the respondent has violated Commission rules or statutes as set forth in the original complaint; that the respondent may, within 30 days of the date of service, file an answer or request a hearing to contest the allegations of the original complaint; and that the respondent may wish to hire an

attorney or other authorized representative or choose to appear on its own behalf. The letter will notify the respondent that if, on 31st day after the date of service, it has not entered into an agreed order, filed an answer to the original complaint, or requested a hearing, a default final order may thereafter be issued against respondent without further notice. Concurrent with the complaint, the Commission may make an offer to settle the case through an agreed order.

(3) When there is actual pollution or injury to the public health and safety, or an imminent threat thereof, a hearing may be set and notice of the hearing sent with the original complaint. The notice will state that if the respondent fails to appear at the hearing, a default final order may be issued against respondent without further notice as specified in subsection (d) of this section.

(b) Filing of answer or request for hearing; setting of hearing. A request for hearing made by the respondent shall serve as a general denial of the allegations in the original complaint. An answer or request for hearing is timely if filed with the Docket Services Section before the matter is included on an open meeting agenda of the Commission that has been posted with the Secretary of State. Except in cases brought under subsection (a)(3) of this section, the Enforcement Section will coordinate with the Docket Services Section to set a hearing on a date at least 30 days after receipt of a timely answer or hearing request, unless the case is disposed of by other means.

(c) Notice of hearing. Notices of hearing will be sent along with the original complaint to respondents or their authorized representatives in all cases brought under subsection (a)(3) of this section. In all other cases, notices of hearing will be sent, along with a current Enforcement Section pleading, only after the respondent or its authorized representative has timely filed a request for hearing or an answer. The notice will be sent to the address from which the request or answer was received, and will state that if the respondent fails to appear at the hearing, a default final order may be issued against respondent without further notice as specified in subsection (d) of this section.

(d) Default order upon failure to answer, request hearing, or appear at hearing.

(1) If the respondent fails to timely answer the original complaint, request a hearing, or appear at a scheduled hearing, a default final order may be issued by the Commission without further notice.

(2) Default final orders will contain findings of fact and conclusions of law sufficient to support the relief ordered.

(3) No default final order shall be issued until the Commission has access to the proof of service of the original complaint or the notice of hearing, or the returned certified mail containing the complaint or the notice, has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance. Default final orders need not be individually signed in each case by the Commissioners if the case is listed by docket number and summarized on a Master Default Order.

(e) Non-applicability of this section to emergency situations. The existing power of the Commission to remedy and seek reimbursement for remediation of any condition which threatens the public health and safety, or to order an operator to remedy said condition, shall not be affected by this section.

(f) When the Enforcement Section alleges a violation of Texas Natural Resources Code, §91.143, relating to false information filed with the Commission, if the records that are subject of the proceeding are incorrect, there is a presumption that the respondent filed the record knowing it to be incorrect. The presumption may be rebutted by competent evidence.

§1.26. Classification and Alignment of Parties.

(a) Parties to contested cases before the Commission are defined in §1.2 of this title (relating to Definitions). If there is an error in a party's designation in its pleadings, the examiner may assign a party an appropriate designation.

(b) The examiner may align parties according to the nature of the proceeding.

§1.27. Parties and Authorized Representatives.

(a) Any party may appear individually or through an authorized representative.

(b) Authorized representatives shall:

(1) file a notice of representation with the Docket Services Section that contains the representative's mailing address, telephone number, and, if applicable, fax number and email address;

(2) advise their clients and witnesses of applicable requirements of conduct and decorum;

(3) comply with §1.7 of this title (relating to Ex Parte Communications).

(c) If an authorized representative's authority is challenged, the authorized representative must file documents that evidence authority to appear as the party's representative.

(d) An authorized representative seeking to withdraw shall file a motion to withdraw and shall provide in the motion a mailing address, telephone number, and, if applicable, fax number and email address for the party or substitute representative. A party's authorized representative shall remain as such until the motion to withdraw is granted by the examiner.

(e) If an authorized representative includes an email address in the notice of representation, the authorized representative agrees to be served by email and affirmatively consents to the release and disclosure of the email address.

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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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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SUBCHAPTER C. PLEADINGS, MOTIONS, AND OTHER DOCUMENTS

16 TAC §§1.31 - 1.38

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.31. Classification of Pleadings.

(a) Pleadings filed in contested case proceedings before the Commission shall be designated as one of the following: application, petition, complaint, notice of protest, answer, motion, exception, or response or reply to one of the preceding pleadings. If there is an error in the designation of a pleading, the examiner or the Hearings Director may determine the appropriate status in the proceeding and treat it accordingly.

(b) Requests for discovery and responses thereto shall not be classified as pleadings and shall become a part of the administrative record in a contested case only when offered as evidence, or when part of a request for an order compelling a discovery response, or a reply thereto.

(c) Pleadings shall be liberally construed. As applicable, the Commission, Hearings Director, or examiner may construe a document as a pleading if the intent of the filing or document is evident.

§1.32. Form and Content of Pleadings.

(a) Unless otherwise permitted or required by Commission rules or by statute, a pleading shall contain a statement of the pleading's objectives, a concise statement of supporting facts, and a specific request for relief.

(b) Pleadings that are filed in hard copy shall be printed on white paper that is 8 1/2 inches wide and 11 inches long, with at least one-inch margins, or on the appropriate Commission form. The text shall only be on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced. Exhibits attached to a pleading shall be the same size as pleadings or folded to that size.

(c) Each pleading shall be signed by the party or its authorized representative. When a copy of the signed document has been filed, the party or its authorized representative shall maintain the original document for examination by the Commission, the examiner, the Hearings or appropriate division director, or any party to the proceedings, should a question arise as to its authenticity.

(d) A pleading shall contain:

(1) the filing party's business address, telephone number, and, if applicable, fax number or email address, or if filed by its authorized representative, the authorized representative's business address, telephone number, and, if applicable, the authorized representative's Texas state bar number, email address, and fax number; and

(2) a certification pursuant to §1.45 of this title (relating to Service in Protested Contested Cases).

(e) If a party or authorized representative includes its email address or fax number in a pleading, the party consents to be served by email or fax and affirmatively consents to the release and disclosure of the email address.

§1.33. Correction of Pleadings.

If the appropriate director or examiner finds that a pleading does not substantially comply in all material respects with the Commission's rules, notice of the deficiency or deficiencies will be provided to the filing party. Unless precluded by operation of law, the party who filed the pleading shall thereafter have the right to file a corrected pleading. The filing of a corrected pleading shall not be permitted to delay any proceeding unless the appropriate director or the examiner determines

based on evidence submitted by the filing party that such delay is necessary to prevent an injustice or to protect the public interest.

§1.34. Amended or Supplemental Pleadings.

(a) Pleadings may be amended or supplemented when permitted by statute or when justice so requires.

(b) Unless the Commission, the Hearings Director, or the examiner approves and issues additional notice as required by law, an application, petition, or complaint, upon which original notice of hearing has been issued, may not be amended so as to broaden or enlarge the scope thereof.

§1.35. Responsive Pleadings and Emergency Action.

(a) Any responsive pleading shall be filed by a party within 10 days after filing of the pleading to which the response is made or as ordered by the examiner.

(b) A responsive pleading to a complaint filed under this chapter shall be filed by the respondent within 20 days of the date of the Commission's letter notifying the respondent of the complaint.

(c) The Commissioners, the Hearings Director, or the examiner may take action on a pleading before the deadline for filing responsive pleadings only in an emergency that presents a risk of imminent pollution, waste, or injury to persons or real or personal property. Action taken under such conditions is subject to modification based on a timely responsive pleading.

§1.36. Motions.

(a) A motion shall be filed with the Docket Services Section, unless dictated into the record during the pendency of a hearing, and shall state the relief sought and the specific reasons for the motion. If the motion is based upon alleged facts that are not a matter of record, it may, in the examiner's discretion, be supported by an affidavit. Motions shall be served in accordance with §1.45 of this title (relating to Service in Protested Contested Cases). Notice of action on any motion shall be served promptly on all parties.

(b) A motion is timely filed if filed with the Docket Services Section before the contested case is included on an open meeting agenda of the Commission that has been posted with the Secretary of State.

§1.37. Intervention.

(a) Any person who has a justiciable or administratively cognizable interest and who is not an applicant, petitioner, complainant, respondent, or protestant and who desires to be designated as a party in any contested case before the Commission may file a petition for leave to intervene no later than five days prior to the hearing date.

(b) The examiner or the Hearings Director shall promptly act on all petitions for leave to intervene. All interventions shall be subject to a motion to strike for having been improperly admitted.

§1.38. Interim Rulings and Appeals of Interim Rulings.

(a) Relief through interim ruling. Prior to presentation of a contested case to the Commission at an open meeting, a party may seek, through an examiner, or Hearings Director, as appropriate, relief through interim ruling, but that ruling shall not be considered of the same nature as a final decision. An interim ruling shall not be subject to exceptions or motions for rehearing. For purposes of this section, the term interim ruling includes orders issued pursuant to §1.55 of this title (relating to Discovery Orders) and final actions taken by Commission staff to deny an application or other requested relief for which no other avenue of appeal is provided by Commission rules.

(b) Evidentiary rulings. An evidentiary ruling by an examiner is not an interim ruling and is not appealable to the Commission pending the issuance by the examiner of a proposal for decision. Such rulings include, but are not limited to, reopening the record of a hearing for additional evidence, before a proposal for decision is issued.

(c) Interim ruling to suspend license.

(1) In this section, "license" includes the whole or a part of a Commission permit, certificate, approval, registration, or similar form of permission required by law.

(2) When an interim ruling suspends a license because an imminent peril to the public health, safety, or welfare requires emergency action, the examiner or Hearings Director shall incorporate a factual and legal basis establishing that imminent peril in the interim ruling.

(3) Unless expressly provided otherwise by statute, the Commission shall initiate the proceedings for revocation of the license or other action not later than the 30th day after the interim ruling is signed.

(d) Appeal of interim ruling.

(1) Except as provided in paragraph (2) of this subsection, any party aggrieved by an interim ruling may appeal that ruling to the Commission and seek a stay if the party files a written appeal within 10 days of the date the interim ruling is signed or stated in the record. Untimely appeals shall not be forwarded by examiners to the Commissioners, pursuant to subsection (e) of this section. If, by the 46th day after the date the interim ruling is signed or stated in the record, the Commission has not signed a written order ruling on the appeal, then the appeal shall be deemed denied and any granted stay is lifted.

(2) In all gas utility proceedings brought or conducted under Texas Utilities Code, Chapters 102, 103, 104, and 121, any party aggrieved by an interim ruling may appeal that ruling to the Commission and seek a stay if the party files a written appeal within five days of the date the interim ruling is signed or stated in the record. Untimely appeals shall not be forwarded by examiners to the Commissioners, pursuant to subsection (e) of this section. If, by the 20th day after the date the interim ruling is signed or stated in the record, the Commission has not signed a written order ruling on the appeal, then the appeal shall be deemed denied and any granted stay is lifted.

(3) In all proceedings, the appealing party shall serve the appeal in accordance with §1.45 of this title (relating to Service in Protested Contested Cases) on the same day the appeal is filed with the Docket Services Section.

(4) Any response to an appeal must be filed with the Docket Services Section and served in accordance with §1.45 of this title within 10 days of the date the appeal of the interim ruling was filed.

(5) Pending action on the appeal of the interim ruling, the Hearings Director or the examiner may issue a stay of the interim ruling.

(e) Procedure on appeal. The Commissioners may consider and rule on an appeal on or after the day following the day the response to the appeal is due. An order on an appeal from an interim ruling shall not be subject to motions for rehearing pending issuance of the proposal for decision and signing of the final order. Any issue in an appeal that has been deemed denied by operation of law may be raised again in exceptions to the proposal for decision. When a timely appeal is filed under this section, the examiner shall:

(1) forward to each Commissioner a copy of the appeal along with a cover memorandum showing the date the appeal was

filed, the date replies are due, and the date on which the appeal will be deemed denied if no Commission action is taken;

(2) forward to each Commissioner a copy of all replies to appeals of interim rulings which may be filed, and of any stay of the interim ruling granted by the Hearings Director; and

(3) upon the request of any one Commissioner, immediately schedule the appeal for consideration by the Commission at an open meeting, and cause proper notice to be given to all parties.

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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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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SUBCHAPTER D. NOTICE AND SERVICE

16 TAC §§1.41 - 1.45

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.41. Notice of Application in Contested Cases.

Notice of application for contested cases shall be given in accordance with applicable law, rule, or order of the Commission.

§1.42. Notice of Hearing.

(a) In a contested case, each party is entitled to an opportunity:

(1) for hearing after reasonable notice of not less than 10 days; and

(2) to respond and to present evidence and argument on each issue involved in the case.

(b) Each notice of hearing shall include the following:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short, plain statement of the factual matters asserted; and

(5) any other statements required by law or directed by the Commission.

(c) If the Commission or a party is unable to state the factual matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be submitted in writing to the Hearings Division, which shall issue an amended notice not less than seven days prior to the date set for the hearing.

(d) In a proceeding in which the Commission has the burden of proof, if the Commission intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, the Hearings Division shall amend the notice to refer to the section of the statute or rule not less than seven days before the date set for the hearing. This subsection does not prohibit the Commission from filing an amended notice of hearing after the hearing has commenced. If the Commission files an amended notice of hearing after the hearing has commenced, the examiner shall grant a continuance of at least seven days at the request of any other party.

§1.43. Notice by Publication.

(a) When an applicant in a proceeding is unable, after due diligence, to identify the address of any person who is required to be notified of an application, complaint, or hearing, the applicant must publish notice of the application, complaint, or hearing.

(1) Unless otherwise directed by the appropriate director or examiner, the applicant shall publish the Commission's notice of application or notice of hearing in a newspaper of general circulation in the county or counties where the land or facility that is the subject of the application or hearing is located. The applicant shall publish such notice once per week for four consecutive weeks. The first publication shall be published at least 28 days before the protest deadline in a notice of application or the hearing date in a notice of hearing.

(2) The applicant must file proof of publication in the form of a publisher's affidavit or present at a hearing a copy of the newspaper notice along with testimony by a person with personal knowledge of the publication details.

(b) In determining whether notice by publication is appropriate, the examiner may consider whether an applicant used due diligence in attempting to identify the address of any person who is required to be notified of an application, complaint, or hearing.

§1.44. Notice of Protest.

A notice of protest may be filed when the notice of application, notice of hearing, or a Commission rule sets forth the requirements for filing such notice, or as provided by order of the Commission instituting the proceeding.

§1.45. Service in Protested Contested Cases.

(a) Service requirements. A copy of any pleading or document filed in a protested contested case shall be served by a party as follows:

(1) On the same day a party files a document with the Commission, the party shall serve a copy on every other party and any other person required by the Hearings Division. If a party is represented by an authorized representative, service shall be made on that representative; and

(2) All filings shall include a certificate of service that copies have been served on all persons described in paragraph (1) of this subsection. The certificate of service shall include the date and manner of service and the names and addresses of all persons served. If a person is served by fax or email, the certificate of service shall include the person's fax number or email, as applicable.

(b) Methods of service.

(1) A pleading or document may be served by hand delivering a copy to the person to be served, or by first class, certified, or registered mail, commercial delivery service, fax, email, or by such other manner as the Commission may require.

(A) Service by mail or commercial delivery service shall be complete upon deposit of the document postpaid and properly addressed to the person's last known address with the United States Postal Service or a commercial delivery service.

(B) Service by fax shall be sent to the person's current fax number and is complete on the date of the fax. Fax transmissions completed after 5 p.m. local time of the recipient shall be deemed served on the following business day.

(C) Personal service may be effectuated by hand delivering a copy to the person to be served and is complete on the date of delivery. Personal service completed after 5 p.m. local time of the recipient shall be deemed served on the following business day.

(D) Service by email may be used if the person to be served consents to be served by email pursuant to §1.27 or §1.32 of this title (relating to Parties and Authorized Representatives, and Form and Content of Pleadings, respectively). If the person consents to be served by email, the person affirmatively consents to the release and disclosure of the email address. Email service is complete on the date of the email transmission. An email received after 5 p.m. local time of the recipient shall be deemed served on the following business day.

(2) Proof of service. The filing party or authorized representative shall certify compliance with this rule in writing over signature and on the filed instrument. A certificate showing service shall be prima facie evidence of the fact of service. In cases of personal service, the certificate shall state when the pleading or motion was served and the manner of service. The recitations in the certificate are prima facie evidence of the facts cited in the certificate.

(c) Service by mail or commercial delivery service. Unless otherwise directed by the examiner or Hearings Director, when a party is required to do some act within a prescribed time period following service of a pleading, motion, or discovery document described in §1.51 of this title (relating to Forms and Scope of Discovery in Contested Cases) and the pleading, motion, or discovery document is served by mail or commercial delivery service, three days shall be added to the prescribed response period.

(d) Failure to serve. The serving party has the burden of proving the date and time of service. The failure of a party to serve a pleading or filed document on another party or person as required by this section may be sufficient grounds for the Hearings Director or the examiner to strike the pleading or filed document, or to take other appropriate action. A party may offer evidence or testimony that a notice or document was not received, or if service was by mail, that it was not received within three days from the date of mailing, and upon so finding, the examiner or Hearings Director may extend the time for taking the action required of the party or grant other appropriate relief.

(e) Service by the Commission.

(1) For documents served on a party with an active or delinquent organization report on file pursuant to §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements), the Commission shall serve documents by:

(A) first class mail to the address shown on the most recently filed organization report or the most recently filed letter notification of change of address, in which case the document is presumed received if the document is not returned to the Commission;

(B) certified mail to the address described in subparagraph (A) of this paragraph, in which case service is effective upon:

(i) acceptance of the item by any person at the address;

(ii) initial failure to claim or refusal to accept the item by any person at the address prior to its eventual return to the Commission by the United States Postal Service; or

(iii) return of the item to the Commission by the United States Postal Service bearing a notation such as "addressee unknown," "no forwarding address," "forwarding order expired," or any similar notation indicating that the organization's mailing address shown on the most recently filed organization report or address change notification letter is incorrect; or

(C) personal service or registered or certified mail to the address described in subparagraph (A) of this paragraph for revocation, suspension, annulment, or withdrawal of a license.

(2) For documents served on all other parties, unless otherwise required by law, the Commission shall serve documents in accordance with subsection (b) of this section.

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

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Haley Cochran

Rules Attorney, Office of General Counsel

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SUBCHAPTER E. DISCOVERY

16 TAC §§1.51 - 1.57

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.51. Forms and Scope of Discovery in Protested Contested Cases.

(a) Permissible forms of discovery by parties are:

(1) oral depositions of a party or a nonparty;

(2) written interrogatories to a party;

(3) requests to a party for admission of facts or the genuineness or identity of documents or things;

(4) requests to a party for production, examination, and copying of documents or other tangible materials;

(5) requests to a party for entry upon and examination of real or personal property, or both; and

(6) requests to a party for disclosures pursuant to Texas Rule of Civil Procedure 194.

(b) The scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders, and duty to supplement as well as the constraints provided in the APA.

§1.52. Service and Filing of Discovery Requests and Responses.

(a) Requests for discovery and responses shall be served using a method of service authorized by §1.45 of this title (relating to Service in Protested Contested Cases) and should not be filed with the Commission.

(b) If the parties disagree on the scheduling or scope of the deposition, a deposition request and proposed deposition discovery order shall be filed with the Docket Services Section and the examiner will set the matter for consideration at a prehearing conference.

(c) The deposition shall be returned to the Commission as provided in the APA, §2001.100.

(d) Except for good cause shown, all requests for discovery shall be served at least 20 days prior to the hearing unless otherwise agreed by the parties.

§1.53. Deadlines for Responses to Discovery Requests.

Responses to discovery requests shall be served within 14 days after the date of the request. The examiner or the Hearings Director may alter this deadline on the request of any party.

§1.54. Requests for Admission.

Except as otherwise provided in §1.53 of this title (relating to Deadlines for Responses to Discovery Requests), requests for admission shall be governed by the applicable provisions of the Texas Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. If a written answer or objection to a request for admission is not timely served, the request is deemed admitted without necessity of a Commission order. The requests for admission document must clearly set forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location to fairly inform the responding party of the consequences of a failure to respond within the prescribed time period. The examiner may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause.

§1.55. Discovery Orders.

(a) Motion to compel. Unless otherwise ordered, a party alleging another party's failure to comply with discovery requests shall file a sworn motion to compel with the Docket Services Section at least 10 days prior to the hearing on the merits. The motion shall certify that the requesting party made a good faith effort to resolve the matter with the non-moving party prior to filing the motion.

(b) Deposition discovery orders. The Hearings Director or the examiner is authorized to issue a subpoena to take a deposition, which shall require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding.

(c) Other discovery orders. The Hearings director or the examiner may issue protective orders, orders compelling discovery responses, and orders creating a discovery control plan. Requests for

discovery orders shall contain a sworn statement that, after due diligence, the desired information cannot be obtained through informal means, and that good cause exists for requiring discovery. The Hearings Director or the examiner may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders. The request for a discovery order may be denied:

(1) if the request is untimely or unduly burdensome in light of the complexity of the proceeding;

(2) if the requesting party has failed to exercise due diligence;

(3) if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding; or

(4) for other good cause in the interest of justice.

(d) Review by Commissioners. Any discovery order issued by the examiner or the Hearings Director is subject to review by an appeal to the Commissioners. Any party that chooses to appeal a discovery order shall follow the requirements set forth in §1.38 of this title (relating to Interim Rulings and Appeals of Interim Rulings). A discovery order does not constitute a final order or decision.

(e) Compliance. The Commission may enforce compliance with any discovery order or subpoena pursuant to Texas Government Code §§2001.089, 2001.094, and 2001.201, and the Texas Natural Resources Code, §81.053 and §81.064, or as otherwise permitted by law.

§1.56. Alignment of Municipal Intervenors for Purposes of Discovery.

(a) This section applies to proceedings initiated pursuant to Texas Utilities Code, §103.055 and §104.102.

(b) Municipal intervenors, whether participating as a single municipality or a coalition of municipalities, are presumed to share a common interest in a proceeding such that alignment of municipal intervenors as a single party for purposes of discovery is appropriate. The examiner shall order alignment of municipal intervenors at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to coordinate discovery efforts in an efficient manner.

(c) To overcome the presumption of alignment, a municipality or municipal coalition must file a motion to realign in whole or in part. In ruling on such a motion, the presiding officer shall consider whether good cause exists to grant the motion to realign in whole or in part including consideration of the following:

(1) whether the municipal intervenors are taking opposing positions regarding the utility's request for relief;

(2) whether the municipal intervenors have sufficiently different positions on one or more issues to justify realignment on such issues;

(3) whether granting the motion will create unnecessary inefficiencies or duplication of effort;

(4) whether granting the motion will result in undue costs to the parties;

(5) the effect of granting the motion on the parties and the public interest;

(6) whether granting the motion will serve the interest of justice; and

(7) any other relevant factors as determined by the presiding officer.

§1.57. Limitations on Discovery Requests.

(a) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and §104.102.

(b) Upon request by a party, the presiding officer may limit discovery, by order, in the interest of efficiency and justice.

(c) For purposes of calculating the number of requests for information (RFIs), each request or subpart shall be considered a separate RFI. Absent a showing of good cause, a reasonable limitation on RFIs propounded to a party is no more than 600 total RFIs, with no more than 75 RFIs propounded by a single party in one calendar week. Commission staff and presiding officers are not subject to these discovery limitations when Commission staff or the presiding officers issue the RFIs.

(d) With regard to discovery propounded by a municipality or municipal coalition, to the extent that the utility first filed its request for relief at the municipal level and a municipal party has requested that the discovery propounded at the municipal level be updated, and the Commission is now considering the utility's request on appeal from the municipal forum, the number of RFIs (inclusive of subparts) that the municipality propounded at the municipal level shall count towards the total number of permissible RFIs a municipality may serve on the utility during the Commission proceeding on appeal, unless the utility updated its test year when filing its appeal.

(e) If a party is not required to answer a question due to a sustained objection or withdrawal, that question may not be included in the calculation of the propounding party's RFI limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question shall be included in the calculation of that propounding party's RFI limit.

(f) As set forth in the Texas Rules of Civil Procedure 196 and 198, there shall be no limitation with regard to requests for production and inspection, or requests for admission.

(g) The party propounding discovery shall separately characterize its discovery as an RFI, a Request for Production and Inspection, or a Request for Admission.

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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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



SUBCHAPTER F. EVIDENCE

16 TAC §§1.61 - 1.68

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to

adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.61. Rules of Evidence.

The Texas rules of evidence and Texas law with regard to evidence in nonjury civil cases shall apply in contested cases. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may nevertheless be admitted by the examiner (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply in Commission proceedings. Objections to evidentiary offers may be made and shall be noted in the record.

§1.62. Official Notice.

(a) Facts noticeable. Official notice may be taken of judicially cognizable facts, and notice may be taken of generally recognized facts within the area of the Commission's specialized knowledge.

(b) Motions for official notice and opportunity to respond. A party's motion for official notice must be made or filed prior to the conclusion of the evidentiary hearing. The motion must specify the facts, material, records, or documents encompassed in the motion. A party who opposes the motion shall have the opportunity to contest the requested action.

(c) Notification of materials noticed. The examiner on his or her own motion, or the Commission on its own motion, may propose to take official notice of facts, material, records, or documents authorized by the APA, §2001.090. The parties will be given the opportunity to contest the proposed action and shall be notified of the facts, material, records, or documents officially noticed before, during, or after the hearing by the Commission.

§1.63. Documentary Evidence.

A copy or excerpt of a document may be admitted as evidence if the original is not readily available and if authenticity is established by competent evidence. When numerous or duplicative documents are offered, the examiner may limit those admitted to a number of documents which are typical and representative. The examiner may require the offering party to abstract or summarize relevant data from documents and present the abstracts or summaries in exhibit form. All parties shall have the right to examine the documents abstracted or summarized.

§1.64. Written Testimony.

(a) Admissibility. When a proceeding will be expedited and the interests of the parties will not be substantially prejudiced, direct testimony may be offered in written form. The written testimony of a witness on direct examination, either in narrative or question and answer form, may be offered as an exhibit and incorporated into the record without the written testimony being read. A witness who is offering written testimony shall be sworn and shall identify the written testimony as a true and accurate representation of what the testimony would be if the witness were to testify orally, after which the witness shall submit to voir dire and cross-examination. Written testimony shall be subject to the same evidentiary objections as oral testimony.

(b) Prefiling. The Commission, the Hearings Director, or an examiner may require or permit written testimony and exhibits to be filed and served on all parties at a specified date prior to the hearing. Failure to prefile written testimony and exhibits if required under this

section shall be sufficient cause for the examiner to rule such evidence, which was to be included in the testimony and exhibits, inadmissible or for other appropriate action to be taken as may be just and reasonable.

§1.65. Exhibits.

(a) Form. Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §1.32 of this title (relating to Form and Content of Pleadings). The pages of each exhibit shall be numbered consecutively.

(b) Tender and service. The original or a true and correct copy of each exhibit offered in evidence shall be identified and tendered for inclusion in the record. Copies of the exhibit shall be furnished to the examiners, to the court reporter, and to each party prior to or at the time the exhibit is offered in evidence.

(c) Excluded exhibits. If an exhibit is offered, objected to, and excluded, the examiner may determine whether or not the party offering the exhibit wishes to withdraw the offer; if so, the examiner shall permit the return of the exhibit to the party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the examiner with the ruling, and shall be included in the record for the purpose of preserving an exception.

(d) Late exhibits. Unless specifically requested and permitted by the Commissioners, the Hearings Director, or the examiner, no exhibit shall be filed in any proceeding after the hearing has been completed. If the filing of a late-filed exhibit is permitted, copies shall be served on all parties, and each party will have the opportunity to respond and submit additional relevant responsive evidence.

§1.66. Written Objections Not Required.

Written objections to rulings made by the examiner during a hearing are not required. It shall be sufficient that the party make a timely objection and state the grounds for the objection on the record.

§1.67. Offers of Proof.

(a) When the examiner excludes evidence, the party offering the evidence shall be permitted to make an offer of proof prior to the close of the hearing.

(1) The party may make the offer in question and answer form, or by dictating or submitting in writing the substance of the proposed evidence.

(2) The examiner may direct the manner in which the offer is made and may ask questions if necessary to conclude that the evidence would be as represented.

(3) The examiner and opposing parties shall be entitled to cross-examine any witness testifying on an offer of proof.

(b) The examiner may direct that offers of proof be transcribed separately and that reporter's costs be assessed against the proponent of the evidence, subject to the Commissioners' review of the examiner's ruling.

§1.68. Confidential Materials.

(a) Applicability of the Public Information Act. All records, data, and information filed with the Commission are subject to the Texas Public Information Act, Texas Government Code, Chapter 552. If the Commission receives a third party request for materials that have been marked confidential pursuant to subsection (b) or (c) of this section, the Commission will notify the filing party of the request in accordance with the provisions of the Texas Public Information Act so that the party can take action with the Office of the Attorney General to oppose release of the materials.

(b) Filing confidential materials in a hearing before the Hearings Division.

(1) A party filing material in a hearing before the Hearings Division that the party contends to be confidential by law shall file the materials with the Docket Services Section by delivering them in a sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and the style of the case, explain the nature of the sealed materials, and specify the relief sought. The outside of the container shall identify the docket number, the style of the case, the name of the submitting party, and be marked "CONFIDENTIAL AND UNDER SEAL" in bold print at least one inch in size. The front page of each portion of confidential material shall be marked "confidential." Confidential material shall not be filed by fax. A party who elects to file confidential material electronically shall notify the Docket Services Section prior to filing such material.

(2) A party may file a motion to seal the record if it has filed confidential materials in accordance with paragraph (1) of this subsection. In the motion, the party shall describe the materials it contends to be confidential by law, indicate the specific provision of law that exempts the material from disclosure, and request that the examiner order the described materials to be sealed. The examiner may, after consideration at hearing, order the described materials to be sealed, subject to any determination by the Office of the Attorney General and as further described in subsection (a) of this section.

(3) Confidential materials filed with the Hearings Division will be retained until the contested case is no longer appealable and in accordance with the Commission's retention policy.

(c) Filing confidential materials with the Commission other than in a hearing.

(1) A party filing material with a division of the Commission other than the Hearings Division that the party contends to be confidential by law shall file the materials with the applicable division by delivering them in a sealed and labeled container accompanied by an explanatory cover letter. The cover letter shall explain the nature of the sealed materials. The outside of the container shall identify the name of the submitting party and be marked "CONFIDENTIAL AND UNDER SEAL" in bold print at least one inch in size. The front page of each portion of confidential material shall be marked "confidential." Confidential material shall not be filed by fax. A party who elects to file confidential material electronically shall notify the applicable division prior to filing such material.

(2) Confidential materials filed under this subsection will be retained in accordance with the Commission's retention policy.

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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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



SUBCHAPTER G. HEARINGS

16 TAC §§1.101 - 1.112

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.101. Examiner's Powers and Duties.

(a) For any assigned case and subject to any limitations imposed by law or by Commission rule, the examiner shall have broad discretion in regulating the course and conduct of the hearing. The examiner's authority includes, but is not limited to, the following authority:

- (1) to administer oaths and affirmations;
 - (2) to issue subpoenas to compel the attendance of witnesses and the production of papers and documents;
 - (3) to authorize the taking of depositions and issue discovery orders;
 - (4) to call and examine witnesses;
 - (5) to receive evidence;
 - (6) to rule upon the admissibility of evidence and amendments to pleadings;
 - (7) to limit the number of witnesses whose testimony would be merely cumulative;
 - (8) to set reasonable times within which a party may testify, cross-examine witnesses, or present evidence;
 - (9) to impose sanctions;
 - (10) to maintain order in a hearing;
 - (11) to recess any hearing;
 - (12) to issue a proposal for decision, including proposed findings of fact and conclusions of law and a recommended order;
 - (13) to reopen the record when justice requires;
 - (14) to amend the proposal for decision or recommended order, or both;
 - (15) to issue a supplemental or amended proposal for decision and proposed order;
 - (16) to review the jurisdiction of the Commission and standing of parties as it pertains to a contested case;
 - (17) to issue orders relating to hearing, prehearing and posthearing matters; and
 - (18) to take other permissive action which is necessary for a fair, just, and proper hearing.
- (b) If at any time the examiner is unable to continue to serve, the Hearings Director may appoint another examiner to perform any remaining functions without the necessity of repeating previous proceedings.

(c) At their discretion, the Commissioners may preside over contested cases pursuant to this section.

§1.102. Sanctioning Authority.

(a) In the interest of justice, and after notice and opportunity for hearing, an order imposing sanctions may be issued by the Commissioners, the Hearings Director, or the examiner for:

(1) abuse of the discovery process, including failure to comply with a discovery order or subpoena issued by the Commission for deposition or production of books, records, papers, or other objects;

(2) filing a motion or pleading that is determined to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or increase in the cost of the proceeding; or

(3) failure to obey an order of the Commissioners, the Hearings Director, or the examiner.

(b) The order imposing sanctions may:

(1) disallow any further discovery of any kind or of a particular kind by the sanctioned party;

(2) require the party, the party's authorized representative, or both to obey the discovery order;

(3) require the party, the party's authorized representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;

(4) direct that the matters for which the discovery order was made shall be deemed admitted in accordance with the claim of the party obtaining the order;

(5) refuse to allow the sanctioned party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters in evidence;

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed;

(7) disallow in whole or in part requests for relief by the offending party and exclude evidence in support of those requests; or

(8) dismiss the action or proceeding or any part thereof or render a decision by default against the sanctioned party.

(c) Any order imposing sanctions issued by the examiner or the Hearings Director is subject to review by an appeal to the Commissioners. The appeal shall be filed with the Docket Services Section, which will forward the pleading to the Commissioners and the Hearings Director.

§1.103. Prehearing and Posthearing Conferences.

(a) The Hearings Director or examiner may direct the parties, the parties' authorized representatives, or both, to appear at a prehearing or posthearing conference to consider the following, as may be applicable:

(1) motions and other preliminary matters relating to the proceeding, including discovery;

(2) settlement of the case or simplification of the issues;

(3) amendment of pleadings;

(4) admissions or stipulations which will avoid the unnecessary introduction of evidence;

(5) limitations on the number of witnesses;

(6) time to be allotted to each party for presentation of its direct case or for cross-examination at the hearing;

(7) procedures to be followed at the hearing; and

(8) other matters that may aid in the disposition of the proceeding.

(b) For any ruling not disclosed on the record, the examiner shall notify the parties in writing of the disposition of a matter considered at a prehearing or posthearing conference.

§1.104. Stipulations.

The examiners will not consider any stipulation or agreement unless it is in writing and signed by the parties or their authorized representatives, or dictated into the record during the course of the proceeding. This section does not limit a party's ability to waive or modify by stipulation any right or privilege afforded by these rules, unless otherwise precluded by law.

§1.105. Continuances.

(a) A motion for continuance shall:

(1) be in writing and served in accordance with §1.45 of this title (relating to Service in Protested Contested Cases);

(2) be filed not less than five business days prior to the hearing, except for good cause shown;

(3) set forth the specific grounds for which the moving party seeks continuance;

(4) make reference to all similar motions filed in the proceeding; and

(5) state whether all parties agree with the relief requested.

(b) A continuance will not be granted based on the need for discovery if discovery requests have not previously been served upon the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence previously undisclosed despite the diligence of the moving party.

(c) The moving party shall confer with all other parties regarding the motion and establish mutually agreeable calendar dates on which the parties are available.

(d) A motion for continuance shall be acted upon by the examiner or Hearings Director, subject to Commission review.

(e) If the motion is filed less than five business days prior to the hearing, the moving party shall state good cause for the failure to timely file and immediately notify all parties and the assigned court reporter of the disposition of the motion.

§1.106. Consolidation and Joint Hearings.

When two or more applications, petitions, or other proceedings involve common questions of law or fact, the appropriate division director, the Hearings Director or the examiner may consolidate the proceedings or direct that there be a joint hearing without formal consolidation and may take other action to avoid unnecessary costs or delay and to ensure due process.

§1.107. Dismissal.

The Commissioners or the Hearings Director may dismiss, with or without prejudice, any proceeding under such conditions and for such reasons as are found to be just and reasonable, including the following:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

- (3) withdrawal;
- (4) moot questions or obsolete petitions;
- (5) lack of jurisdiction; or
- (6) if necessary in the interest of justice.

§1.108. Place and Nature of Hearings.

All hearings shall be open to the public and, except as otherwise required by law, shall be held in Austin. The Commissioners or the Hearings Director may designate another place of hearing if for good cause and in the public interest.

§1.109. Hearing Procedures.

(a) Opening the hearing. The examiner shall call the hearing to order and make a concise statement of its scope and purposes. All parties shall then enter their appearances. Thereafter, parties may make motions or opening statements.

(b) Order of procedure. Parties shall be permitted to make opening statements, offer direct evidence, cross-examine witnesses, and present supporting arguments. The party having the burden of proof shall be entitled to open and close. When several proceedings are heard on a consolidated record or when the proceeding has been initiated by the Commission, the examiner shall designate who may open and close. The examiner shall determine at what stage intervenors will be permitted to offer evidence. The examiner may direct that closing arguments be made in writing. The examiner may alter the order of procedure if necessary for efficient conduct of the hearing.

(c) Voir dire. Voir dire examination to evaluate the qualifications of a witness to testify may be permitted but will not be substituted for cross-examination.

(d) Rebuttal. The petitioner, applicant, or complainant may rebut evidence and argument presented by protestants or intervenors. The examiner may allow additional rebuttal from other parties.

(e) Additional evidence. The Commissioners, Hearings Director, or examiner may subpoena records or may call upon or subpoena for additional evidence on any issue any party, person, or employee of the Commission who is not assigned to render a decision or to make findings of fact and conclusions of law for additional evidence on any issue. Additional evidence shall not be admitted without an opportunity for examination, objection, and rebuttal by all parties.

§1.110. Burden of Proof.

Generally, the party seeking affirmative relief shall have the burden of proof. An examiner may reassign the burden of proof and shall serve copies of the decision on all parties. In reassigning the burden of proof, the examiner may consider:

- (1) the classification of the parties;
 - (2) the parties' access to information pertinent to the merits of the case;
 - (3) the party seeking affirmative relief;
 - (4) the party seeking to change the status quo;
 - (5) whether a party would be required to prove a negative;
- and
- (6) the nature of the relief that is requested.

§1.111. Reporters and Transcripts.

(a) Request for transcript. When requested by the Commission, the examiner, or a party, a certified shorthand reporter shall make a verbatim record and transcript of the hearing.

(b) Assessment of costs. The cost of the original transcripts shall be assessed to all parties equally unless otherwise directed by the examiner or required by law.

(c) Charges. The Commission shall approve rates to be charged by reporters for appearances, original transcripts, and copies. The rates shall not exceed rates authorized by law to be paid to court reporters in Texas district courts.

§1.112. Proceedings by Telephony.

(a) The examiner may sua sponte or upon granting the timely written motion of a party order that all or part of a prehearing or post-hearing conference or hearing be conducted by telephony.

(b) A party may file a motion to appear at a prehearing or post-hearing conference or a hearing by telephony as follows:

(1) The motion shall be in writing, shall be filed with the Docket Services Section and served in accordance with §1.45 of this title (relating to Service in Protested Contested Cases) not less than 10 days prior to the proceeding at which the party wishes to appear remotely, and shall include the pertinent telephone number(s) and/or other connection instructions.

(2) If the motion is to conduct only a portion of the proceeding by telephony, the requesting party shall identify the relevant portion of the proceeding to be conducted by telephony.

(3) Any reply to a motion shall be made in writing and shall be filed with the Docket Services Section and served in accordance with §1.45 of this title within five days of service of the motion.

(4) Upon agreement of the parties or a finding of good cause, the examiner may modify the times for filing a motion for an appearance by telephony and/or replies to such a motion.

(c) Unless a timely objection is filed by another party, the examiner may grant the motion if:

(1) the moving party will not present any evidence as part of its direct case other than the oral testimony of that party or a single party representative; and

(2) the motion is to appear by telephony for which the Commission has all necessary equipment and technology.

(d) If a timely objection is filed, the objecting party has the burden of showing how the requested relief will unduly burden the proceeding or unfairly prejudice the objecting party.

(e) If the moving party will present any evidence other than the oral testimony of that party or a single party representative or requests a method of telephony for which the Commission does not have all necessary equipment and technology, and no timely objection is filed, the examiner shall consider the factors in subsection (f) of this section and issue a ruling on the motion. If a timely objection is filed, the moving party shall have the burden of showing that the requested relief will not unduly burden the proceeding or unfairly prejudice any party and the examiner shall issue a ruling taking into consideration the arguments of the parties and the factors in subsection (f) of this section.

(f) In considering whether conducting all or part of a prehearing or posthearing conference or hearing by telephony is feasible, the examiner shall ensure that the proceeding will provide due process and will be fair, and shall take into account the following factors:

- (1) whether a party's request is timely;
- (2) whether all parties to a protested proceeding have agreed in writing to conducting all or part of the proceeding by telephony;

- (3) equipment and technology constraints;
- (4) the number of parties;
- (5) the number of witnesses;
- (6) the number and type of exhibits;
- (7) the distance of the parties or witnesses from Austin;
- (8) the nature of the hearing;
- (9) the testimony to be offered; and
- (10) any other pertinent factors which may affect the proceeding.

(g) The examiner shall issue a ruling within a reasonable time period prior to the proceeding stating whether the proceeding will be conducted, in whole or in part, by telephony and serve prompt written notice of the ruling on all parties.

(h) The Commission may consider the following events to constitute a failure to appear and grounds for default or dismissal:

- (1) failure to connect or answer for more than 10 minutes after the scheduled time for the proceeding;
- (2) failure to be ready to proceed with the proceeding after 10 minutes of the scheduled time; and
- (3) a party's intentional disconnection.

(i) In the event of accidental disconnection of one or more parties to the proceeding or other technical issues, the examiner shall immediately recess the hearing and attempt to re-establish the connection or connections.

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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 Haley Cochran
 Rules Attorney, Office of General Counsel
 Railroad Commission of Texas
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SUBCHAPTER H. DECISION

16 TAC §§1.121 - 1.131

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas on February 28, 2017.

§1.121. Proposals for Decision.

(a) In a contested case, if a majority of the Commissioners have not heard the case or read the record, the decision, if adverse to a party other than the Commission, may not be made until:

- (1) a proposal for decision is served on each party; and
- (2) an opportunity is afforded to each adversely affected party to file exceptions and present briefs to the Commission.

(b) The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record.

(c) The parties may waive the requirements of subsections (a) and/or (b) of this section by written stipulation.

(d) The examiner may direct a party to draft and submit proposed findings of fact and conclusions of law. The examiner may limit the request for proposed findings or conclusions to any particular issue or issues of fact. The party's proposed findings of fact and conclusions of law shall be supported by concise and explicit statements of underlying facts developed from the record with specific record references. If the examiner requires the filing of proposed findings of fact or conclusions of law, the Commissioners shall rule on each proposed finding and conclusion. If the examiner permits but does not require a party to submit proposed findings of fact or conclusions of law, a ruling on the proposed findings or conclusions is not required.

(e) When a proposal for decision is issued, a copy of the proposal shall be served promptly on each party or its authorized representative.

(f) An examiner may amend or correct a previously served proposal for decision or proposed order and shall serve the amendment or correction on the parties. Exceptions and replies are not permitted in response to a clerical or typographical correction. When substantive amendments are necessary prior to presentation at conference, an examiner shall specify the time period for the filing of exceptions and replies. Amendments adopted by the Commission shall be noted with specificity in the Commission's final order.

§1.122. Filing of Exceptions and Replies.

(a) Any party may, within 15 days after the date of service of a proposal for decision, file exceptions to the proposal for decision. Replies to such exceptions may be filed by any other party within 10 days after the deadline for filing such exceptions. Either party may file a case summary with the party's exceptions or replies.

(1) Exceptions and replies shall be filed with the Docket Services Section by hand delivery, first class, certified or registered mail, or commercial delivery service. The number of copies filed will be determined by the examiner as stated in the notice to the parties issued with the proposal for decision. Exceptions, replies, and case summaries may not be filed by fax or email unless permitted by the examiner or Hearings director.

(2) All copies shall be unstapled and three-hole punched for a three-ring binder.

(3) The filing party shall serve the exceptions or replies in accordance with §1.45 of this title (relating to Service in Protested Contested Cases).

(b) The examiner, or the parties by agreement with the examiner's approval, may lengthen or shorten the time periods set out in this section if good cause is shown. A request for extension of time within which to file exceptions or replies shall be filed with the examiner and copies shall be served by the party making such a request in accordance with §1.45 of this title. The examiner shall promptly notify the parties

of any action taken and shall grant the request only if good cause is shown.

(c) The Commissioners may consider the case as soon as:

(1) the time for filing exceptions and replies expires; or

(2) the exceptions and replies are filed, if filed before the filing deadline.

(d) Additional filings shall not be made and will not be accepted or considered after an item has been included on a Commission open meeting agenda posted with the Secretary of State unless the filing:

(1) exclusively concerns material circumstances or events that arose after the item was posted; or

(2) was requested by the Commissioners, the Hearings Director, or the examiner.

§1.123. Commission Action.

(a) At an open meeting, the Commissioners may:

(1) adopt, modify, or reject the examiner's proposed findings of fact and conclusions of law in whole or in part;

(2) remand the proceeding for further consideration by the same examiner or a different examiner;

(3) direct the examiner to further consider the case with or without reopening the hearing.

(b) If, on remand by the Commissioners, additional evidence is received which results in a substantial change of the examiner's recommendation for final action, an amended proposal for decision shall be prepared and circulated to the parties, unless a majority of the Commission has held the hearing or read the record. If an amended proposal for decision is prepared, all parties shall have the right to file exceptions, replies, and briefs.

§1.124. Oral Argument before the Commission.

(a) Any party may request oral argument on a matter before the Commissioners by filing the request with the Docket Services Section as part of a party's exceptions, replies to exceptions, motion for rehearing, or reply to a motion for rehearing. A party may not orally request the opportunity to make oral argument at a Commission open meeting.

(b) Oral argument may be allowed at the discretion of the Commissioners. Failure of the Commissioners to grant a request for oral argument shall be deemed denial of the request.

(c) The Commissioners may request that parties to any proceeding present oral argument.

(d) If the Commissioners will hear oral argument, the Commissioners shall determine the date, time, and order of the oral argument. The Commissioners may:

(1) request that parties focus their arguments on particular issues in the case;

(2) determine the sequence in which parties will proceed, and which party, if any, may close;

(3) impose time limits on all speakers;

(4) limit or exclude unduly repetitious arguments and presentations;

(5) require that one representative present the information and position of closely aligned persons or entities; and

(6) set deadlines for filing additional information or written briefs in the case.

(e) Persons who need special equipment or assistance and who have a special request concerning the presentation of comments or oral argument should contact the secretary of the Commission at least 48 hours prior to the start of the open meeting to ensure that they are provided with the necessary special equipment or assistance. Failure to make such a request will not preclude a person from providing comment or oral argument. A special request includes:

(1) presentation of video or audio recordings; and/or

(2) use of audio or visual aids.

(f) The Commissioners will accept unsolicited comments from elected officials when they are acting in their official capacities.

§1.125. Interim Orders Entered by the Commissioners.

When an interim order is provided for by law, a request for an interim order will be presented to the Commissioners for consideration at an open meeting. An interim order shall not be considered a final Commission decision. Interim orders are not appealable and shall not be subject to exceptions or motions for rehearing, as provided by the APA or the rules in this chapter.

§1.126. Final Decisions and Orders.

(a) A final decision or final order adverse to any party in a contested case shall be in writing and shall be signed by two or more Commissioners. Final decisions or final orders shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If in accordance with §1.121 of this title (relating to Proposals for Decision) a party submits proposed findings of fact or conclusions of law as required by the examiner, the decision shall include a ruling or order on each proposed finding. All parties shall be notified of any decision or order pursuant to subsections (b) and (c) of this section.

(b) When a decision or order in a contested case that may become final under Texas Government Code, §2001.144 is signed or when an order ruling on a motion for rehearing is signed, the Commission shall deliver or send a copy of the decision or order to each party in accordance with subsection (c) of this section. The Commission shall keep a record documenting the provisions of the notice provided to each party.

(c) Methods of notice. The Commission shall notify each party to a contested case of any decision or order of the Commission in the following manner:

(1) personally;

(2) if agreed to by the party to be notified, by email to the party's current email address or fax number of the party's authorized representative, or of the party if the party is not represented; or

(3) by first class, certified, or registered mail, or commercial delivery service sent to the last known address of the party's authorized representative or of the party if the party is not represented.

§1.127. Effective Date.

A decision or order becomes final as provided in §1.130 of this title (relating to Finality of Decisions or Orders). The effective date of a decision or order is the date it is signed by a majority of the Commissioners, unless otherwise stated in the order and subject to a motion for rehearing. The effective date shall be incorporated into the body of the decision.

§1.128. Motions for Rehearing.

(a) Motions for rehearing, if filed, must be filed by a party not later than the 25th day after the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has been extended under subsection (e) of this section. A motion for rehearing must identify with particularity the findings of facts or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error. On filing of the motion for rehearing, copies of the motion shall be served on all other parties in accordance with §1.45 of this title (relating to Service in Contested Cases).

(b) Replies to motions for rehearing must be filed not later than the 40th day after the date the decision or order that is subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement or by a written Commission order. On filing of the reply, copies of the reply shall be served on all other parties in accordance with §1.45 of this title.

(c) Motions for rehearing and replies to motions for rehearing may not be filed by fax or email unless permitted by the examiner or the Hearings director. The number of copies required to be filed will be determined by the examiner as noted in the notice to the parties issued with the proposal for decision. All copies shall be unstapled and three-hole punched for a three-ring binder.

(d) Commissioners shall act on a motion for rehearing not later than the 55th day after the date the decision or order that is the subject of the motion is signed or the motion for rehearing is overruled by operation of law.

(e) The deadline for filing a motion for rehearing may be extended as follows:

(1) The Commission may, on its own initiative or on the motion of any party for cause shown, by written order, extend the period of time for filing these motions and replies and for taking Commission action, provided that the Commission extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. An extension shall not extend the period for Commission action beyond the 100th day after the date the decision or order that is the subject of the motion is signed. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, on the 100th day after the decision or order that is the subject of the motion is signed;

(2) The parties may, by agreement and with the approval of the Commission, provide for a modification of the time periods provided in this section; or

(3) Pursuant to Texas Government Code, §2001.142.

(f) A subsequent motion for rehearing is not required after the Commission rules on a motion for rehearing unless the order disposing of the original motion for rehearing:

(1) modifies, corrects, or reforms in any respect the decision or order that is the subject of the complaint, other than a typographical, grammatical, or other clerical change identified as such by the agency in the order, including any modification, correction, or reformation that does not change the outcome of the contested case; or

(2) vacates the decision or order that is the subject of the motion and provides for a new decision or order.

(g) A subsequent motion for rehearing required by subsection (f) of this section must be filed not later than the 25th day after the date the order disposing of the original motion for rehearing is signed.

§1.129. Effect of Order Granting Rehearing.

An order granting a motion for rehearing vacates the preceding final order. When the Commission renders a new final decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.

§1.130. Finality of Decisions or Orders.

(a) A decision or order in a contested case is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order denying the motion for rehearing is signed; or

(B) the motion is overruled by operation of law;

(3) if the Commission finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision or order is signed, provided that the agency incorporates in the decision or order a factual and legal basis establishing an imminent peril to the public health, safety, or welfare; or

(4) on:

(A) the date specified in the decision or order for a case in which all parties agree to the specified date in writing or on the record; or

(B) if the agreed specified date is before the date the decision or order is signed, the date the decision or order is signed.

(b) If a decision or order is final under subsection (a)(3) of this section, the Commission shall recite in the decision or order the finding made under that subsection and the fact that the decision or order is final and effective on the date signed.

§1.131. Administrative Record.

The party appealing the Commission's order shall pay to the Commission the cost of preparing the original or a certified copy of the record prior to it being transmitted to the reviewing court at rates approved by the Office of the Attorney General of Texas. When more than one party appeals the Commission's order, the cost of the preparation of the record shall be divided equally among the appealing parties or as agreed by the parties.

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 28, 2017.

TRD-201700805

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 475-1295



SUBCHAPTER J. RULEMAKING

16 TAC §1.301

The Commission proposes the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

Issued in Austin, Texas, on February 28, 2017.

§1.301. Petition for Adoption of Rules.

(a) An interested person may petition the Commission requesting adoption of a rule. Petitions shall be in writing and filed with the Office of General Counsel.

(b) Each petition must state the name and address of the petitioner.

(c) Each petition shall include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated; and

(4) a justification for adoption of the rule.

(d) For the purposes of this section, an interested person must be:

(1) a resident of this state;

(2) a business entity located in this state;

(3) a governmental subdivision located in this state; or

(4) a public or private organization located in this state that is not a state agency.

(e) The Office of General Counsel shall review all petitions for compliance with this section. If rejected, the petitioner may file a corrected petition that complies with the requirements of this section.

(f) Upon receipt of a petition that complies with the requirements of this section, the Office of General Counsel shall present the petition to the Commissioners with a recommendation on whether a rulemaking proceeding should be initiated.

(g) The Commissioners shall either deny the petition or approve initiation of rulemaking proceedings in accordance with the APA and these rules. The Commission may modify any proposed rule to ensure that it conforms to the format of Commission rules, adequately addresses the subject matter of the petition, and conforms to the filing requirements of the Texas Register.

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 28, 2017.

TRD-201700806

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 475-1295

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 7. ADMINISTRATION

22 TAC §7.11

The Texas Board of Architectural Examiners (Board) proposes new §7.11, pertaining to Enhanced Contract and Performance Monitoring. The proposed rule implements Texas Government Code §2261.253, which requires state agencies to adopt a rule which establishes a procedure to identify contracts that require enhanced contract monitoring and submit information on such contracts to the agency's governing body.

Proposed §7.11 would require the Board to complete a risk assessment to identify procurement contracts for goods or services from a private vendor that require enhanced contract or performance monitoring. In implementing this requirement, the agency finance manager would be required to complete a risk assessment for all contracts over \$25,000, and is authorized to complete a risk assessment for contracts of a lesser value. The proposed rule identifies factors that may be considered in determining whether enhanced contract or performance monitoring is required. Contracts identified for enhanced contract monitoring under the proposed rule would be reported to the Board, along with the basis for the determination, any serious risks or issues identified with the contract, and staff's plan for carrying out enhanced contract monitoring. Subsequently, the Board would be provided status reports on the contract, as directed by the Board.

FISCAL NOTE

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the proposed rule is in effect, the rule would have no adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the proposed rule is in effect, the anticipated public benefit would be the creation of a process to efficiently and effectively identify agency contracts in need of enhanced contract monitoring, in furtherance of legislative directive. There is no anticipated cost of compliance with the proposed rule.

The proposed rules will have no negative fiscal impact on small or micro-business and no employment impact statement or regulatory flexibility analysis is required.

CROSS REFERENCE TO STATUTE

The proposed rule does not affect any other statutes.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

STATUTORY AUTHORITY

The rule is proposed under Section 1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code, and Section 2261.253 of the Texas Government Code, which requires the Board to adopt a rule which establishes a procedure to identify contracts that require enhanced contract monitoring and submit information on such contracts to the agency's governing body.

§7.11. Enhanced Contract and Performance Monitoring.

(a) The Board will complete a risk assessment to identify procurement contracts for goods or services from a private vendor that require enhanced contract or performance monitoring.

(b) For all contracts with a value greater than \$25,000, the finance manager will complete a risk assessment to evaluate whether enhanced contract or performance monitoring may be required. For contracts of a lesser value, the finance manager may complete a risk assessment to evaluate whether enhanced contract or performance monitoring is indicated. The risk assessment may consider the following factors:

- (1) total cost of the contract, including contract renewals;
- (2) risk of loss to the agency under the contract;
- (3) risk of fraud, waste or abuse;
- (4) scope of the goods or services provided;
- (5) availability of agency resources;
- (6) complexity of the contract;
- (7) business process impact of failure or delay;
- (8) vendor past performance; and
- (9) whether the vendor is a foreign or domestic person or

entity.

(c) Contracts identified for enhanced contract and/or performance monitoring will be reported to the Board at the first regular Board meeting after the contract is executed. The report shall include:

- (1) the basis for the determination that enhanced contract or performance monitoring is appropriate;
- (2) any serious issues or risks identified with the contract, if applicable; and
- (3) the plan for carrying out the enhanced contract or performance monitoring.

(d) For any contract subject to enhanced contract or performance monitoring, the finance manager shall provide the Board with progress reports, as directed by the Board.

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

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

Filed with the Office of the Secretary of State on March 3, 2017.

TRD-201700841

Lance Brenton
General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 305-8519

◆ ◆ ◆ TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.30

Introduction and Background

The Texas General Land Office (GLO) proposes amendments to Chapter 3, Subchapter C, Services and Products, including §3.30, concerning Historically Underutilized Business Programs. The proposed amendments to §3.30 conform with non-substantive changes made to other rules in the Texas Administrative Code.

Fiscal Impact

Anne Idsal, Chief Clerk/Deputy Land Commissioner, has determined that for each year of the first five years that the proposed amendments will be in effect, minimal fiscal implications for state government will result from better recovery for services provided by the GLO.

Public Benefit/Cost Analysis

Anne Idsal has determined that for each year of the first five years the amendment is proposed to be in effect, the public benefit will be improved operation of the GLO with better clarity and consistency of the GLO's rules.

Small Business Analysis

The GLO has determined that for each year of the first five years the proposed amendments will be in effect, there will be minimal economic cost to small businesses, micro-businesses, and individuals based on the proposed amendments.

Employment Impact

The GLO does not anticipate any employment impact as a result of administering the proposed rule amendments.

Request for Comments by the Public

To comment on the proposed amendments, please send a written comment to Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.texas.gov.

Statutory Authority

The amendments are proposed under Texas Natural Resources Code §31.051 and Texas Government Code §2161.003, which provide the GLO with the authority to set and enforce rules consistent with the law.

Statutes Affected

No statutes are affected by the proposed amendments.

§3.30. *Historically Underutilized Businesses [Program].*

In accordance with Texas Government Code, §2161.003, the General Land Office adopts by reference the Comptroller of Public Accounts' rules found at Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, [Subchapter B] relating to [the] Historically Underutilized Businesses [Business Program].

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

Filed with the Office of the Secretary of State on March 6, 2017.

TRD-201700855

Anne L. Isdal

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 475-1859



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 6. PAROLE AND DISCHARGE

37 TAC §380.8595

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8595, concerning Parole Completion and Discharge.

The amended rule will remove the requirement that youth with offenses of high severity or who were ever classified as Type A Violent must remain on parole until age 19. These youth may now successfully complete parole and be discharged before reaching age 19.

The amended rule will also add two new requirements for the successful completion of parole: 1) youth with a committing or revocation offense of high severity must successfully complete 90 days on the minimum level of parole supervision and 2) all other youth must successfully complete 30 calendar days on the minimum level of parole supervision.

In addition, the amended rule will clarify that youth may qualify for discharge upon successfully completing 40 hours of approved constructive activities each week for the four consecutive weeks immediately prior to the discharge date (instead of each week for at least 30 days).

The amended rule will also remove the condition that a youth must never have been classified as a Type A Violent offender nor had a committing offense of high severity in order for that youth to be discharged prior to the completion of parole requirements to enlist in the military.

The amended rule will also clarify that youth placed out of state may be discharged when the youth is adjudicated by a juvenile court or convicted by a criminal court in the placement state and that approval from the executive director is not required for such discharges.

In addition, the amended rule will remove the condition that a youth must never have been classified as a Type A Violent offender nor had a committing offense of high severity in order for that youth to be discharged prior to the completion of parole requirements to obtain appropriate services and also will clarify that a designee of the executive director may approve such discharges.

The amended rule will also clarify that special discharges for reasons other than those listed in the rule may be approved by a designee of the executive director.

The amended rule will also add that TJJD discharges a youth when the youth is placed on actively supervised adult probation for conduct that occurred in a TJJD or contract residential facility while the youth was not on parole status and the youth spent at least 180 days in county jail awaiting the disposition.

In addition, the amended rule will specify that TJJD notifies the youth's parole officer at least ten calendar days before the youth's discharge or as soon as practicable, if the youth is not on parole status at a home location at the time of discharge, and that TJJD notifies the chief juvenile probation officer for the county in which the youth will be living after discharge at least ten calendar days before the youth's discharge or as soon as practicable, if that county is different than the one that committed the youth.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Rebecca Walters, Senior Director of Youth Placement, Re-entry, and Program Development, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the availability of rules that have been updated to conform to current laws, to more accurately reflect TJJD's current operational practices, and to move the agency toward best practices in supervision and discharge of youth on parole.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or e-mail to policy.proposals@tjjd.texas.gov.

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, and §245.001, which authorizes TJJD to employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the rules adopted by the TJJD Board.

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

§380.8595. *Parole Completion and Discharge.*

(a) Purpose. This rule establishes ~~[The purpose of this rule is to establish]~~ criteria for discharging certain youth from the jurisdiction of the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule applies only to non-sentenced offenders. Refer to §380.8565 of this title for information relating to discharging ~~[discharge of]~~ sentenced offenders.

(c) Discharge Criteria.

(1) Discharge Due to Successful Completion of Parole.

(A) Youth ~~[who have never been classified as a Type A Violent offender and whose committing offense(s) are of moderate or low severity]~~ may qualify for discharge upon completion of the following criteria:

(i) successful completion of the following amount of time on the minimum ~~[pre-discharge]~~ level of parole supervision ~~[or equivalent, if on parole in another state];[:]~~

(I) 90 days for a youth with a committing or revocation offense of high severity; or

(II) 30 calendar days for all other youth; and

(ii) compliance with the youth's conditions of parole/placement ~~[parole, based on the individual needs assessment];~~

(iii) no pending criminal charges or delinquency petitions or referrals ~~[criminal charges];~~

(iv) completion of 60 hours of approved community service while on parole status ~~[as specified in the youth's conditions of parole (credit is granted for community service performed while in a medium restriction facility, if applicable)]; and~~

(v) completion of 40 hours of approved constructive activities ~~[as defined on the conditions of parole]~~ each week for the four consecutive weeks immediately prior to the discharge date ~~[at least 30 days]~~. Constructive activity includes, but is not limited to, time spent working, attending school, attending treatment or counseling ~~[treatment/counseling]~~, completing community service, actively searching for employment, and/or ~~[and]~~ providing direct supervision to a child.

(B) The executive director or ~~[his/her]~~ designee may approve the discharge of a youth who has not yet completed ~~[prior to completion of]~~ the requirements in subparagraph (A) of this paragraph when consideration of the ~~[a]~~ youth's committing offense, behavior, history, and progress toward ~~[towards]~~ completion of parole/placement ~~[parole]~~ conditions justifies an earlier discharge.

(2) Direct Discharge from Residential Facility by Release Review Panel. Pursuant to §380.8557 of this title, the Release Review Panel may discharge a youth directly from a residential facility if it determines: [placement upon a finding that]

(A) the youth is no longer in need of rehabilitation; or

(B) ~~[that]~~ TJJD is no longer the most suitable location to provide the needed rehabilitation.

(3) Discharge Due to Age.

~~[(A) Youth committed to TJJD before February 1, 2009, who were ever classified as Type A Violent offenders or youth committed to TJJD on or after February 1, 2009, with committing or revocation offenses of high severity are discharged on:]~~

~~[(i) the day before the 19th birthday, if the youth is assigned to a residential facility; or]~~

~~[(ii) the last working day prior to the 19th birthday, if the youth is assigned to a non-residential placement.]~~

~~(A) [(B)] Any youth who has not previously been discharged due to successful completion of parole or by the Release Review Panel is discharged on:~~

~~(i) the day before the 19th birthday, if the youth is assigned to a residential facility; or~~

~~(ii) the last working day prior to the 19th birthday, if the youth is assigned to a non-residential placement.~~

~~(B) [(C)] A youth on parole status who is discharged due to age is considered to have successfully completed parole if the youth:~~

~~(i) is not in jail or on abscond status;~~

~~(ii) has no pending criminal charges or delinquency petitions or referrals ~~[criminal charges]; and~~~~

~~(iii) has substantially complied with all parole requirements.~~

(4) Discharge Due ~~[due]~~ to Special Circumstances.

(A) Youth ~~[who have never been classified as a Type A Violent offender and do not have a committing offense of high severity]~~ may be discharged prior to completion of parole requirements to enlist in the military. Only the executive director may approve such a discharge.

(B) In addition to other discharge criteria listed in this rule, a youth ~~[Youth]~~ placed out of state may be discharged ~~[when requested by the placement state for satisfactory adjustment or]~~ when the youth is adjudicated by a juvenile court or convicted by a criminal court in ~~[court action is taken by]~~ the placement state. ~~[Only the executive director may approve such a discharge.]~~

(C) Youth who have completed length-of-stay requirements and who are unable to progress in the agency's rehabilitation program because of mental illness or intellectual disability ~~[mental retardation may]~~ be discharged as specified in §380.8779 of this title.

(D) Youth ~~[who have never been classified as a Type A Violent offender and do not have a committing offense of high severity]~~ who are age 18 or older may be discharged prior to completion of parole requirements in order to obtain appropriate services. Only the executive director or designee may approve such a discharge.

(E) Upon approval from the executive director or designee, youth ~~[Youth]~~ may be discharged for special circumstances other than those addressed in subparagraphs (A) - (D) of this paragraph ~~[upon the executive director's approval].~~

(5) Other Types of Discharges. TJJD discharges a youth when:

(A) the youth is sentenced for a minimum of 180 days in a state or county jail as part of the disposition of a criminal case;

(B) ~~[(A)]~~ the youth is placed on actively supervised adult probation for conduct that occurred while on TJJD parole status;

~~(B)~~ the youth is sentenced for a minimum of 180 days in a state or county jail as part of the disposition of a criminal case;

~~(C)~~ the youth is placed on actively supervised adult probation for conduct that occurred while the youth was in a TJJD or contract residential facility and not on parole status and the youth spent at least 180 days in county jail awaiting the disposition;

~~(D)~~ ~~(C)~~ the court orders a reversal of the commitment;

~~(E)~~ ~~(D)~~ records are closed following the [a] youth's death; or

~~(F)~~ ~~(E)~~ the youth is sentenced to the Texas Department of Criminal Justice - Correctional Institutions [~~Institutional~~] Division.

(d) Notification.

(1) TJJD immediately notifies the youth of the discharge and provides the youth and the parent/guardian a written explanation of procedures for sealing records.

(2) TJJD notifies the following at least ten calendar days before the youth's discharge or as soon as practicable:

(A) the committing juvenile court;

(B) the prosecuting attorney;

(C) the youth's parole officer, if the youth is not on parole status at a home location at the time of discharge;

(D) the ~~county~~ chief juvenile probation officer for [in] the county in which the youth will be living after discharge if that county is different than the one that committed the youth [to which the youth is being moved]; and

(E) any entity that has issued an active warrant for the youth.

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

Filed with the Office of the Secretary of State on March 3, 2017.

TRD-201700835

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 490-7278



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER A. ACCREDITATION

37 TAC §651.7

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 TAC §651.7 to 1) add the forensic discipline "forensic odontology used for purposes of human identification and age assessment, not to include bite mark comparison related to patterned injuries"; 2) add the forensic discipline "testing and/or screening conducted for sexually transmitted diseases"; and 3) remove the forensic discipline "forensic hypnosis"

from the list of forensic disciplines exempt from statutory Commission Accreditation. The amendments are necessary to update the rule language in Title 37, Part 1, Chapter 651, Subchapter A, §651.7 to reflect adoptions made by the Commission at its October 5, 2016 quarterly meeting, excluding forensic odontology used for human identification and age assessment from accreditation oversight in Texas and removing forensic hypnosis from the list of forensic disciplines exempt from accreditation oversight in Texas and at its February 10, 2016 meeting, excluding testing and/or screening conducted for sexually transmitted diseases from accreditation oversight in Texas. The adoption was made in accordance with the Commission's accreditation authority to exempt from the crime laboratory accreditation process a type of analysis, examination, or test as described in Texas Code. Crim. Proc. art. 38.01 §4-d(c).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be accurate and updated rules.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the rule as proposed.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by March 29, 2017 to be considered by the Commission.

Statutory Authority. The amendment is proposed under Texas Code Crim. Proc. art 38.01 §4-d.

Cross reference to statute. The proposal affects 37 Texas Admin. Code §651.7.

§651.7. Disciplines, Subdisciplines, and Procedures Exempt from Statutory Commission Accreditation.

(a) This section describes a discipline, subdiscipline, or procedure that is 'forensic analysis' but is not subject to accreditation by one or more recognized accrediting bodies.

(b) Even though a discipline or subdiscipline is forensic analysis, the Commission has determined that no accreditation is appropriate

or available from a recognized accrediting body for the following disciplines, subdisciplines, or procedures and a laboratory may not apply for Commission accreditation for:

- (1) sexual assault examination of the person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- ~~{(8) forensic hypnosis;}~~
- (8) ~~[(9)]~~ statement analysis;
- (9) ~~[(10)]~~ profiling; ~~[or]~~

(10) forensic odontology for purposes of human identification or age determination, not to include bite mark comparison related to patterned injuries;

(11) testing and/or screening conducted for sexually transmitted diseases; or

(12) ~~[(11)]~~ other discipline or subdiscipline so determined by the Commission, including those identified and listed at the Commission's website.

(c) A request for exemption shall be submitted in writing to the Commission.

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-201700778

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: April 16, 2017

For further information, please call: (512) 936-0661





Lizeth Rosas 8th Grade

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.56

Proposed new §20.56, published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6583), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on March 6, 2017.

TRD-201700842



1 TAC §20.61

Proposed amended §20.61, published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6584), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on March 6, 2017.

TRD-201700843



TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

Proposed amended §79.30, published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6591), is automatically

withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on March 6, 2017.

TRD-201700844



CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.302

Proposed amended §80.302, published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6592), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on March 6, 2017.

TRD-201700845



CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.302

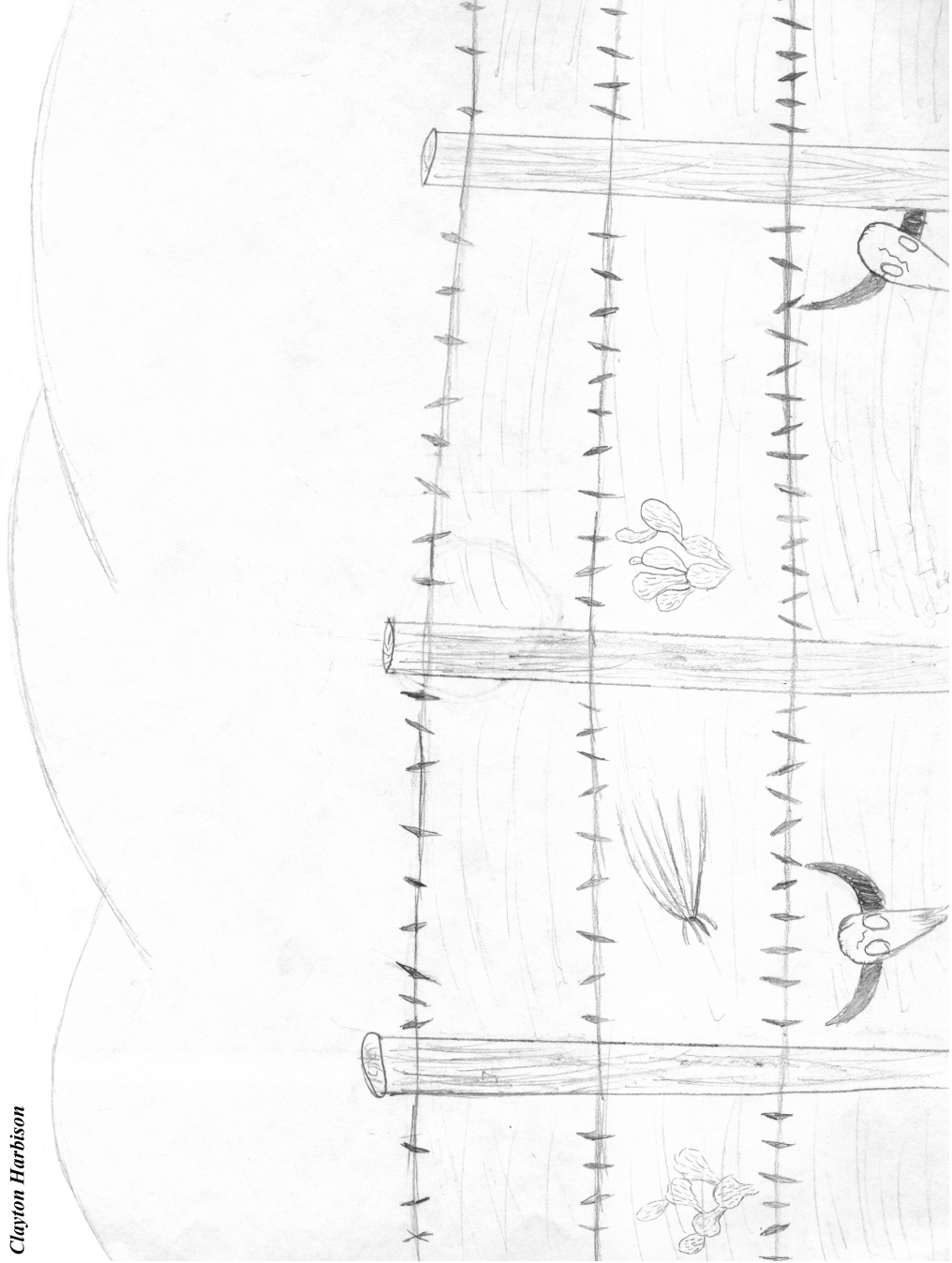
Proposed amended §81.302, published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6592), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on March 6, 2017.

TRD-201700846



Clayton Harbison



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §354.1432

The Texas Health and Human Service Commission (HHSC) adopts amended §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations. The amended rule is adopted without changes to the proposed text published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10034).

BACKGROUND AND JUSTIFICATION

The rule amendments clarify that a patient must receive an initial evaluation by a physician or other qualified healthcare professional prior to receiving telehealth services, with the exception of services to treat a mental health diagnosis or condition. The rule amendments further require that a patient receive an annual follow-up evaluation by a physician or other qualified healthcare professional for continued receipt of telehealth services, again with the exception of services to treat a mental health diagnosis or condition. The amendments permit the evaluating physician or other qualified healthcare professional to conduct the evaluation in person or through a telemedicine visit that conforms to Texas Medical Board rules in 22 TAC Chapter 174, concerning Telemedicine.

COMMENTS

The 30-day comment period ended January 23, 2017. During this period, HHSC did not receive any comments regarding the amended rule.

STATUTORY AUTHORITY

The amended rule is 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 March 1, 2017.

TRD-201700821

Karen Ray

Chief Counsel

Texas Health and Human Service Commission

Effective date: March 21, 2017

Proposal publication date: December 23, 2016

For further information, please call: (512) 462-6275



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, without changes to the proposed text as published in December 30, 2016, issue of the *Texas Register* (41 TexReg 10504) and will not be republished. The section adopts by reference the 2017 State of Texas Low Income Housing Plan and Annual Report ("SLIHP") as a rule. No changes have been made to the rule text or to the 2017 SLIHP in response to comment.

REASONED JUSTIFICATION. The Department finds that Tex. Gov't Code §2306.0723 specifically authorizes the Department to consider the SLIHP as a rule. Accordingly, the amendment adopts by reference the 2017 SLIHP. The purpose of the rule and referenced 2017 SLIHP is to serve as a comprehensive reference on statewide housing needs, housing reviews, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2016 performance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was between December 30, 2016, and January 27, 2017, and a public hearing was held

on January 4, 2017, in Austin, TX. Written comments were accepted by mail, email, and facsimile.

Although no comments were received concerning the proposed rule amendment, the Department received eight comments on the 2017 SLIHP from one source: Texas Council for Developmental Disabilities ("TCDD").

Comment 1: TCDD commented on the unmet need for individuals with incomes below 30% AMFI, stating that failure to provide housing that is affordable to people with disabilities or to the elderly who rely on federal assistance, such as Social Security Disability Income ("SSDI") or Supplement Security Income ("SSI"), results in reduced safety or displacement from the community. Further, TCDD commented that only the Section 811 Program, Homeless Housing and Services Program ("HHSP"), and Emergency Solutions Grant Program ("ESG") target individuals with income below 30% AMFI and urged TDHCA to go beyond simply recognizing the unmet need and provide more for this income group.

Department Response: TDHCA's mission is to administer its assigned programs efficiently, transparently, and lawfully and to invest its resources strategically and develop high quality affordable housing which allows Texas communities to thrive.

In addition to the Section 811 Program, HHSP, and ESG, TDHCA administers the Community Services Block Grant ("CSBG") Program, which serves Texans who fall within the very low and extremely low income categories. Through CSBG, TDHCA served more than 559,000 very low and extremely low-income Texans in SFY 2016.

Also, in the 2017 Qualified Allocation Plan ("QAP"), which governs the awarding and allocation of 2017 9% Housing Tax Credit ("HTC") program funds, scoring priority may be awarded to applicants who elect to restrict an additional 10% of the proposed low income units for households at or below 30% of Area Median Gross Income ("AMGI"). These units must be in addition to units required under any other provision of the 2017 QAP. While the pre-application period for the 2017 HTC has concluded, the Department is actively seeking stakeholder input on the development of the 2018 QAP.

Finally, through the Department's Multifamily Direct Loan Program, funding is provided to nonprofit and for-profit entities for the new construction or rehabilitation of affordable multifamily rental developments. Funding is typically provided in the form of low interest rate, repayable construction-to-permanent loans. Multifamily developments funded through the Department's Multifamily Direct Loan Program must comply with long-term rent and income restrictions and may be layered with additional funding sources (such as HTC). In the Multifamily Direct Loan Program NOFA, released in December 2016, funds under a Supportive Housing/Soft Repayment Set-Aside are intended to increase the number of 30% rent-restricted units and occupy them with households with an annual income of 30% Area Median Income ("AMI") or less who are not currently receiving any type of rental assistance. The Department will accept applications under this NOFA beginning on January 9, 2017. Based on the availability of funds, applications may be accepted until 5:00 p.m. Austin Local Time on August 31, 2017. The NOFA can be found at <http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm>.

Through the administration of all programs, TDHCA will continue to solicit public and stakeholder comment to enhance program administration and further meet its mission. No changes have been made to the 2017 SLIHP in response to this comment.

Comment 2: TCDD referenced TDHCA's Strategic Plan Goal 1 and recommended that TDHCA develop a target income category of between 0 and 110% of the level of SSI with the rationale that setting a threshold below "extremely low" will allow TDHCA to monitor, strategize, and allocate resources for a group that TCDD states has the greatest needs for housing and related supports.

Department Response: TDHCA's Strategic Plan Goals reflect program performance based upon measures developed with the State's Legislative Budget Board ("LBB") and the Governor's Office of Budget, Planning and Policy ("GOBPP"). The goals are also based upon Riders attached to the Department's appropriations bill. The Department believes that the goals and objectives for the various TDHCA programs, to the extent feasible, should be consistent with its mandated performance requirements. Revising income eligibility and setting a target income category of between 0 and 110% of the level of SSI for programs addressed by Goal 1 (titled "TDHCA WILL INCREASE AND PRESERVE THE AVAILABILITY OF SAFE, DECENT AND AFFORDABLE HOUSING FOR VERY LOW-, LOW-, AND MODERATE-INCOME PERSONS AND FAMILIES") is driven by recommending changes to specific program rules. Opportunities for public comment on program rules are made available at <http://www.tdhca.state.tx.us/public-comment.htm>. Further, the Department has developed a plan for ongoing stakeholder involvement in development of the 2018 Qualified Allocation Plan ("QAP"), which governs the HTC program. The 2018 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multi-family/docs/18-QAP-ProjectPlan.pdf>. No changes have been made to the 2017 SLIHP in response to this comment.

Comment 3: Referring to Goal 3 of TDHCA's Strategic Plan goals, TCDD recommended that people with the greatest need, those classified as "extremely low-income," should be included in efforts to improve living conditions through rental and energy assistance, citing the burden of fluctuating utility and rental payments for those living on fixed incomes.

Department Response: In the utility assistance programs that Goal 3 and the TDCC comment refer to, program rules require the Department to establish priority criteria to serve persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Highest energy costs or needs in relation to income shall be the highest rated item in sliding scale priority determinations (10 TAC Chapter 5 Subchapter D, §5.407 and Chapter 6 Subchapter C, §6.307). No changes have been made to the 2017 SLIHP in response to this comment.

Comment 4: TCDD referenced Rider 5(a) of the General Appropriations Act and recommended that TDHCA increase the effective allocation of resources to reflect greater participation of extremely low-income individuals and households in mainstream community-integrated housing.

Department Response: As required by Rider 5(a) of the General Appropriations Act, TDHCA adopts an annual goal to apply no less than \$30,000,000 of the funds available from the Housing Trust Fund, HOME Program, Section 8 Program, and Housing Tax-Credit Program's total housing funds toward housing assistance for individuals and families earning less than 30 percent of the AMFI. TDHCA regularly exceeds this goal. The FY 2016 Rider 5 Report states that \$62,341,219 in funding assisted households at or below 30% AMFI, meeting the goal by

207.80%. No changes have been made to the 2017 SLIHP in response to this comment.

Comment 5: TCDD recommended that TDHCA include a goal to dedicate expected National Housing Trust Fund (NHTF) funding to establish community-integrated accessible housing for individuals who must rely on fixed Social Security income or incomes no greater than 20% AMFI.

Department Response: TDHCA has been named as the State Designated Entity that will administer NHTF funds in Texas. TDHCA has developed an NHTF Allocation Plan with public input in accordance with the HUD approved Citizen Participation Plan. The plan has already been submitted to the federal oversight agency and is awaiting approval; once the plan is approved, goals for activities will be included in Strategic Plan Goal 1. No changes have been made to the 2017 SLIHP in response to this comment.

Comment 6: TCDD recommended that TDHCA include a goal to encourage and provide incentives to employ people with disabilities in building, rehabilitating, or managing TDHCA housing programs in support of the Texas Employment First Policy for working age Texans adopted by the 83rd Texas Legislature.

Department Response: While the Employment-First policy, as required by Senate Bill 1226 (83rd Texas Legislature, Regular Session), only applies to the Health and Human Services Commission, the Texas Education Agency, and the Texas Workforce Commission, the Department recognizes the importance of competitive employment opportunities that provide a living wage for individuals with disabilities. Similar to the Department response to Comment 2, adding incentives to TDHCA programs to employ people with disabilities is driven by recommending changes to specific program rules. Opportunities for public comment on program rules are made available at <http://www.tdhca.state.tx.us/public-comment.htm>. Again, the Department has developed a plan for ongoing stakeholder involvement in development of the 2018 QAP, which governs the HTC program. The 2018 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multifamily/docs/18-QAP-Project-Plan.pdf>. No changes have been made to the 2017 SLIHP in response to this comment.

Comment 7: TCDD recommended that TDHCA include a goal to promote innovative approaches that advance community integrated housing opportunities for individuals with disabilities, and which may be funded through matching general revenue and federal funding.

Department Response: Similar to the Department response to Comment 2 and Comment 6, adding a goal to TDHCA programs to promote innovative approaches that advance community integrated housing opportunities for individuals with disabilities funded through matching general revenue and federal funding would be driven by changes to program rules. Opportunities for public comment on program rules are made available at <http://www.tdhca.state.tx.us/public-comment.htm>. Again, the Department has developed a plan for ongoing stakeholder involvement in development of the 2018 QAP, which governs the HTC program. The 2018 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multifamily/docs/18-QAP-Project-Plan.pdf>. No changes have been made to the 2017 SLIHP in response to this comment.

Comment 8: TCDD noted the success of the coordination between TDHCA and the Department of State Health Services ("DSHS") allowing Local Mental Health Authorities ("LMHAs") to

become HOME Tenant-Based Rental Assistance ("TBRA") administrators. This initiative supported individuals in subsidized housing while waiting for permanent housing subsidies. Based on that success, TCDD recommends that TDHCA direct funding to serve other persons with disabilities who have extremely low incomes who are at risk for homelessness.

Department Response: TDHCA has programs that serve special populations, including Persons with Disabilities who have extremely low incomes, and the Department already provides TBRA to persons with disabilities through subrecipients that are separate and in addition to the coordinated effort with LMHAs and DSHS. As funding opportunities become available, TDHCA will work with other partner agencies as appropriate. No changes have been made to the 2017 SLIHP in response to this comment.

The TDHCA Governing Board approved the 2017 SLIHP and the final order adopting the amendments on February 28, 2017.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Tex. Gov't Code §2306.053 which authorizes the Department to adopt rules and pursuant to §2306.0723 which specifically authorizes the Department to consider the SLIHP as a rule.

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 March 6, 2017.

TRD-201700856

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 26, 2017

Proposal publication date: December 30, 2016

For further information, please call: (512) 936-7803



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1050, 89.1055, and 89.1195, concerning special education services. The amendments to §89.1055 and §89.1195 are adopted without changes to the proposed text as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9205) and will not be republished. The amendment to §89.1050 is adopted with changes to the proposed text as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9205). The adopted amendments modify procedures related to students' individualized education programs (IEPs), the content of students' IEPs, and special education complaints.

REASONED JUSTIFICATION. Senate Bill (SB) 1259, 84th Texas Legislature, Regular Session, 2015, amended special education requirements in the TEC, §29.005, Individualized

Education Program. The changes specify that if a committee established under TEC, §29.005, is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's IEP. In addition, SB 1259 required that the written statement of the IEP document the decisions of the committee with respect to issues discussed at each committee meeting and include the date of the meeting; the name, position, and signature of each member participating in the meeting; and an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the committee. Finally, SB 1259 added language to specify that each member of the committee who disagrees with the IEP developed by the committee is entitled to include a statement of disagreement in the written statement of the program.

The adopted amendments to 19 TAC Chapter 89, Subchapter AA, Division 2, implement the requirements of TEC, §29.005, as follows.

Section 89.1050, The Admission, Review, and Dismissal (ARD) Committee, clarifies the procedures for when a member of a student's ARD committee disagrees with the proposed IEP. In response to public comments, §89.1050(c)(1)(B) is modified at adoption to add language that reads, "...who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP."

Section 89.1055, Content of the Individualized Education Program (IEP), includes the new content requirements for a student's IEP as added by SB 1259.

The adopted amendment to 19 TAC Chapter 89, Subchapter AA, Division 7, provides clarity and updates the rule to comply with the requirements of the Individuals with Disabilities Education Act. Specifically, §89.1195, Special Education Complaint Resolution, clarifies TEA's receipt of a special education complaint.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began November 25, 2016, and ended December 27, 2016, and included public hearings that were held on Thursday, December 8, 2016, and Friday, December 9, 2016. Following is a summary of public comments received, including those received at the public hearings, and corresponding agency responses.

Comment: The Texas State Teachers Association (TSTA), Disability Rights Texas (DRTx), and a parent who is a member of the Coalition of Texans With Disabilities and of the Down Syndrome Association of Central Texas recommended that 19 TAC §89.1050(c)(1)(B) be amended to include language requiring the regular education teacher who is a member of a student's admission, review, and dismissal (ARD) committee be, to the extent practicable, a teacher who is responsible for implementing a portion of the student's individualized education program (IEP).

Agency Response: The agency agrees and has modified §89.1050(c)(1)(B) at adoption.

Comment: DRTx expressed agreement that the proposed amendment to §89.1055 is appropriate.

Agency Response: The agency agrees. However, in response to another comment, the agency has modified §89.1050(c)(1)(B) at adoption.

Comment: TSTA and DRTx recommended that §89.1075(d) be amended to include language requiring school districts to de-

velop a process for teachers who instruct a student with a disability to provide input into the development of the student's IEP.

Agency Response: This comment is outside the scope of the proposed rulemaking. However, the recommended change is included as a requirement in the Texas Education Code, §29.001(11)(B), to which school districts and charter schools must adhere.

Comment: DRTx commented that the proposed amendment to §89.1195 is unwarranted and that it is contrary to 34 Code of Federal Regulations (CFR), §300.152, which establishes a 60-calendar day timeline for resolution of a special education complaint after the state education agency's (SEA's) receipt of a complaint. DRTx explained that 34 CFR, §300.11, defines "day" within the Individuals with Disabilities Education Act to mean calendar day unless otherwise specified.

Agency Response: The agency disagrees. 34 CFR, §300.151, requires the agency to inform stakeholders of its procedures related to the state complaints process. Therefore, the agency has determined that informing the public of when the 60-calendar day timeline for resolution of a special education complaint begins is important and warrants the inclusion of the clarification in rule.

As to the comment that the proposed amendment contradicts federal regulations, 34 CFR, §300.152(a), reads, "Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153...." In its *Questions and Answers on IDEA PART B Dispute Resolution Procedures*, revised July 2013, the Office of Special Education and Rehabilitative Services (OSERS) explains that SEAs have "some discretion in determining when a complaint is considered received.... For example, if a State complaint is filed electronically on a day that is not considered a business day (e.g., the weekend), the State could consider the complaint received on the date the complaint is filed or on the next business day."

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §89.1050, §89.1055

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §29.001, which requires the Texas Education Agency to develop and modify as necessary a statewide plan that includes rules for the administration and funding of the delivery of services to children with disabilities in the state of Texas so that a free appropriate public education is available to all of those children between the ages of 3 and 21; and TEC, §29.005, as amended by Senate Bill 1259, 84th Texas Legislature, Regular Session, 2015, which requires a school district, before a child is enrolled in a special education program, to establish a committee composed of the persons required under 20 U.S.C. §1414(d), to develop the child's individualized education program (IEP) and establishes procedures for the committee and required components of the IEP.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §29.001 and §29.005, as amended by Senate Bill 1259, 84th Texas Legislature, Regular Session, 2015.

§89.1050. The Admission, Review, and Dismissal Committee.

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial eval-

uation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

- (1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);
- (2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);
- (3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);
- (4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);
- (5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);
- (6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);
- (7) TEC, §28.006 (Reading Diagnosis);
- (8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
- (9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);
- (10) TEC, §28.0213 (Intensive Program of Instruction);
- (11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
- (12) TEC, §30.002 (Education for Children with Visual Impairments);
- (13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);
- (14) TEC, §33.081 (Extracurricular Activities);
- (15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and
- (16) TEC, §42.151 (Special Education).

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

- (A) the parents of the student;
- (B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.

(2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.

(3) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;

(B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students with auditory impairments; or

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.

(4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video con-

ferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(f) If the parent is unable to speak English, the school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

(h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(i) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide

a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

(j) A school district must comply with the following for a student who is newly enrolled in the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(k) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

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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Christina De La Fuente-Valadez

Director, Rulemaking Unit

Texas Education Agency

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



DIVISION 7. DISPUTE RESOLUTION

19 TAC §89.1195

STATUTORY AUTHORITY. The amendment is adopted under 34 Code of Federal Regulations, §300.152, which outlines time limits and minimum procedures that must be included in a state education agency's complaint procedures.

CROSS REFERENCE TO STATUTE. The amendment implements 34 Code of Federal Regulations, §300.152.

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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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

Introduction. The Texas Board of Architectural Examiners (Board) adopts amendments to §5.5, concerning Terms Defined Herein, and the repeal of §5.34, concerning Fees. The

amendments are adopted without changes to the proposed text published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10058).

Reasoned Justification. The adopted rules implement changes resulting from the Board's review of 22 Tex. Admin. Code Chapter 5, as required under Texas Government Code, §2001.039.

Amendment of §5.5

The Board amends §5.5 to modify certain terms and definitions. Under §5.5(2), the Board previously defined the term "actual signature." However, the term "actual signature" does not appear in the Board's rules. Rather, the Board's rules make reference to the term "signature." Because the Board's rules do not include the term "actual signature," the Board amends the rule to define the term "signature" with the definition previously used for "actual signature."

The Board adopts a definition for "Architectural Barriers Act" under §5.5(5). The Architectural Barriers Act is contained in Government Code Chapter 469, and requires certain buildings and facilities to be accessible to and functional for persons with disabilities. §5.180 references the Architectural Barriers Act, but does not provide a citation. Defining this term will promote greater understanding of the Board's rules.

The Board deletes the term and definition for "authorship" under previous §5.5(7). The Board rules do not contain any references to the terms "authorship" or "author." Therefore, it is unnecessary to define this term.

The Board adopts clarifying amendments to §5.5(15) and (37), relating to the definitions for "Consultant" and "Registrant." Previously, these definitions referred to the term "interior designer" rather than "registered interior designer." Since "registered interior designer" is the regulated term under Tex. Occ. Code 1053.151 and the term used elsewhere in the Board's rules, the Board amends these definitions to refer to "registered interior designer."

The Board deletes the term and definition for "e-mail directory" under former §5.5(22). The Board rules do not reference the term "e-mail directory." Therefore, it is unnecessary to define this term.

The Board amends the definition for "Interior Designers' Registration Law," which is the Board's common title for Occupations Code Chapter 1053. In defining this term, the rule previously referred to Chapter 1053, as well as Article 249e, Vernon's Texas Civil Statutes. Because the citation to Article 249e is obsolete following the 2003 codification of Occupations Code Chapter 1053, the Board has eliminated this reference in the definition.

Due the addition and/or deletion of the definitions for "Architectural Barriers Act," "authorship," and "e-mail directory," and the alphabetical re-ordering of the definition for "signature," §5.5 is renumbered accordingly.

Repeal of §5.34

The Board repeals §5.34. Previously, this rule stated that the Board shall establish a schedule of fees, and that the schedule shall be published and copies made available at the Board's office. This rule was adopted at a time, prior to 2005, when the Board did not adopt a fee schedule by rule, and instead made copies of the fee schedule available in the Board's offices. Under current practices, in which the fee schedule is adopted and published under §7.10, this rule is inaccurate and redundant.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

Statutory Authority.

Amended §5.5 is adopted under Sections 1051.202, 1053.058 and 1053.252(8) of the Texas Occupations Code.

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1053.058 requires the Board to prescribe and approve the seal to be used by a registered interior designer. Pursuant to this authority, the Board has adopted rules which require a registered interior designer to seal certain documents, and to include his or her signature with the seal. For this reason, the Board adopts a definition for the term "signature."

Section 1053.252(8) authorizes the Board to take disciplinary action against a person who fails to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department. The common name for Chapter 469 is the Architectural Barriers Act, a term which the Board defines in this rulemaking action.

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

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.34

STATUTORY AUTHORITY

The repeal of §5.34 is adopted under Sections 1051.202, 1051.305, 1051.355, 1051.357, 1053.052, and 1053.156 of the Texas Occupations Code. The repealed rule described the processes the Board used in establishing a fee schedule. The cited statutes provide the Board with obligations and authorizations with respect to collection of fees, as follows:

1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1051.305 authorizes the Board to set a fee in a reasonable and necessary amount to cover the cost of processing and investigating an application for registration by reciprocity.

Section 1051.355 requires the Board to prescribe a renewal fee for a registrant on inactive status.

Section 1051.357 requires the Board to set a renewal fee for registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer this section.

Section 1053.052 requires the Board to set certain fees, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053 (Interior Designers), including a registration application fee, an annual registration renewal fee, a reciprocal registration fee and an examination fee. Furthermore, Section 1053.052 authorizes the Board to set fees for other services, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053, including providing a duplicate certificate of registration, providing a roster of interior designers, reinstating a revoked or suspended certificate of registration, and performing any other board action involving an administrative expense. Additionally, Section 1053.052 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1053.156 requires the Board to set a renewal fee for interior designer registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

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

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.6

The State Board of Dental Examiners (Board) adopts amended rule §104.6 concerning continuing education audits. This rule is adopted without changes to the proposed text as published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9855).

Amended rule §104.6 establishes a process for the auditing of continuing education requirements upon renewal of licensure.

The Board received no written comments on this rule.

Rule §104.6 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the rule.

No statutes are affected by these adopted rules.

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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Kelly Parker

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 475-0977



CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER E. DATA REPORTING

22 TAC §107.400

The State Board of Dental Examiners (Board) adopts new rule §107.400 concerning collection and reporting of enforcement and licensing data. This rule is adopted without changes to the proposed text as published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9855).

New rule §107.400 establishes the types of licensing data the Board will collect and report on.

The Board received no written comments on this rule.

Rule §107.400 is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. No statutes are affected by this adopted new rule.

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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Kelly Parker

Executive Director

State Board of Dental Examiners

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts amendments to §§801.2, 801.44, 801.48, 801.115, 801.142, 801.143, 801.204, 801.235, and 801.236, and adopts new 801.57 and §801.58, concerning marriage and family therapists, without changes to the proposed text as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9435), and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and new sections modify requirements for technology-assisted services, supervised clinical experience, requirements for supervisors, and late renewal. The amendments also implement House Bill (HB) 1449 of the 84th Legislature, Regular Session, 2015, relating to child custody evaluations and adoption evaluations conducted and testimony provided in certain suits affecting the parent-child relationship; and Senate Bill (SB) 807 and SB 1307 of the 84th Legislature, Regular Session, 2015, relating to occupational licenses for military service members, military veterans, and military spouses.

HB 1449 amended Family Code, Chapter 107, relating to Special Appointments, Child Custody Evaluations, and Adoption Evaluations. SB 1307 amended Occupations Code, Chapter 55, relating to Licensing of Military Service Members, Military Veterans, or Military Spouses.

SECTION-BY-SECTION SUMMARY

Subchapter A. Introduction.

Amendments to §801.2 define "technology-assisted services" and conform the definition of "administrative law judge" to the definition in Government Code, Chapter 2003 (relating to State Office of Administrative Hearings).

Subchapter C. Guidelines for Professional Therapeutic Services and Code of Ethics.

Amendments to §801.44 replace outdated language with "technology-assisted services."

Amendments to §801.48 update and correct citations, grammar, and other technical form.

New §801.57 implements HB 1449, establishing requirements regarding child custody evaluations and adoption evaluations, and prohibiting licensed marriage and family therapist associates from conducting child custody evaluations or adoption evaluations unless allowed by law.

New §801.58 establishes requirements for the practice of technology-assisted services.

Subchapter F. Academic Requirements for Examination and Licensure.

Amendments to §801.115 clarify the requirements for education endorsement for applicants who hold current out-of-state licenses.

Subchapter G. Experience Requirements for Licensure.

Amendments to §801.142 modify requirements for supervised clinical experience for licensed marriage and family therapy associates regarding practicum hours; update language regard-

ing technology-assisted services; delete the requirement for a licensed marriage and family associate to have a Supervisory Agreement Form on file for each location where the licensed marriage and family associate practices; and require the supervisor to retain information on where the associate practices.

Amendments to §801.143 delete obsolete requirements for a continuing education course in clinical supervision and add the requirement for supervisors to take the jurisprudence exam each license renewal period.

Subchapter I. Licensing.

Amendments to §801.204 add definitions for active duty, license, and U.S. Armed Forces; update definitions for military service member, military veteran, and military spouse; delete outdated language relating to licensing; and update requirements in accordance with Occupations Code, Chapter 55.

Subchapter J. License Renewal and Inactive Status.

Amendment to §801.235 clarifies late renewal fees.

Amendments to §801.236 add continuing education requirements to licensees on inactive status and require a licensee on inactive status to complete the jurisprudence exam before returning to active status.

In all amended sections, the amendments revise grammar and citations, correct errors, and renumber divisions as necessary.

COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters included Texas Counseling Association (TCA) and Texas Association for Marriage and Family Counselors (TAMFC). Commenters were generally in favor of the rules; however, some commenters suggested recommendations for change as discussed in the summary of comments.

COMMENT: Concerning §801.2(29) and §801.58, TCA stated that they honored and respected the thorough research and discussion that the board conducted during the process of developing the rules regarding technology-assisted services (TAS). The board diligently reviewed rules not only from other licensing boards, but also investigated how other fields are managing the use of technology, and the board created language that is comprehensive and that clearly delineates minimum standards of practice.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.58(c), TCA stated that they understood that the purpose of this section is to limit clinicians from other states from practicing therapy with Texas residents unless they are licensed in Texas. If this understanding is correct, then the commenter suggested that this restriction belies the purpose of TAS and unnecessarily limits the Texas public's access to critical care provided by clinicians from other states. The commenter encouraged the board to pursue reciprocity agreements with other states, wherein Texas licenses are honored in their states to practice with their residents and vice versa.

RESPONSE: The board concurs with your understanding; however reciprocity agreements with other states are the jurisdiction of the Texas Legislature. No changes were made as a result of the comments.

COMMENT: Concerning §801.58(c), TAMFC requested to have a reciprocity agreement among other states to provide therapeutic services to individuals living in other states. The commenter also requested to have a section in the informed consent for clients to use TAS regardless of residency.

RESPONSE: The board concurs with your comments, however reciprocity agreements with other states are the jurisdiction of the Texas Legislature. No changes were made as a result of the comments.

COMMENT: Concerning §801.58(d), TCA appreciated the board's desire to ensure that clinicians providing TAS have received adequate training to do so, and agreed with the requirements set forth in this section.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.58(e)(3), TCA stated that at the start of each session with a client, licensees should obtain "appropriate consents from clients;" it appears as if an informed consent form must be reviewed and signed each time. However, the commenter did not think this interpretation was the intent of the board, and suggested that the board give details about what constitutes "appropriate consent" for each session so that clinicians can understand and comply with the board's expectations.

RESPONSE: The board's current interpretation of "appropriate consent" is client approval, verbal or written, of TAS for the current session's location and time. No changes were made as a result of the comments.

COMMENT: Concerning §801.58(e)(3), TAMFC requested that the board be more specific on what "appropriate consent" would look like.

RESPONSE: The board will research creating guidelines or policies that address the "appropriate consent." No changes were made as a result of the comment.

COMMENT: Concerning §801.115(1), TCA agreed with the board's efforts to ensure that persons applying for reciprocity to practice in Texas meet minimum standards and are competent. The commenter stated that the changes in this rule allow adequate latitude for the board to review applicants who may be competent to practice but do not meet the "immediate 5 years" requirement, and appreciated the board's willingness to review and offer expanded reciprocity.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.142(1)(A)(i)(IV), TCA and TAMFC thanked the board for allowing excess pre-graduate practicum hours to count toward post-graduate licensure supervised clinical experience hours. This allowance removes obstacles and encourages clinicians to pursue this important licensure.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.142, a commenter thanked the board for removing the requirement to submit a new "Supervisory Agreement Form" for each location of practice and for allowing supervisors to track LMFT-Associates' practice locations. This change reduces confusion and paperwork for all involved, including Texas State Board of Examiners of Marriage and Family Therapists' staff, LMFT-Supervisors, and LMFT-Associates.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.142(1)(D), TCA thanked the board for adding specific requirements for LMFT-Supervisors' supervision files for LMFT-Associates. This clarity helps both LMFT-Supervisors and LMFT-Associates to ensure they understand and are in compliance with board expectations.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.142(1)(D)(ii), TCA requested clarification as to what constitutes "proof of board approval of the Supervisory Agreement Form," as this broad expectation makes the board's expectations unclear. Will supervisors receive a letter of approval? Does the LMFT-Associate receiving their license (when the Supervisory Agreement Form was submitted with their application packet) constitute approval? Clarification is requested on what documentation is needed to satisfy this requirement.

RESPONSE: The board defines "proof of board approval of the Supervisory Agreement Form" as a copy of the Supervisory Agreement Form with the date approved and board's staff initials or a letter stating approval of the supervisor from the board's staff. No changes were made as a result of the comments.

COMMENT: Concerning §801.143(o), TCA agreed with the board to ensure that competent supervision is being provided by requiring supervisors to complete the Jurisprudence Exam every licensure renewal period.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.235(a), TCA agreed with increasing fees required for renewing a license based on longer periods of expiration.

RESPONSE: The board appreciates the support. No changes were made as a result of the comments.

COMMENT: Concerning §801.236(d), TCA agreed with the board's concern regarding ensuring competence before clinicians' return to active status after a period of inactivity, but the commenter was concerned about requiring the completion of continuing education units (CEUs) during the inactive status period. Inactive status is essentially helpful to clinicians who wish to maintain their licensure but are unable to practice, which the commenter assumed would also make it difficult to gain CEUs. The commenter supported requiring the completion of 15 CEUs prior to returning to active status, but not for "each renewal period" during inactive status.

RESPONSE: The board disagrees with the comments because the board wants to insure the continued competence of licensees. No changes were made as a result of the comments.

COMMENT: Concerning §801.236, TAMFC stated that a licensee has to report inactive status and pay a fee of \$75. In subsection (d), before returning to active status, a licensee will have to complete the 15 hours of continuing education per year of inactive period before a licensee can return to active status. After 5 years of inactive status, a clinician must report in front of the board and the board will discern what steps are necessary to become active.

RESPONSE: The board disagrees with the comment because the board wants to insure the continued competence of licensees

and feels that having the person appear in front of the board is too broad or creates inconsistency. No changes were made as a result of the comments.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.2

STATUTORY AUTHORITY

The amendment is adopted under Occupations Code §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; Occupations Code §§55.002, 55.004, and 55.007, which authorize the board to adopt rules related to licensing military service members, military veterans, and military spouses; Occupations Code §55.007; HB 1449, Article 5, which directs the board to adopt rules that require license holders to comply with Family Code, Chapter 107, Subchapters D-F.

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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Jennifer Smothermon, M.A., LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

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Proposal publication date: December 2, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.44, 801.48, 801.57, 801.58

STATUTORY AUTHORITY

The amendments and new rules are adopted under Occupations Code §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; Occupations Code §§55.002, 55.004, and 55.007, which authorize the board to adopt rules related to licensing military service members, military veterans, and military spouses; Occupations Code §55.007; HB 1449, Article 5, which directs the board to adopt rules that require license holders to comply with Family Code, Chapter 107, Subchapters D-F.

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 March 6, 2017.

TRD-201700850

Jennifer Smothermon, M.A., LPC, LMFT

Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 26, 2017

Proposal publication date: December 2, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §801.115

STATUTORY AUTHORITY

The amendment is adopted under Occupations Code §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; Occupations Code §§55.002, 55.004, and 55.007, which authorize the board to adopt rules related to licensing military service members, military veterans, and military spouses; Occupations Code §55.007; HB 1449, Article 5, which directs the board to adopt rules that require license holders to comply with Family Code, Chapter 107, Subchapters D-F.

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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Jennifer Smothermon, M.A., LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 776-6972



SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §801.142, §801.143

STATUTORY AUTHORITY

The amendments are adopted under Occupations Code §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; Occupations Code §§55.002, 55.004, and 55.007, which authorize the board to adopt rules related to licensing military service members, military veterans, and military spouses; Occupations Code §55.007; HB 1449, Article 5, which directs the board to adopt rules that require license holders to comply with Family Code, Chapter 107, Subchapters D-F.

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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Jennifer Smothermon, M.A., LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 26, 2017

Proposal publication date: December 2, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER I. LICENSING

22 TAC §801.204

STATUTORY AUTHORITY

The amendment is adopted under Occupations Code §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; Occupations Code §§55.002, 55.004, and 55.007, which authorize the board to adopt rules related to licensing military service members, military veterans, and military spouses; Occupations Code §55.007; HB 1449, Article 5, which directs the board to adopt rules that require license holders to comply with Family Code, Chapter 107, Subchapters D-F.

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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Jennifer Smothermon, M.A., LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 776-6972



SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

22 TAC §801.235, §801.236

STATUTORY AUTHORITY

The amendments are adopted under Occupations Code §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; Occupations Code §§55.002, 55.004, and 55.007, which authorize the board to adopt rules related to licensing military service members, military veterans, and military spouses; Occupations Code §55.007; HB 1449, Article 5, which directs the board to adopt rules that require license holders to comply with Family Code, Chapter 107, Subchapters D-F.

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 March 6, 2017.

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Jennifer Smothermon, M.A., LPC, LMFT
Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 26, 2017

Proposal publication date: December 2, 2016

For further information, please call: (512) 776-6972



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE
REGULATIONS AND ENFORCEMENT
PROCEDURES
SUBCHAPTER B. REGULATIONS
GOVERNING TRANSPORTATION SAFETY
37 TAC §4.12

The Texas Department of Public Safety (the department) adopts amendments to §4.12, concerning Exemptions and Exceptions. This section is adopted without changes to the proposed text as published in the January 27, 2017 issue of the *Texas Register* (42 TexReg 297) and will not be republished.

The first amendment strikes paragraph (a)(10) which is the requirement for non-regulated Household Goods Mover commercial vehicles to comply with 49 CFR Part 395 Hours of Service requirements. Striking this paragraph makes this type of vehicle consistent with other intrastate non-regulated vehicles, has no safety impact and reduces paperwork requirements imposed by the State. The second amendment strikes paragraph (a)(11) which contains language incompatible with adopted Federal Motor Carrier Safety Regulations related to "contract carriers", for which there is no definition in Texas law or Federal regulation. This incompatibility was identified in an audit of the Department's Motor Carrier Safety Assistance Program by the Federal Motor Carrier Safety Administration and necessitated this second amendment.

The department accepted comments on the proposed amendments through February 27, 2017. A written comment was submitted by Southwest Movers Association in support of the amendment striking paragraph (a)(10).

This proposal is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 28, 2017.

TRD-201700785

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 20, 2017

Proposal publication date: January 27, 2017

For further information, please call: (512) 424-5848





IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Central Texas Council of Governments

Due Notice of Election

Notice of Election of Representatives in the Bell, Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba Counties of the Area Agency on Aging of Central Texas.

To all eligible voters in the State of Texas living in the above named counties who are sixty (60) years of age or older as of April 28, 2017.

Notice is hereby given that in accordance with the provisions of the Elections and Credentials Manual of the Texas Silver-Haired Legislature, qualified voters of the above named counties may cast their vote via Mail-In Ballot to elect a qualified candidate desiring to serve as a member of the Texas Silver-Haired Legislature.

Mail-In Ballots may be obtained from the Area Agency on Aging of Central Texas:

In person at 2180 North Main Street, Belton, Texas, 77513 or by calling (800) 447-7169.

Mail-In Ballots must be obtained by the voter no later than March 15, 2017. Completed ballots must be postmarked no later than midnight, April 21, 2017.

Office hours are 8:00 a.m. - 5:00 p.m., Monday through Friday.

By directions of the Texas Silver-Haired Legislature's Election & Credential Committee.

Barbara Aydlett, Chair

TSHL Election & Credentials Committee 2038 FM 933

Aquilla, Texas 76622

(254) 582-1579

Email: baydlett@Windstream.net

TRD-201700834

Kerry Phillip

Director

Area Agency on Aging of Central Texas

Filed: March 3, 2017

◆ ◆ ◆ Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - February 2017

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period February 2017 is \$36.50 per barrel for the three-month period beginning on November 1, 2016, and ending January 31, 2017. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of February 2017, from a qualified low-producing oil lease, is not eligible for a credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period February 2017 is \$2.32 per mcf for the three-month period beginning on November 1, 2016, and ending January 31, 2017. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2017, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of February 2017 is \$53.46 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of February 2017, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of February 2017 is \$2.91 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of February 2017, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201700877

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Filed: March 8, 2017

◆ ◆ ◆
Local Sales Tax Rate Changes Effective April 1, 2017

A 1 1/2 percent local sales and use tax will become effective April 1, 2017, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Kingsbury (Guadalupe Co)	2094114	.020000	.082500

The City sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2017 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Ivanhoe (Tyler Co)	2229041	.020000	.082500

The City sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2017 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
El Cenizo (Webb Co)	2240037	.020000	.082500
Streetman (Freestone Co)	2081048	.015000	.077500
Streetman (Navarro Co)	2081048	.020000	.082500

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2017 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Gustine (Comanche Co)	2047032	.020000	.082500

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair will be **abolished** effective March 31, 2017 and the city sales and use tax will be **increased** from one percent to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code will become effective April 1, 2017 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Annetta North (Parker Co)	2184124	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be **abolished** effective March 31, 2017 and the City sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code will become effective April 1, 2017 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Higgins (Libscomb Co)	2148012	.020000	.082500
Sundown (Hockley Co)	2110043	.020000	.082500

The additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be **reduced** to 1/4 percent, the additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be **reduced** to 1/4 percent effective March 31, 2017 and the additional city sales and use

tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to 1/2 percent as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2017 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Grandview (Johnson Co)	2126018	.020000	.082500

The additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be **reduced** to 1/8 percent, the additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be **reduced** to 1/8 percent effective March 31, 2017 and the additional city sales and use tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to 3/4 percent as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2017 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Anson (Jones Co)	2127026	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective March 31, 2017 and the additional city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be increased from 1/2 percent to 3/4 percent and the city sales and use tax will be **increased** from one percent to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code, will become effective April 1, 2017 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Anna (Collin Co)	2043134	.020000	.082500

A 1/4 percent special purpose district sales and use tax will be abolished effective March 31, 2017 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Streetman Crime Control and Prevention District	5081501	.000000	.062500

A 1/8 percent special purpose district sales and use tax will become effective April 1, 2017 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Sunset Valley Crime Control and Prevention District	5227711	.001250	SEE NOTE 1

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2017 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Hughes Springs Municipal Development District	5034518	.005000	SEE NOTE 2

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2017 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Tyler County Emergency Services District No. 2	5229504	.015000	SEE NOTE 3

A 2 percent special purpose district sales and use tax will become effective April 1, 2017 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Williamson County Emergency Services District No. 5	5246585	.020000	SEE NOTE 4

NOTE 1: The boundaries for the Sunset Valley Crime Control and Prevention District are the same as the boundaries for the city of Sunset Valley.

NOTE 2: The boundaries of the Hughes Springs Municipal Development District are the same as the portion of the city of Hughes Springs located in Cass County. The district does **not** include any are of the city of Hughes Springs in Morris County. Contact the city of Hughes Springs at 903-639-7510 for additional boundary information.

NOTE 3: The Tyler County Emergency Services District No. 2 is located in the southeastern portion of Tyler County, which has a county sales and use tax. The unincorporated areas of Tyler County in ZIP Codes 75979, 77624 and 77660 are partially located within the district. Contact the district representative at 409-654-6700 for additional boundary information.

NOTE 4: The Williamson County Emergency Services District No. 5 is located in the north-central portion of Williamson County. The district excludes, for sales tax purposes, any area in the city of Jarrell. The unincorporated areas of Williamson County in ZIP Codes 76511, 76527, 76537, 76573, 78626, 78633 and 78673 are partially located within the district. Contact the district representative at 512-746-2505 for additional boundary information.

TRD-201700848
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: March 6, 2017

The monthly ceiling as prescribed by §303.005 and 303.009³ for the period of 03/01/17 - 03/31/17 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 03/01/17 - 03/31/17 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.

³ For variable rate commercial transactions only.

TRD-201700859
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 7, 2017

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/13/17 - 03/19/17 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/13/17 - 03/19/17 is 18% for Commercial over \$250,000.

◆ ◆ ◆
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 17, 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 17, 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: 6711 HIGHWAY 332 LLC; DOCKET NUMBER: 2016-2139-PWS-E; IDENTIFIER: RN104422209; LOCATION: Freeport, Brazoria 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, 2014 - December 31, 2014, monitoring period in which the system first exceeded the copper action level, and 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: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(2) COMPANY: BASF CORPORATION; DOCKET NUMBER: 2016-1699-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 7595A, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(3) COMPANY: Chinquapin Preparatory School; DOCKET NUMBER: 2016-2090-PWS-E; IDENTIFIER: RN101271062; LOCATION: Highlands, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED), and

failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED; PENALTY: \$787; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(4) COMPANY: City of Graham; DOCKET NUMBER: 2016-1844-PWS-E; IDENTIFIER: RN101386308; LOCATION: Graham, Young County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(b)(3), (c)(3) and (f)(5)(B) and §290.122(a)(2) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the acute maximum residual disinfectant level (MRDL) for chlorine dioxide for the month of July 2016, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the acute MRDL for chlorine dioxide; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed; PENALTY: \$1,322; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833.

(5) COMPANY: City of Hilshire Village; DOCKET NUMBER: 2016-1553-PWS-E; IDENTIFIER: RN101270304; LOCATION: Hilshire Village, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(A) and (f), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - December 31, 2015, monitoring period; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; PENALTY: \$330; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(6) COMPANY: City of Snook; DOCKET NUMBER: 2016-2026-PWS-E; IDENTIFIER: RN101195170; LOCATION: Snook, Bursleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to

provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; PENALTY: \$750; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826.

(7) COMPANY: Cypress Valley Water Supply Corporation; DOCKET NUMBER: 2016-1481-PWS-E; IDENTIFIER: RN101184745; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2012 - December 31, 2014, monitoring period; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2015, monitoring period; and 30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *Escherichia coli* sample from the facility's one active source within 24 hours of being notified of a distribution total coliform-positive result in May 2014; PENALTY: \$862; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734.

(8) COMPANY: David Richter and Francisca Richter dba Hillside Water Works; DOCKET NUMBER: 2016-2059-MLM-E; IDENTIFIER: RN101228492; LOCATION: Vinton, El Paso County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (ii)(III), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; and 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: \$572; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212.

(9) COMPANY: Del Grande Mobile Home Owners' Association, Incorporated; DOCKET NUMBER: 2016-2024-PWS-E; IDENTIFIER: RN101227759; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is

correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR and the failure to collect a raw groundwater source *Escherichia coli* sample from the facility's one active source within 24 hours of being notified of a distribution total coliform-positive result; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887.

(10) COMPANY: Fahmina Pervaiz dba SMZ Food Mart; DOCKET NUMBER: 2016-2034-PST-E; IDENTIFIER: RN102145935; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(11) COMPANY: FCI La Tuna; DOCKET NUMBER: 2016-1724-AIR-E; IDENTIFIER: RN100811066; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: federal correctional institution; RULES VIOLATED: 30 TAC §115.252(1) and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum Reid Vapor Pressure gasoline requirement of 7.0 pounds per square inch absolute during the control period of June 1 - September 16; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206.

(12) COMPANY: George Oberdorf dba Boyd Acres Water System; DOCKET NUMBER: 2016-1830-PWS-E; IDENTIFIER: RN102313608; LOCATION: Frisco, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(4), 290.106(e), 290.108(e), and 290.113(e), by failing to provide the results of triennial metals, radionuclides, and Stage 1 disinfectant byproducts contaminants sampling to the executive director (ED); 30 TAC §§290.46(f)(4), 290.106(e), and 290.107(e), by failing to provide the results of annual nitrate and volatile organic chemical contaminants sampling to the ED; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2015 - December 31, 2015, monitoring period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90610051 for Fiscal Years 2004 - 2016; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12381 for calendar years 2014 and 2015; PENALTY: \$460; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(13) COMPANY: GLOBAL GOLDEN, INCORPORATED dba Smiley Face Truck Stop; DOCKET NUMBER: 2016-1279-PST-E; IDENTIFIER: RN103194361; LOCATION: Hewitt, McLennan 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: \$6,750; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826.

(14) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2016-2064-AIR-E; IDENTIFIER: RN106492325; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 6534, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(15) COMPANY: Lion Elastomers LLC; DOCKET NUMBER: 2016-1884-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: crumb rubber manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1224, Special Terms and Conditions (STC) Number 13, and New Source Review Permit Number 9908, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O1224, STC Number 2.F, by failing to submit an initial notification within 24 hours after discovery of the emissions event; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830.

(16) COMPANY: Nalco Company LLC; DOCKET NUMBER: 2016-1282-AIR-E; IDENTIFIER: RN102895745; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: chemical production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1538, General Terms and Conditions (GTC), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O1538, GTC, by failing to submit deviation reports no later than 30 days after the end of the reporting period; PENALTY: \$8,663; Supplemental Environmental Project offset amount of \$3,465; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-2296; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

(17) COMPANY: NEW N & S VENTURES LLC dba Shax Food Store; DOCKET NUMBER: 2016-1751-PST-E; IDENTIFIER: RN100769595; LOCATION: Everman, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$13,795; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(18) COMPANY: PHILLIPS 66 GULF COAST PROPERTIES LLC; DOCKET NUMBER: 2016-1804-PWS-E; IDENTIFIER: RN104947064; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.45(f)(1) and (3) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a purchase water contract that authorizes a

maximum daily purchase rate, or a uniform purchase rate; 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 §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual using the prescribed notification format as specified in 30 TAC §290.47(c); 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(f)(2), (3)(A)(iii), and (D)(i), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$1,753; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(19) COMPANY: Plainview BioEnergy, LLC; DOCKET NUMBER: 2016-0569-PWS-E; IDENTIFIER: RN101983278; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required five sample sites for the first six-month monitoring period following the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(e)(2), (h), and (i)(3) and §290.122(c)(2)(A) and (f), and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample site(s) for two consecutive six-month periods following the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, and July 1, 2015 - December 31, 2015, monitoring periods; 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1,

2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2012 - December 31, 2012, and January 1, 2013 - December 31, 2013, monitoring periods; PENALTY: \$1,313; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421.

(20) COMPANY: Roy Raines; DOCKET NUMBER: 2016-1730-WQ-E; IDENTIFIER: RN108500505; LOCATION: Spring Branch, Comal County; TYPE OF FACILITY: home construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR150000, Part II, Section E.(2)(b), by failing to maintain a TCEQ small construction site notice until completion of the construction activity; and TWC, §26.121(a)(2), 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and TPDES GP Number TXR150000, Part III, Section F.6(a) and (d), by failing to maintain all protective measures identified in the stormwater pollution prevention plan in effective operating condition which resulted in the discharge of sediment into or adjacent to water in the state; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(21) COMPANY: Southwestern Bell Telephone Company; DOCKET NUMBER: 2017-0026-EAQ-E; IDENTIFIER: RN102409232; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: emergency generator associated with an aboveground storage tank (AST); RULES VIOLATED: 30 TAC §213.4(j)(6) and Edwards Aquifer Protection Plan Number 13000012, by failing to obtain approval of a modification to an approved AST Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(22) COMPANY: Sun-N-Fun Association; DOCKET NUMBER: 2016-1759-PWS-E; IDENTIFIER: RN101182848; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding an exceedance of the maximum contaminant level for total trihalomethanes; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the ED each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of

the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect routine coliform monitoring samples; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(23) COMPANY: SUNWELL CORPORATION dba Redi-Fuel; DOCKET NUMBER: 2016-1988-PST-E; IDENTIFIER: RN105023568; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,859; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(24) COMPANY: U.S. Department of Veterans Affairs; DOCKET NUMBER: 2016-0492-PWS-E; IDENTIFIER: RN101377182; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), §290.122(c)(2)(A) and (f), and 40 Code of Federal Regulations (CFR) §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample site(s) for two consecutive six-month periods following the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED), and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling; 30 TAC §290.117(d)(2)(A), (h), and (i)(2), §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f), and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples during the following monitoring periods: July 1, 2013 - December 31, 2013, January 1, 2014 - June 30, 2014, and July

1, 2014 - December 31, 2014; PENALTY: \$655; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706.

(25) COMPANY: Whitener Enterprises Incorporated; DOCKET NUMBER: 2016-1822-PST-E; IDENTIFIER: RN100523935; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tanks (USTs); and 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated UST system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$7,613; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452.

TRD-201700847

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 6, 2017



Enforcement Orders

An agreed order was adopted regarding Signor Logistics-Barnhart LLC, Docket No. 2014-1280-MLM-E on March 7, 2017, assessing \$2,600 in administrative penalties with \$520 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Amy Investments, Inc. dba Triangle Market, Docket No. 2015-0775-PST-E on March 7, 2017, assessing \$4,350 in administrative penalties with \$870 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tonya DeMary, Docket No. 2015-0865-PWS-E on March 7, 2017, assessing \$350 in administrative penalties with \$70 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CYNDIE PARK 2 WATER SUPPLY CORPORATION, Docket No. 2015-1580-PWS-E on March 7, 2017, assessing \$982 in administrative penalties with \$196 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Tierra III, Ltd. Docket No. 2015-1628-PST-E on March 7, 2017, assessing \$5,500 in administrative penalties with \$1,100 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Point, Docket No. 2016-0235-MWD-E on March 7, 2017, assessing \$3,055 in administrative penalties with \$611 deferred. Information concerning any aspect

of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Junction, Docket No. 2016-0373-PWS-E on March 7, 2017, assessing \$690 in administrative penalties with \$138 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NICO-TYME WATER CO-OP, INC. Docket No. 2016-0384-PWS-E on March 7, 2017, assessing \$680 in administrative penalties with \$136 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Country Club Retirement Community, L.P. Docket No. 2016-0598-MWD-E on March 7, 2017, assessing \$7,012 in administrative penalties with \$1,402 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Circle W RV Ranch LLC, Docket No. 2016-0648-PWS-E on March 7, 2017, assessing \$4,985 in administrative penalties with \$997 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EAS Oil, LLC dba Stage Coach Stop, Docket No. 2016-0689-PWS-E on March 7, 2017, assessing \$1,300 in administrative penalties with \$260 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jesse Gibson and Vivian R. Gibson dba ETC Cleaners, Docket No. 2016-0737-DCL-E on March 7, 2017, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 7-Eleven, Inc. Docket No. 2016-0918-PST-E on March 7, 2017, assessing \$7,442 in administrative penalties with \$1,488 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Linden-Kildare CISD, Docket No. 2016-1046-PST-E on March 7, 2017, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Happy, Docket No. 2016-1113-PWS-E on March 7, 2017, assessing \$472 in administrative penalties with \$94 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bloomfield Homes, L.P. Docket No. 2016-1140-WQ-E on March 7, 2017, assessing \$2,488 in administrative penalties with \$497 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Three Rivers, Docket No. 2016-1174-MWD-E on March 7, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Western Refining Company, L.P. Docket No. 2016-1364-AIR-E on March 7, 2017, assessing \$5,775 in administrative penalties with \$1,155 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding La Cantera Development Company, LLC Docket No. 2016-1380-EAQ-E on March 7, 2017, assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ahmed A. Aljasimi dba Bino Food Mart, Docket No. 2016-1391-PST-E on March 7, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Winkler Water Supply Corporation, Docket No. 2016-1399-PWS-E on March 7, 2017, assessing \$200 in administrative penalties with \$40 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HALL OIL COMPANY, INC. Docket No. 2016-1425-PST-E on March 7, 2017, assessing \$5,733 in administrative penalties with \$1,146 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shakti Investments L C dba Louis Food Store, Docket No. 2016-1437-PST-E on March 7, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAQSH INVESTMENTS, INC dba Bag A Bag, Docket No. 2016-1443-PST-E on March 7, 2017, assessing \$4,375 in administrative penalties with \$875 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tarrant County, Docket No. 2016-1445-PST-E on March 7, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Livingston Water Supply and Sewer Service Corporation, Docket No. 2016-1472-PWS-E on March 7, 2017, assessing \$650 in administrative penalties with \$130 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CAMILLA COVES LOT OWNERS ASSOCIATION, INC. Docket No. 2016-1482-PWS-E on March 7, 2017, assessing \$435 in administrative penalties with \$87 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AUDUBON C STORE INC dba Minute Market, Docket No. 2016-1484-PST-E on March 7, 2017, assessing \$4,575 in administrative penalties with \$915 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Vander Horst Enterprises, LLC and MW DAIRY FARM, LLC, Docket No. 2016-1488-AGR-E on March 7, 2017, assessing \$813 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R & W Convenience Stores, LLC Docket No. 2016-1507-PST-E on March 7, 2017, assessing \$3,688 in administrative penalties with \$737 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the Town of Pantego, Docket No. 2016-1526-WQ-E on March 7, 2017, assessing \$1,125 in administrative penalties with \$225 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding "Earthwise Organics, Inc.", Docket No. 2016-1548-MLM-E on March 7, 2017, assessing \$7,479 in administrative penalties with \$1,495 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sky Lakes Water Supply Corporation, Docket No. 2016-1551-PWS-E on March 7, 2017, assessing \$337 in administrative penalties with \$67 deferred. Information concerning any aspect of this order may be obtained by contacting Steven

Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ConocoPhillips Company, Docket No. 2016-1588-AIR-E on March 7, 2017, assessing \$4,162 in administrative penalties with \$832 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Burleson Independent School District, Docket No. 2016-1601-PST-E on March 7, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Guadalupe Regional Medical Center, Docket No. 2016-1644-PST-E on March 7, 2017, assessing \$5,364 in administrative penalties with \$1,072 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carol Pulido dba Dollar General Store 15541 and Robert Pulido, Sr. dba Dollar General Store 15541, Docket No. 2016-1739-PWS-E on March 7, 2017, assessing \$505 in administrative penalties with \$101 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JUSTICE SAND CO., INC. Docket No. 2016-1779-WQ-E on March 7, 2017, assessing \$3,188 in administrative penalties with \$637 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Garcia's River Camp, LLC, Docket No. 2016-1783-PWS-E on March 7, 2017, assessing \$350 in administrative penalties with \$70 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COASTAL CHEMICAL CO., L.L.C. Docket No. 2016-1792-PST-E on March 7, 2017, assessing \$1,107 in administrative penalties with \$221 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PJY Enterprises, LLC dba Youngs Market, Docket No. 2016-1801-PST-E on March 7, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Tovia P. Grynewicz, Docket No. 2016-2003-OSI-E on March 7, 2017, assessing \$175 in administrative

penalties. Information concerning any aspect of this citation may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding 1265 LLC, Docket No. 2016-2076-WQ-E on March 7, 2017, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ann E. Robinson, Docket No. 2016-2122-WOC-E on March 7, 2017, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wigginsville Victory Tabernacle, Docket No. 2015-0687-PWS-E on March 8, 2017, assessing \$205 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Farhad Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nns Inc d/b/a Andys Food Mart, Docket No. 2016-0080-PST-E on March 8, 2017, assessing \$13,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Michael V. I. Mciver, Docket No. 2016-0152-LII-E on March 8, 2017, assessing \$1,530 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Saeed A. Ally f/k/a Jeffco Reclamation & Storage, LLC, Docket No. 2016-0247-MSW-E on March 8, 2017, assessing \$11,812 in administrative penalties with \$2,362 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Penelope, Docket No. 2016-0514-MWD-E on March 8, 2017, assessing \$11,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cobra Stone, Inc, Docket No. 2016-0515-WQ-E on March 8, 2017, assessing \$11,750 in administrative penalties with \$2,350 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Lubrizol Corporation, Docket No. 2016-0734-AIR-E on March 8, 2017, assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hilliard Dozer, LP, Docket No. 2016-0833-WQ-E on March 8, 2017, assessing \$10,000 in administrative penalties with \$2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I L.P., Docket No. 2016-0866-PWS-E on March 8, 2017, assessing \$1,205 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aep Texas Central Company, Docket No. 2016-1074-IHW-E on March 8, 2017, assessing \$10,563 in administrative penalties with \$2,112 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding L. H. Chaney Materials, Inc. d/b/a Chaney Trucking, Docket No. 2016-1144-PST-E on March 8, 2017, assessing \$29,731 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Acme Brick Company, Docket No. 2016-1203-IWD-E on March 8, 2017, assessing \$8,250 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rehobeth Water Supply Corporation, Docket No. 2016-1300-PWS-E on March 8, 2017, assessing \$172 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Pasadena, Docket No. 2016-1477-PST-E on March 8, 2017, assessing \$8,625 in administrative penalties with \$1,725 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K.I. Comfort Park, Ltd., Docket No. 2016-1525-PWS-E on March 8, 2017, assessing \$205 in administrative penalties with \$205 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dixie Oil Company, Docket No. 2016-1532-PST-E on March 8, 2017, assessing \$10,234 in administrative penalties with \$2,046 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201700875

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 2017

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Jerry Ung d/b/a Ku Food Mart

SOAH Docket No. 582-17-2907

TCEQ Docket No. 2016-1456-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 30, 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 January 6, 2017, concerning assessing administrative penalties against and requiring certain actions of Jerry Ung d/b/a KU Food Mart, for violations in Tarrant County, Texas, of: 30 Tex. Admin. Code §334.72 and §334.74.

The hearing will allow Jerry Ung d/b/a KU Food Mart, 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 Jerry Ung d/b/a KU Food Mart, 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 Jerry Ung d/b/a KU Food Mart 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.** Jerry Ung d/b/a KU Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting 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 Tex. 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: March 1, 2017

TRD-201700871

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 2017

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Texas Facilities Commission

Request for Proposals #303-8-20597

The Texas Facilities Commission (TFC), on behalf of the State Office of Administrative Hearings (SOAH), announces the issuance of Request for Proposals (RFP) #303-8-20597. TFC seeks a five (5) or ten (10) year lease of approximately 3,924 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is March 28, 2017, and the deadline for proposals is April 12, 2017, at 3:00 p.m. The award date is May 17, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=131461.

TRD-201700868

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 7, 2017

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Request for Proposals #303-8-20598

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-8-20598. TFC seeks a five (5) or ten (10) year lease of approximately 17,373 square feet of office space in the City of Amarillo, Potter County or Randall County, Texas.

The deadline for questions is March 29, 2017, and the deadline for proposals is April 12, 2017, at 3:00 p.m. The award date is May 17, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this

notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=131463.

TRD-201700869

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 7, 2017

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Department of State Health Services

Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by John Hellerstedt, M.D., Commissioner of Health, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is <http://www.dshs.state.tx.us/dmd>.

Included in this republication is an amendment temporarily placing N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (Other name: Furanyl fentanyl) including its isomers, esters, ethers, salts and salts of isomers, esters and ethers into Schedule I. This action was based on a final order from the Administrator of the Drug Enforcement Administration dated November 29, 2016 and published in the Federal Register, Volume 81, Number 229, pages 85873-85877. The DEA took this action based on the following.

1. Furanyl fentanyl has a high potential for abuse;
2. Furanyl fentanyl has no currently accepted medical use in treatment in the United States;
3. There is a lack of accepted safety for use of furanyl fentanyl under medical supervision; and
4. Furanyl fentanyl poses an imminent hazard to public safety.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance Furanyl fentanyl placed temporarily into schedule I.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

- Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl alpha methylfentanyl (N [1 (1 methyl 2 phenethyl) 4 piperidinyl] N phenylacetamide);

*(2) AH-7921 (3,4-dichloro-N-[(dimethylamino)cyclohexymethyl]benzamide));

(3) Allylprodine;

(4) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alpha methylfentanyl or any other derivative of Fentanyl;

(6) Alpha methylthiofentanyl (N [1 methyl 2 (2 thienyl) ethyl 4 piperidinyl] N- phenyl-propanamide);

(7) Benzethidine;

(8) Beta hydroxyfentanyl (N [1 (2 hydroxy 2 phenethyl) 4 piperidinyl] N phenyl-propanamide);

(9) Beta hydroxy 3 methylfentanyl (N [1 (2 hydroxy 2 phenethyl) 3 methyl 4 piperidinyl] N phenylpropanamide);

(10) Betaprodine;

(11) Clonitazene;

(12) Diampromide;

(13) Diethylthiambutene;

(14) Difenoxin;

(15) Dimenoxadol;

(16) Dimethylthiambutene;

(17) Dioxaphetyl butyrate;

(18) Dipipanone;

(19) Ethylmethylthiambutene;

(20) Etonitazene;

(21) Etoxidine;

(22) Furethidine;

(23) Hydroxypethidine;

(24) Ketobemidone;

(25) Levophenacetylmorphan;

(26) Meprodine;

(27) Methadol;

(28) 3 methylfentanyl (N [3 methyl 1 (2 phenylethyl) 4 piperidyl] N phenylpropanamide), its optical and geometric isomers;

(29) 3 methylthiofentanyl (N [3 methyl 1 (2 thienyl)ethyl 4 piperidinyl] N phenylpropanamide);

(30) Moramide;

(31) Morpheridine;

(32) MPPP (1 methyl 4 phenyl 4 propionoxypiperidine);

(33) Noracymethadol;

(34) Norlevorphanol;

(35) Normethadone;

(36) Norpipanone;

(37) Para fluorofentanyl (N (4 fluorophenyl) N [1 (2 phenethyl)-4 piperidinyl]- propanamide);

(38) PEPAP (1 (2 phenethyl) 4 phenyl 4 acetoxy piperidine);

(39) Phenadoxone;

(40) Phenampromide;

(41) Phencyclidine;

(42) Phenomorphan;

(43) Phenoperidine;

(44) Piritramide;

(45) Proheptazine;

(46) Properidine;

(47) Propiram;

(48) Thiofentanyl (N phenyl N [1 (2 thienyl)ethyl 4 piperidinyl] propanamide);

(49) Tilidine; and

(50) Trimeperidine.

- Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine N Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine N Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

- (22) Normorphine;
- (23) Pholcodine; and
- (24) Thebacon.

- Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

- (1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase;
alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);
- (2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;
- (3) 4 bromo 2,5 dimethoxyamphetamine (some trade or other names: 4 bromo-2,5 dimethoxy alpha methylphenethylamine; 4 bromo 2,5 DMA);
- (4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);
- (5) 2,5 dimethoxyamphetamine (some trade or other names: 2,5 dimethoxy alpha methylphenethylamine; 2,5 DMA);
- (6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);
- (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;
- (8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;
- (9) 5 methoxy 3,4 methylenedioxy-amphetamine;
- (10) 4 methoxyamphetamine (some trade or other names: 4 methoxy alpha methylphenethylamine; paramethoxyamphetamine; PMA);
- (11) 1 methyl 4 phenyl 1,2,5,6 tetrahydro pyridine (MPTP);
- (12) 4 methyl 2,5 dimethoxyamphetamine (some trade and other names: 4 methyl 2,5 dimethoxy alpha methyl phenethylamine; "DOM"; and "STP");
- (13) 3,4 methylenedioxy-amphetamine;
- (14) 3,4 methylenedioxy-methamphetamine (MDMA, MDM);
- (15) 3,4 methylenedioxy-N ethylamphetamine (some trade or other names: N ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);
- (16) 3,4,5 trimethoxy amphetamine;
- (17) N hydroxy 3,4 methylenedioxyamphetamine (Also known as N hydroxy MDA);
- (18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);
- (19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl) 5 hydroxyindole; 3 (2 dimethylaminoethyl) 5 indolol;

N,N dimethylserotonin; 5 hydroxy N,N dimethyltryptamine; map-pine);

- (20) Diethyltryptamine (some trade and other names: N,N Diethyl-tryptamine; DET);
- (21) Dimethyltryptamine (some trade and other names: DMT);
- (22) Ethylamine Analog of Phencyclidine (some trade or other names: N ethyl 1 phenylcyclohexylamine; (1 phenylcyclohexyl) ethylamine; N (1 phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);
- (23) Ibogaine (some trade or other names: 7 Ethyl 6,6-beta, 7,8,9,10,12,13 octhydro 2 methoxy 6,9 methano-5H-pyrido[1',2':1,2] azepino [5,4 b] indole; taber-nanthe iboga);
- (24) Lysergic acid diethylamide;
- (25) Marihuana;
- (26) Mescaline;
- (27) N ethyl 3 piperidyl benzilate;
- (28) N methyl 3 piperidyl benzilate;
- (29) Parahexyl (some trade or other names: 3 Hexyl 1 hydroxy 7,8,9,10 tetrahydro 6,6,9 trimethyl 6H dibenzo [b,d] pyran; Synhexyl);
- (30) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;
- (31) Psilocybin;
- (32) Psilocin;
- (33) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1 phenyl- cyclohexyl)-pyrrolidine, PCPy, PHP);
- (34) Tetrahydrocannabinols;
meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
1 cis or trans tetrahydrocannabinol, and their optical isomers;
6 cis or trans tetrahydrocannabinol, and their optical isomers;
3,4 cis or trans tetrahydrocannabinol, and its optical isomers;
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);
- (35) Thiophene analog of phencyclidine (some trade or other names: 1 [1 (2 thienyl) cyclohexyl] piperidine; 2 thienyl analog of phencyclidine; TPCP);
- (36) 1 [1 (2 thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);
- (37) 4-methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);
- (38) 3,4-methylenedioxypropylvalerone (MDPV);
- (39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other names: 2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other names: 2C-D);

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-C);

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-I);

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-2);

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-4);

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (Other names: 2C-H);

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other names: 2C-N);

(47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other names: 2C-P);

(48) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methy-lone);

*(49) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);

*(50) [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole);

*(51) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA, AKB48);

*(52) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

*(53) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

*(54) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: AB-FUBINACA);

*(55) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA);

*(56) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);

*(57) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and

*(58) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36).

- Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amirex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro- 5-phenyl-2-oxazolamine);

(2) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(3) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha- aminopropiophenone; 2-aminopropiophenone and norephedrone);

(4) Fenethylamine;

(5) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(6) 4-methylaminorex;

(7) N-ethylamphetamine; and

(8) N,N dimethylamphetamine (some other names: N,N-alpha trimethylbenzene-ethanamine; N,N-alpha trimethylphenethylamine).

- Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

- Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(1-2) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(1-3) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(1-4) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(1-5) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

- (2) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: CP-47,497);
- (3) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol or CP-47,497 C8 homolog);
- (4) 1-pentyl-3-(1-naphthoyl)indole (Other names: JWH-018 and AM678);
- (5) 1-mutyl-3-(1-naphthoyl)indole (Other names: JWH-073);
- (6) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);
- (7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH-200);
- (8) 1-pentyl-3-(2-methoxyphenylacetyl)indole (Other names: JWH-250);
- (9) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other names: JWH-081);
- (10) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (Other names: JWH-122);
- (11) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other names: JWH-398);
- (12) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (Other names: AM2201);
- (13) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (Other names: AM694);
- (14) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19 and RCS-4);
- (15) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18 and RCS-8); and
- (16) 1-pentyl-3-(2-chlorophenylacetyl)indole (Other names: JWH-203).

- Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

- (1) 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one);
- (2) 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)propan-1-one);
- (3) alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one);
- (4) Butylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one);
- (5) Pentadone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one);

(6) Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one);

(7) 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one);

(8) 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one);

(9) Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one);

(10) alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one);

(11) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other names: "AB-CHMINACA");

(12) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other names: "AB-PINACA");

(13) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (Other names: "THJ-2201");

(14) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (Other names: acetyl fentanyl);

*(15) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names: MAB-CHMINACA and ABD-CHMINACA);

*(16) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (Other name: butyryl fentanyl);

*(17) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropanamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide (Other name: beta-hydroxythiofentanyl);

*(18) 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (Other name: U47700); and

*(19) N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (Other name: Furanyl fentanyl).

SCHEDULE II

Schedule II consists of:

- Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, *naloxegol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

- (1-1) Codeine;
- (1-2) Dihydroetorphine;
- (1-3) Ethylmorphine;
- (1-4) Etorphine hydrochloride;
- (1-5) Granulated opium;
- (1-6) Hydrocodone;

- (1-7) Hydromorphone;
- (1-8) Metopon;
- (1-9) Morphine;
- (1-10) Opium extracts;
- (1-11) Opium fluid extracts;
- (1-12) Oripavine;
- (1-13) Oxycodone;
- (1-14) Oxymorphone;
- (1-15) Powdered opium;
- (1-16) Raw opium;
- (1-17) Thebaine; and
- (1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:

(4-2-1) decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or

(4-2-2) ioflupane; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

- Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Carfentanil;
- (6) Dextropropoxyphene, bulk (nondosage form);
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphaacetylmethadol (some trade or other names: levo-alphaacetylmethadol, levomethadyl acetate, LAAM);

- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone Intermediate, 4 cyano 2 dimethylamino 4,4 diphenyl butane;
- (17) Moramide Intermediate, 2 methyl 3 morpholino 1,1 diphenyl propane carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine Intermediate A, 4 cyano 1 methyl 4 phenylpiperidine;
- (20) Pethidine Intermediate B, ethyl 4 phenylpiperidine 4 carboxylate;
- (21) Pethidine Intermediate C, 1 methyl 4 phenylpiperidine 4 carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil;
- (28) Tapentadol; and

* (29) Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperadine)

- Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;
- (3) Methylphenidate and its salts;
- (4) Phenmetrazine and its salts; and
- (5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

- Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital; and,
- (4) Secobarbital.

- Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-trans 3 (1,1 dimethylheptyl) 6,6a,7,8,10,10a hexahydro 1 hydroxy 6,6 dimethyl 9H dibenzo[b,d]pyran 9 one).

- Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (some trade or other names: phenyl 2 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1 phenylcyclohexylamine;

(3-2) 1 piperidinocyclohexanecarbonitrile (PCC); and

(4) Immediate precursor to fentanyl:

(4-1) 4-anilino-N-phenethyl-4-piperidine (ANPP).

SCHEDULE III

Schedule III consists of:

- Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food Drug and Cosmetic Act;

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methyprylon;

(10) Perampanel, and its salts, isomers, and salts of isomers;

(11) Sulfondiethylmethane;

(12) Sulfonethylmethane;

(13) Sulfonmethane; and

(14) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2 (ethylamino) 2 (2 thienyl) cyclohexanone. Some trade or other names for zolazepam: 4 (2 fluorophenyl) 6,8 dihydro 1,3,8 trimethyl-pyrazolo [3,4 e][1,4] diazepin 7(1H) one, flupyrazapon.

- Nalorphine

- Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-4) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

- Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

- Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstenediol

(1-1) 3 beta,17 beta-dihydroxy-5 alpha-androstane;

- (1-2) 3 alpha,17 beta -dihydroxy-5 alpha-androstane;
(2) androstanedione (5 alpha-androstan-3,17-dione);
(3) androstenediol--
(3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);
(3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);
(3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);
(3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);
(4) androstenedione--
(4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);
(4-2) 4-androstenedione (androst-4-en-3,17-dione);
(4-3) 5-androstenedione (androst-5-en-3,17-dione);
(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);
(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);
(7) boldione (androsta-1,4-diene-3,17-dione);
(8) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);
(9) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);
(10) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);
(11) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);
(12) desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol);
(13) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);
(14) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);
(15) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);
(16) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);
(17) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);
(18) furazabol (17 alpha-methyl-17 beta-hydroxyandrostano[2,3-c]-fuzazan);
(19) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;
(20) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);
(21) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);
(22) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);
(23) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);
(24) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);
(25) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);
(26) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);
(27) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;
(28) methasterone (2 alpha, 17 alpha-dimethyl-5-alpha-androstan-17 beta-ol-3-one);
(29) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;
(30) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;
(31) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);
(32) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);
(33) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);
(34) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);
(35) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);
(36) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');
(37) nandrolone (17 beta-hydroxyestr-4-en-3-one);
(38) norandrostenediol--
(38-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);
(38-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);
(38-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);
(38-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);
(39) norandrostenedione--
(39-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
(39-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
(40) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
(41) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);
(42) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);
(43) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);
(44) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);
(45) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);
(46) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);
(47) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);
(48) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);
(49) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);

- (50) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (51) testosterone (17 beta-hydroxyandrost-4-en-3-one);
- (52) prostanozol (17 beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);
- (53) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);
- (54) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and
- (55) any salt, ester, or ether of a drug or substance described in this paragraph.

- Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol:(6aR trans) 6a,7,8,10a tetrahydro 6,6,9 tri-methyl 3 pentyl 6H dibenzo[b,d]pyran 1 ol, or () delta 9-(trans) tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

- Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Alfaxalone (5[alpha]-pregnan-3[alpha]-ol-11,20-dione);
- (2) Alprazolam;
- (3) Barbital;
- (4) Bromazepam;
- (5) Camazepam;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;
- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;
- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Dichloralphenazone;
- (17) Estazolam;
- (18) Ethchlorvynol;
- (19) Ethinamate;
- (20) Ethyl loflazepate;
- (21) Fludiazepam;
- (22) Flunitrazepam;
- (23) Flurazepam;

- (24) Fospropofol;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;
- (28) Loprazolam;
- (29) Lorazepam;
- (30) Lormetazepam;
- (31) Mebutamate;
- (32) Medazepam;
- (33) Meprobamate;
- (34) Methohexital;
- (35) Methylphenobarbital (mephobarbital);
- (36) Midazolam;
- (37) Nimetazepam;
- (38) Nitrazepam;
- (39) Nordiazepam;
- (40) Oxazepam;
- (41) Oxazolam;
- (42) Paraldehyde;
- (43) Petrichloral;
- (44) Phenobarbital;
- (45) Pinazepam;
- (46) Prazepam;
- (47) Quazepam;
- (48) Suvorexant;
- (49) Temazepam;
- (50) Tetrazepam;
- (51) Triazolam;
- (52) Zaleplon;
- (53) Zolpidem; and
- (54) Zopiclone, its salts, isomers, and salts of isomers.

- Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine [(+) norpseudoephedrine];
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;

- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and their chelates);
- (10) Phentermine;
- (11) Pipradrol;
- (12) SPA [() 1 dimethylamino 1,2 diphenylethane]; and
- (13) Sibutramine.

- Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (Alpha (+) 4 dimethylamino 1,2 diphenyl 3 methyl 2

propionoxybutane); and,

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (Other name: tramadol).

- Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;

(2) Carisoprodol;

* (3) Eluxadoline (Other names: 5-[[[(2S-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its salts, isomers, and salts of isomers;

(4) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and

(5) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

- Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

- Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

- Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

* (1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names: BRV, UCB-34714, and Briviact);

(2) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;

(3) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]; and

(4) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-201700833

Lisa Hernandez

General Counsel

Department of State Health Services

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Texas Lottery Commission

Scratch Ticket Game Number 1878 "Cash on the Spot"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1878 is "CASH ON THE SPOT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1878 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1878.

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, DOLLAR BILL SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 and \$500.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1878 - 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
DOLLAR BILL SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THR\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$500	FVHN

E. Serial Number- A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1878), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1878-0000001-001.

H. Pack - A Pack of the "CASH ON THE SPOT" Scratch Ticket Game contains 150 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 150 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 150 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 "CASH ON THE SPOT" Scratch Ticket Game No. 1878.

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 "CASH ON THE SPOT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If a player reveals a "DOLLAR BILL" Play Symbol, the player wins the prize for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) 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 11 (eleven) 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 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) 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. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 1 and \$1).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

G. The "DOLLAR BILL" (WIN) Play Symbol will only appear on intended winning Tickets.

H. The "DOLLAR BILL" (WIN) Play Symbol may appear multiple times on winning Tickets unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH ON THE SPOT" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "CASH ON THE SPOT" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "CASH ON THE SPOT" 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 "CASH ON THE SPOT" 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 840,000 Scratch Tickets in Scratch Ticket Game No. 1878. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1878 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	156,800	5.36
\$2	33,600	25.00
\$3	28,000	30.00
\$4	11,200	75.00
\$5	11,200	75.00
\$10	5,600	150.00
\$20	1,120	750.00
\$50	126	6,666.67
\$500	21	40,000.00

*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 3.39. 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. 1878 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. 1878, 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-201700872
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 8, 2017



Public Utility Commission of Texas

Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of the City of McAllen for Approval to Provide Non-Emergency 311 Service. Docket Number 46893.

The Application: On February 24, 2017, the City of McAllen filed an application with the Commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service (NE311) for the City of McAllen. McAllen proposes to request carriers to participate in the program and route NE311 calls to the designated phone number on behalf of the City.

NE311 service is available to local governmental entities to provide to their residents an easy to-remember number to call for access to non-emergency services. By implementing NE311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement NE311 service will determine the types of non-emergency calls that will be handled by their 311 call center.

Persons who wish to comment on this application should notify the commission by April 17, 2017. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission’s Customer Protection Division 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 46893.

TRD-201700828
 Adriana Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: March 1, 2017



Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Comal County.

Docket Style and Number: Application of SJWTX Inc., dba Canyon Lake Water Service Company to Amend a Water Certificate of Convenience and Necessity in Comal County, Docket Number 46899.

The Application: SJWTX Inc., dba Canyon Lake Water Service Company filed an application to amend its water certificate of convenience and necessity number 10692 in Comal County. The total area being requested includes approximately 692 acres and 0 current customers.

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 46899.

TRD-201700827
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2017



Notice of Joint Petition for Declaratory Order

Notice is given to the public of a joint petition for a declaratory order filed with the Public Utility Commission of Texas (commission) on February 28, 2017.

Docket Style and Number: Joint Petition of Southwestern Public Service Company and Southwest Power Pool, Inc. for a Declaratory Order, Docket Number 46901.

The Petition: Southwestern Public Service Company (SPS) and the Southwest Power Pool, Inc. (SPP) filed a joint petition for a declaratory order from the commission interpreting PURA, with regards to whether an incumbent electric utility operating in Texas, but in areas outside of the Electric Reliability Council of Texas, is granted a right of first refusal to build new transmission facilities in its service area. A regionally funded transmission project to be located in SPS's service territory is scheduled to be considered by SPP within two months. SPP is proceeding as if there is no right of first refusal under Texas law and is abiding by portions of its Open Access Transmission Tariff. SPS and SPP ask the commission to resolve this issue as a matter of law.

Persons who wish to comment upon 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. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46901.

TRD-201700870
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2017



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Athens, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Athens; TxDOT CSJ No.: 1710ATHNS.
Scope:

Provide engineering and design services, including construction administration, to:

- Reconstruct North Parallel Taxiway and Cross Taxiway;
- Reconstruct partial Apron;
- Rehabilitate remaining partial Apron;
- Rehabilitate South Parallel Taxiway and Cross Taxiway;
- Rehabilitate and mark Runway 17-35; and
- Rehabilitate Hangar Access Taxiway 14.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the design phase of the current project is 15%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Eusebio Torres, P.E.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Athens Municipal Airport may include constructing a hangar and hangar access taxiway.

The City of Athens reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Athens Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number (800) 68-PILLOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider

will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 **must be received** in the TxDOT Aviation eGrants system no later than April 18, 2017, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

An instructional video on how to respond to a solicitation in eGrants is available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.html>.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Eusebio Torres, P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201700830

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 2, 2017

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Texas Water Development Board

Applications for January and February, 2017

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73752, a request from the City of Arlington, P.O. Box 90231, MS 01-0200, Arlington, Texas 76004, received September 23, 2016, for \$5,601,861 in financial assistance consisting of a \$4,775,000 loan and \$826,861 in principal forgiveness from the Clean Water State Revolving Fund to finance construction of collection system improvements.

Project ID #62725, a request from the Kellyville-Berea Water Supply Corporation, P.O. Box 459, Jefferson, Texas 75657-0459, received September 22, 2016, for a \$635,000 loan from the Drinking Water State Revolving Fund to finance construction of a new water well and the development of an asset management plan.

Project ID #73750, a request from the City of Fort Worth, 1000 Throckmorton St., Fort Worth, Texas 76102-6312, received September 21, 2016, for \$16,991,157 in financial assistance consisting of a \$16,045,000 loan and \$946,157 in principal forgiveness from the Clean Water State Revolving Fund to finance construction of improvements to its wastewater collection system.

Project ID #73753, a request from the City of Grand Prairie, P.O. Box 534045, Grand Prairie, Texas 75053-4045, received September 29 2016, for \$5,741,175 in financial assistance consisting of a \$5,110,000 loan and \$631,175 in principal forgiveness from the Clean Water State Revolving Fund to finance construction of wastewater collection system improvements.

Project ID #73747, a request from the City of Alton, 509 S. Alton Blvd., Alton, Texas 78573-6914, received September 22, 2016, for a \$500,000 loan from the Clean Water State Revolving Fund to finance a master drainage study and an asset management plan for its stormwater system.

Project ID #10451, a request from the City of Melvin, P.O. Box 777, Melvin, Texas 76858-0777, received September 21, 2016, for \$539,902 in financial assistance consisting of a \$180,000 loan and \$359,902 in principal forgiveness from the Drinking Water State Revolving Fund to finance construction of a corrective treatment facility.

Project ID #62732, a request from the 114th Mobile Home Park, LLC, 1818 114th St., #29, Lubbock, Texas 79423-7279, received October 11, 2016, for \$200,000 in principal forgiveness from the Drinking Water State Revolving Fund to finance planning, design, and construction of a filtration system for arsenic and fluoride removal.

Project ID #62720, a request from the City of Ballinger, P.O. Box 497, Ballinger, Texas 76821-0497, received September 21, 2016, for \$3,393,435 in financial assistance consisting of a \$1,035,000 loan and \$2,358,435 in principal forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition, and design of an alternative water supply.

Project ID #73696, a request from the City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666, received September 21, 2016, for \$5,445,839 in financial assistance consisting of a \$4,760,000 loan and \$685,839 in principal forgiveness from the Clean Water State Revolving Fund to finance construction of a wastewater reuse system expansion project.

Project ID #73748, a request from the City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666, received September 22, 2016, for \$1,961,821 in financial assistance consisting of a \$1,000,000 loan and \$961,821 in principal forgiveness from the Clean Water State Revolving Fund to finance planning, acquisition and design of a flood mitigation project.

Project ID #73681, a request from the City of Huntington, P.O. Box 349, Huntington, Texas 75949-0349, received September 19, 2016, for financial assistance in the amount of \$2,312,025, consisting of a \$1,180,000 loan and \$1,132,025 in principal forgiveness from the Clean Water State Revolving Fund to finance renovation and expansion of the City's wastewater treatment plant.

Project ID #73749, a request from the City of River Oaks, 4900 River Oaks Blvd., Fort Worth, Texas 76114, received September 26, 2016, for a \$7,000,000 loan from the Clean Water State Revolving Fund to fi-

nance planning, design and construction of improvements to the wastewater collection system.

Project ID #62731, a request from the City of River Oaks, 4900 River Oaks Blvd., Fort Worth, Texas 76114, received September 26, 2016, for a \$8,000,000 loan from the Drinking Water State Revolving Fund to finance planning, design and construction of water system improvements.

Project ID #62730, a request from the West Wise Special Utility District, P.O. Box 566, Bridgeport, Texas 76426-0566, received September 26, 2016, for a \$13,430,000 loan from the Drinking Water State Revolving Fund to finance planning, acquisition, design, and construction of a surface water treatment plant.

Project ID #62734, a request from the City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469-9277, received December 13, 2016, for a \$51,300,000 loan from the Drinking Water State Revolving Fund to refinance construction of the Mary Rhodes Phase II transmission line.

Project ID #62729, a request from Dario V. Guerra, III, doing business as Derby Ing., P.O. Box 721025, McAllen, Texas 78501, received September 26, 2016, for \$200,000 in principal forgiveness from the Drinking Water State Revolving Fund to finance planning, design, acquisition and construction of water system improvements.

Project ID #62733, a request from the City of Granbury, 116 W. Bridge St., Granbury, Texas 76048, received November 14, 2016, for a \$15,000,000 loan from the Drinking Water State Revolving Fund to finance planning, design, acquisition and construction of water distribution system improvements and a request for a waiver from the requirement to include funds to mitigate water loss as part of the project.

Project ID #73714, a request from the City of Hudson, 201 Mt. Carmel Rd., Hudson, Texas 75904-8661, received September 19, 2016, for financial assistance in the amount of \$4,295,908, consisting of a \$3,735,000 loan and \$560,908 in principal forgiveness from the Clean Water State Revolving Fund to finance construction costs for the replacement of the City's wastewater treatment plant.

TRD-201700829

Todd Chenoweth

General Counsel

Texas Water Development Board

Filed: March 1, 2017



Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

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

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

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

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

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