TEXAS REGISTER

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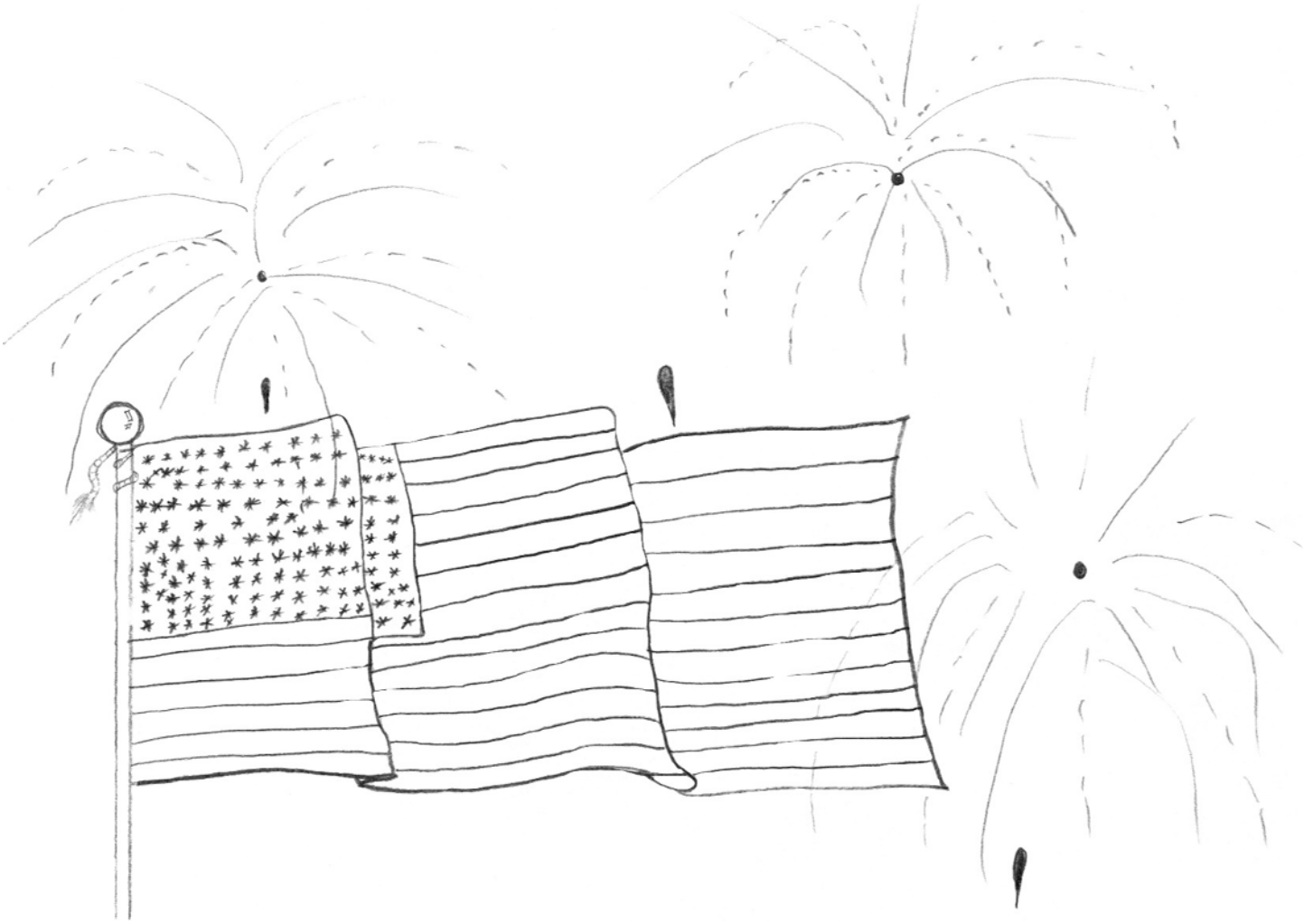

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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In This Issue

Open Meetings

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

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

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

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

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

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

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

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

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

THE 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.

Proclamation 41-3545

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the legislature adjourned its 85th regular session without extending the existence of the Texas Medical Board, the Texas State Board of Examiners of Psychologists, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners; and

WHEREAS, without legislative action, these five agencies will be abolished on September 1, 2017, pursuant to the Texas Sunset Act, Chapter 325, Government Code, and statutory law applicable to these agencies; and

WHEREAS, the continuation of these agencies is important to the operation of the professions subject to oversight by these agencies; and

WHEREAS, the people of Texas have placed the constitutional power to call the legislature into special sessions in the hands of the governor; and

WHEREAS, as soon as the Senate passes all bills necessary to extend the existence of the five state agencies referenced above, I intend to add to this first called session of the 85th Legislature the items I announced on June 6, 2017, including matters such as teacher compensation and retention practices, school finance reform, education options for students with special needs, property tax reform, constraining the growth of state and local government, municipal regulatory and annexation reforms, protection of property rights, privacy, the governmental collection of union dues, pro-life legislation, and mail-in ballot reforms; and

WHEREAS, bills related to the matters that I intend to add to this first called session of the 85th Legislature may be filed and may begin to be considered by the legislature before those matters are added to the call;

NOW, THEREFORE, I, GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article III, Section 5 and Article IV, Section 8 of the Texas Constitution, do hereby call an extraordinary session of the 85th Legislature, to convene in the City of Austin, commencing at 10 a.m. on July 18, 2017, for the purpose of considering the following:

Legislation amending sections 151.004, 501.005, 502.003, 503.005, and 505.005 of the Texas Occupations Code to extend the expiration dates applicable to the Texas Medical Board, the Texas State Board of Examiners of Psychologists, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners.

The Secretary of State will take notice of this action and will notify the members of the legislature of my action.

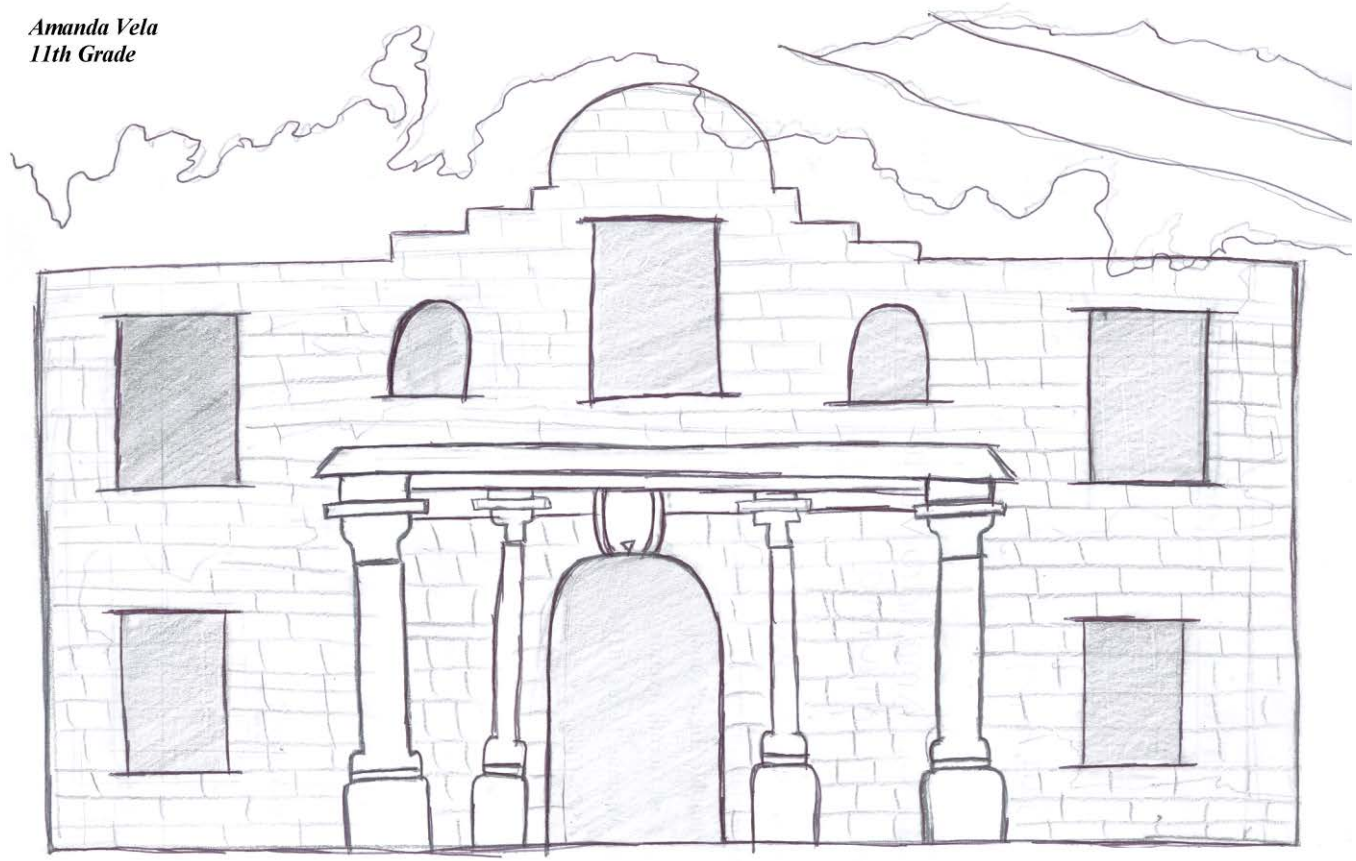
IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of the State to be affixed at my Office in the City of Austin, Texas, this the 10th day of July 2017.

GREG ABBOTT, Governor

TRD-201702688

♦ ♦ ♦

Amanda Vela
11th 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.)

Opinions

Opinion No. KP-0154

The Honorable John Zerwas, M.D.

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an independent school district must hold a tax ratification election pursuant to Tax Code section 26.08 in specific circumstances (RQ-0159-KP)

S U M M A R Y

Subsection 26.08(a) of the Tax Code requires the registered voters of an independent school district to approve an adopted tax rate if the governing body of the district adopts a tax rate that exceeds the district's rollback tax rate. The rollback rate calculation, defined in subsection 26.08(n), includes a maximum maintenance and operations tax rate component and a current debt service tax rate component. The debt service component of the rollback rate does not reflect the debt service tax rate of the preceding year but of the current year. As a result, the rollback tax rate effectively measures only the maintenance and operations component of the tax rate.

An independent school district may not increase a maintenance and operations tax rate above the maximum maintenance and operations tax rate component calculated for purposes of the rollback tax rate without voter approval through a tax ratification election.

Opinion No. KP-0155

The Honorable Donna Campbell, M.D.

Chair, Committee on Veteran Affairs and Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether under certain circumstances municipal tree preservation ordinances may violate the Takings Clause of the Texas Constitution (RQ-0164-KP)

S U M M A R Y

If a municipal tree preservation ordinance operates to deny a property owner all economically beneficial or productive use of land, the ordinance will result in a taking that requires just compensation under article I, section 17 of the Texas Constitution.

Furthermore, a court is likely to find a regulatory taking if a municipal tree preservation ordinance, as applied to a specific property, imposes restrictions that unreasonably interfere with landowners' rights to use and enjoy their property. In analyzing whether the interference is unreasonable, the court will consider all relevant circumstances, including: (1) the economic impact of the ordinance; (2) the extent to which the ordinance interferes with distinct investment-backed expectations; and (3) the character of the governmental action.

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

TRD-201702722
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: July 19, 2017

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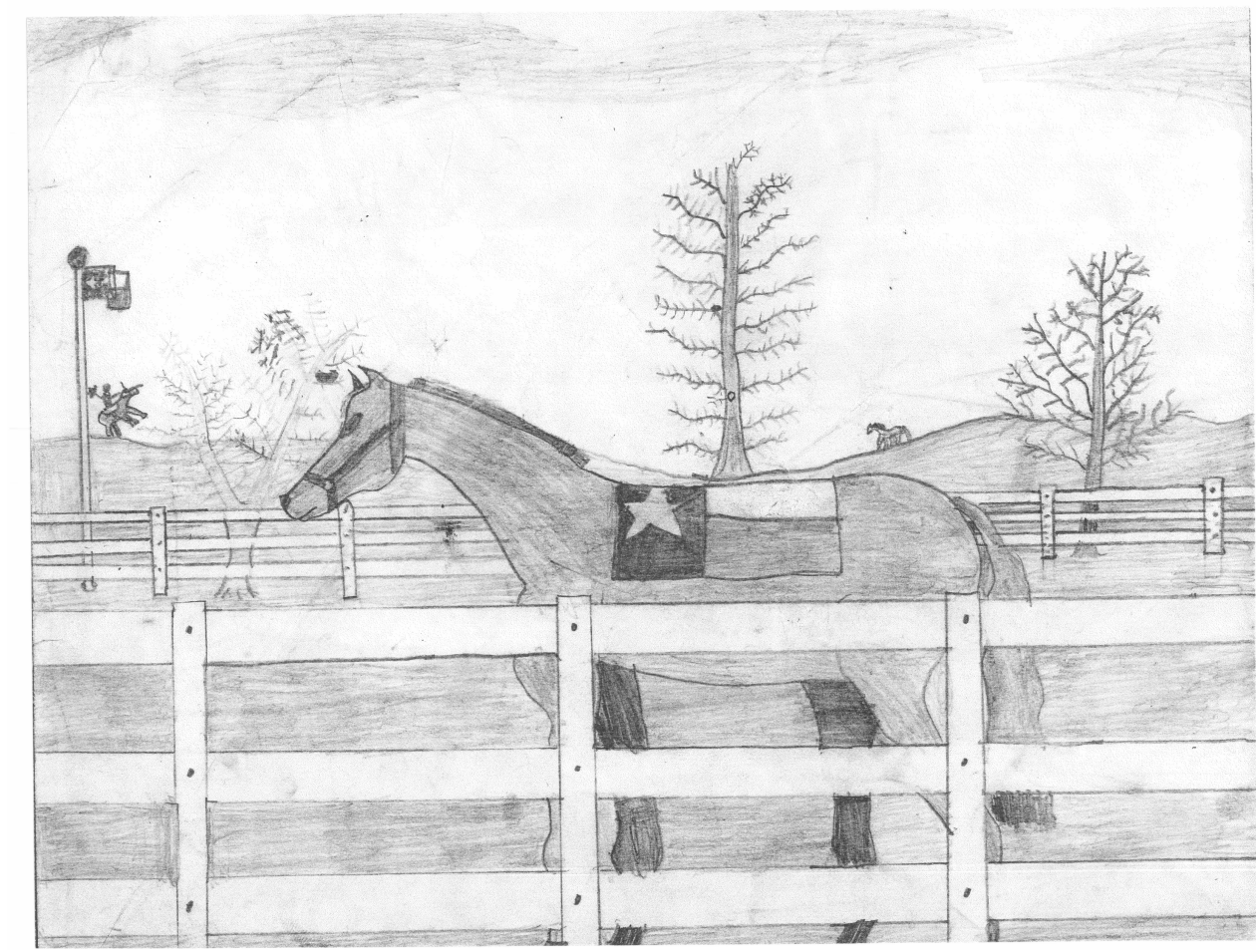

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views,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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §20.1 by adding a definition for the term "vendor."

Concurrently with publication of this rule amendment, the Commission is publishing new rule §20.56 and an amendment to §20.61 to clarify reporting requirements and certain prohibitions on the use of political contributions. The term "vendor" is included in each of those rules and would be defined in §20.1 as any person providing goods or services to a candidate, officeholder, political committee, or other filer of a campaign finance report. The term does not include an employee of the filer.

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

Ms. Willing has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding the meaning of the term "vendor" as it appears in Chapter 20 of the commission's rules. There will not be an affect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.1 affects Title 15 of the Election Code, specifically in statutes requiring the disclosure of political expenditures, including §254.031, in addition to §§253.035, 253.038, and 253.041.

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (23) (No change.)

(24) Vendor--Any person providing goods or services to a candidate, officeholder, political committee, or other filer under this chapter. The term does not include an employee of the candidate, officeholder, political committee, or other filer.

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 July 14, 2017.

TRD-201702652
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 463-5800

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SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.56

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rules §20.56, regarding expenditures to vendors providing goods or services to a candidate, officeholder, political committee, or other filer.

Section 254.031 of the Election Code requires a candidate, officeholder, political committee, or other filer who files a campaign finance report to include certain information regarding political expenditures and expenditures made from political contributions. When an expenditure is required to be itemized in a report, the report must include certain information regarding the expenditure, including the amount, date, and purpose of the expenditure and the name and address of the person to whom the expenditure is made. The rule addresses the proper disclosure of an expenditure made by a vendor for a filer with the intent to seek

reimbursement from the filer, which must be reported by the filer as though the filer made the expenditure directly.

Additionally, §§253.035, 253.038, and 253.041 of the Election Code include prohibitions on candidates, officeholders, and specific-purpose committees converting political contributions to the personal use of a candidate or officeholder, making certain payments to purchase or rent real property, or paying certain family members of the candidate or officeholder for their personal services. The rule is intended to prevent a candidate, officeholder, or specific-purpose committee from using a vendor to circumvent these statutory prohibitions. Accordingly, the rule specifies that, in providing goods or services to a candidate, officeholder, or specific-purpose committee, a vendor may not make an expenditure for the candidate, officeholder, or committee that would be prohibited by one of those statutes if it were made by the candidate, officeholder, or committee. The rule also specifies that a candidate, officeholder, or specific-purpose committee may not use political contributions to pay or reimburse a vendor for an expenditure that would be prohibited by one of those statutes if it were made by the candidate, officeholder, or committee.

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

Ms. Willing has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in the commission's rules regarding the disclosure of political expenditures to vendors in campaign finance reports made available to the public and in the application of certain statutory prohibitions to limit the misuse of political contributions. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

The new rule §20.56 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new rule §20.56 affects Chapter 254 of the Election Code as it relates to the requirement to report a political expenditure, including §254.031, and to §§253.035, 253.038, and 253.041.

§20.56. Expenditures to Vendors.

(a) A political expenditure made by a vendor for a candidate, officeholder, political committee, or other filer, with the intent to seek reimbursement from the filer, shall be reported by the filer in accordance with this chapter as though the filer made the expenditure directly.

(b) A vendor of a candidate, officeholder, or specific-purpose committee may not, in providing goods or services for the candidate, officeholder, or committee, make an expenditure that, if made by the candidate, officeholder, or committee, would be prohibited by §§253.035, 253.038, or 253.041, Election Code.

(c) A candidate, officeholder, or specific-purpose committee may not use political contributions to pay or reimburse a vendor for an expenditure that, if made by the candidate, officeholder, or committee, would be prohibited by §§253.035, 253.038, or 253.041, Election Code.

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

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702653
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 463-5800

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1 TAC §20.61

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §20.61, regarding the disclosure of expenditures, including expenditures to vendors.

Section 254.031 of the Election Code requires a candidate, officeholder, political committee, or other filer who files a campaign finance report to itemize certain political expenditures and expenditures made from political contributions, including the purposes of the expenditures. Current Texas Ethics Commission Rules §20.61 requires the purpose of an expenditure to include a description of the category of goods, services, or other thing of value for which the expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The rule provides examples of acceptable categories for the description of an expenditure.

The proposed amendment provides a definition for the term "consulting," which would require the category "consulting expense" to be used for an expenditure made for advice and strategy, and not for goods or services. The amendment also provides that an expenditure, other than a reimbursement, that is made for more than one type of good or service must be itemized in a report separately for each type of good or service that is provided.

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

Ms. Willing has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding the disclosure of expenditures, including expenditures for political consulting services, and requiring providing greater disclosure to the public when expenditures are made to vendors and other persons for more than one type of good or service. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The amendment to §20.61 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.61 affects Chapter 254 of the Election Code as it relates to the requirement to report an expenditure, including §254.031.

§20.61. Purpose of Expenditure.

(a) For reporting required under Section 254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

(A) advertising expense;

(B) accounting/banking;

(C) consulting expense;

(D) contributions/donations made by candidate/officeholder/political committee;

(E) event expense;

(F) fees;

(G) food/beverage expense;

(H) gifts/awards/memorials expense;

(I) legal services;

(J) loan repayment/reimbursement;

(K) office overhead/rental expense;

(L) polling expense;

(M) printing expense;

(N) salaries/wages/contract labor;

(O) solicitation/fundraising expense;

(P) transportation equipment and related expense;

(Q) travel in district;

(R) travel out of district;

(S) other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(3) For purposes of this section, "consulting" means advice and strategy. "Consulting" does not include providing other goods or services, including without limitation media production, voter contact, or political advertising.

(b) An expenditure other than a reimbursement to a person, including a vendor, for more than one type of good or service must be reported by the filer as separate expenditures for each type of good or service provided by the person in accordance with this rule.

(c) [~~(b)~~] The description of a political expenditure for travel outside of the state of Texas must provide the following:

(1) The name of the person or persons traveling on whose behalf the expenditure was made;

(2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred; and

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(d) [~~(c)~~] Except as provided by subsection (e)(d) of this section, this rule applies to expenditures made on or after July 1, 2010.

(e) [~~(d)~~] The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.

(f) [~~(e)~~] Comments: The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made. The following is a list of examples that describe how the purpose of an expenditure may be reported under section 20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

(1) Example: Candidate X is seeking the office of State Representative, District 2000. She purchases an airline ticket from ABC Airlines to attend a campaign rally within District 2000. The acceptable category for this expenditure is "travel in district." The candidate activity that is accomplished by making the expenditure is to attend a campaign rally. An acceptable brief statement is "airline ticket to attend campaign event."

(2) Example: Candidate X purchases an airline ticket to attend a campaign event outside of District 2000 but within Texas, the acceptable category is "travel out of district." The candidate activity that is accomplished by making the expenditure is to attend a cam-

paign event. An acceptable brief statement is "airline ticket to attend campaign or officeholder event."

(3) Example: Candidate X purchases an airline ticket to attend an officeholder related seminar outside of Texas. The acceptable method for the purpose of this expenditure is by selecting the "travel out of district" category and completing the "Schedule T" (used to report travel outside of Texas).

(4) Example: Candidate X contracts with an individual to do various campaign related tasks such as work on a campaign phone bank, sign distribution, and staffing the office. The acceptable category is "salaries/wages/contract labor." The candidate activity that is accomplished by making the expenditure is to compensate an individual working on the campaign. An acceptable brief statement is "contract labor for campaign services."

(5) Example: Officeholder X is seeking re-election and makes an expenditure to purchase a vehicle to use for campaign purposes and permissible officeholder purposes. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "purchase of campaign/officeholder vehicle."

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "campaign vehicle repairs."

(7) Example: Officeholder X purchases flowers for a constituent. The acceptable category is "gifts/awards/memorials expense" and an acceptable brief description is "flowers for constituent."

(8) Example: Political Committee XYZ makes a political contribution to Candidate X. The acceptable category is "contributions/donations made by candidate/officeholder/political committee" and an acceptable brief description is "campaign contribution."

(9) Example: Candidate X makes an expenditure for a filing fee to get his name on the ballot. The acceptable category is "fees" and an acceptable brief description is "candidate filing fee."

(10) Example: Officeholder X makes an expenditure to attend a seminar related to performing a duty or engaging in an activity in connection with the office. The acceptable category is "fees" and an acceptable brief description is "attend officeholder seminar."

(11) Example: Candidate X makes an expenditure for political advertising to be broadcast by radio. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising." Similarly, Candidate X makes an expenditure for political advertising to appear in a newspaper. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising."

(12) Example: Officeholder X makes expenditures for printing and postage to mail a letter to all of her constituents, thanking them for their participation during the legislative session. Acceptable categories are "advertising expense" OR "printing expense" and an acceptable brief description is "letter to constituents."

(13) Example: Officeholder X makes an expenditure to pay the campaign office electric bill. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office electric bill."

(14) Example: Officeholder X makes an expenditure to purchase paper, postage, and other supplies for the campaign office. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office supplies."

(15) Example: Officeholder X makes an expenditure to pay the campaign office monthly rent. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office rent."

(16) Example: Candidate X hires a consultant for fundraising services. The acceptable category is "consulting expense" and an acceptable brief description is "campaign services."

(17) Example: Candidate/Officeholder X pays his attorney for legal fees related to either campaign matters or officeholder matters. The acceptable category is "legal services" and an acceptable brief description is "legal fees for campaign" or "for officeholder matters."

(18) Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting with her constituents. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting with constituents."

(19) Example: Candidate X makes food and beverage expenditures for a meeting to discuss candidate issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign issues."

(20) Example: Officeholder X makes food and beverage expenditures for a meeting to discuss officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss officeholder issues."

(21) Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting to discuss campaign and officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign/officeholder issues."

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 July 14, 2017.

TRD-201702654
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS
SUBCHAPTER C. VOTING SYSTEMS

1 TAC §81.52

The Office of the Secretary State, Elections Division received a petition (as amended) for the adoption of rules under Section 2001.021 of the Texas Government Code and 1 TAC §71.16, requesting, among other things, modifications to 1 TAC §81.52. In accordance with Section 2001.021(c)(2) of the Texas Government Code and 1 TAC §71.16, the Secretary of State proposes amendments to 1 TAC §81.52. The proposed amendments to §81.52 relate to a requirement of a real-time audit log on a precinct ballot counter, and not a continuous audit log printer to be attached to the precinct ballot counter, during the early vot-

ing by personal appearance period. They also concern requirements relating to securing precinct ballot counters from tampering. The continuous audit log printer requirement is no longer necessary as federal voting system guidelines have been revised to provide additional content and security requirements for internal audit logs. Currently, all precinct ballot counters certified in Texas meet these federal standards.

Keith Ingram, Director of Elections, has determined that for the first five-year period the rule as amended is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as amended. The elimination of the outdated requirement for a continuous audit log printer is expected to reduce costs for local governments, and potentially open opportunities for more vendors to submit their precinct ballot counters for voting system certification in Texas. There will be no effect on small businesses or micro-businesses. There will be no anticipated economic cost to the state or local governments.

Mr. Ingram has also determined that for the first five-year period the public benefit anticipated as a result of the rule as amended will be the consistent and uniform guidance provided to entities conducting elections using precinct ballot counters.

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via E-mail to: *elections@sos.texas.gov.* For comments submitted electronically, please include "Proposed Amendment of Rule §81.52" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the rule in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed amendments may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The amendments are proposed pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The amendments are also proposed pursuant to §122.001 and §122.032 of the Texas Election Code, which provide the Office of the Secretary of State the authority to prescribe additional procedures related to certification and operation of voting systems. The amendments are also proposed pursuant to §81.002 of the Texas Election Code, which applies provisions related to electronic voting systems to early voting.

No other code or statute is affected by the amendments.

§81.52. Precinct Ballot Counters.

(a) Where an electronic voting system that does not entail the counting of ballots at central locations established under the Texas Election Code, Chapter 127, Subchapter A, is to be used at an election, the election results shall be processed in accordance with this section.

(b) If the tabulating equipment is capable of separating damaged ballots, irregularly marked ballots, and write-in ballots for manual processing, the equipment may be arranged so that voters deposit their marked ballots directly into the tabulator. The tabulator must be provided with a sealed container such that ballots deposited by voters are counted by the tabulator or separated for manual counting, as the case may be, and then placed by the device directly into the sealed container.

(c) In addition to the procedures provided herein and in §127.157 of the Texas Election Code (the "Code"), compliance with the following voting procedures is required for the proper processing of ballots to be tabulated by voting systems specifically designed as electronic precinct ballot counters ("precinct counters").

(1) The voter may deposit a ballot directly into a precinct counter. If the machine returns the ballot to the voter because the ballot is blank, mismarked, damaged, or otherwise spoiled, the voter may either attempt to correct the ballot, request another ballot once the spoiled ballot is returned to the election officer, or request the election official to override the rejection so that the precinct counter accepts the ballot, and outstacks the write-in, if necessary.

(2) The voter is not entitled to receive more than three ballots. The procedures for handling a spoiled ballot provided by §64.007 of the Code must be followed.

(3) The precinct counter must be set up to reject and return the ballot to the voter rather than outstack the ballot if it is blank, mismarked, undervoted, or overvoted.

(4) If the precinct counter rejects the ballot for any reason and the voter has received the maximum number of ballots or does not wish to make further changes to the ballot, the election official must override the rejection so that the precinct counter accepts the ballot and outstacks the write-in, if necessary.

(5) While the polls are open or as soon as practicable after the polls close, the counted ballots shall be removed from the ballot box and examined for irregularly marked ballots for processing in accordance with §127.157(b) - (e) of the Code.

(d) If the tabulating equipment is not capable of separating damaged, irregularly marked, and write-in ballots for manual counting, a container meeting the specifications of the Code for ballots boxes number one and number two must be provided for the deposit of ballots by voters after the ballots have been marked. At the direction of the presiding judge, the election officials shall unlock the ballot container and process the ballots in accordance with the provisions of the Texas Election Code, §127.034(b) and (c), and then pass the ballots to be counted electronically through the tabulator for counting.

(e) In either case, the damaged and irregularly marked ballots shall be counted manually or duplicated for automatic tabulation pursuant to §127.126 of the Code. Write-in ballots shall be counted manually, and the results added to those for ballots counted by the tabulating equipment. The results entered on the returns shall reflect the totals obtained from the count of the ballots tabulated on the tabulating equipment and from the manual count of damaged, irregularly marked, and write-in ballots.

(f) In this section, "damaged ballot" means a ballot that is damaged such that it may not be accurately counted by the tabulating equipment.

(g) The returns, ballots, and other records of the election shall then be distributed in accordance with the provisions of Chapter 66 of the Code. Ballots must be returned to the appropriate authority in a container meeting the specifications of the Code for ballot box number three.

(h) If a precinct ballot counter is to be used during early voting by personal appearance, it must have a real-time [~~a continuous feed~~] audit log [~~printer must remain attached to the precinct counter throughout the early voting period~~]. In addition, the counter must be secured to prevent tampering by the following procedure.

(1) Immediately prior to the opening of the polls on the first day of early voting by personal appearance, a zero tape shall be run. If

the tape properly reads "0" for all candidates and propositions, voting may begin.

(2) At the close of each day's voting, the precinct counter's doors must be locked and sealed with a numbered paper seal. The precinct counter must be unplugged and secured for the evening.

(3) Prior to voting on each day of the period, the precinct counter must be plugged back in and a tape run to indicate that the counter has not been disturbed since the previous day's voting and that voting may continue.

(4) At the conclusion of early voting by personal appearance, the precinct counter shall be locked, sealed, and secured by the Early Voting Clerk until Election Day.

(5) At the proper time designated for tabulation, the paper seal must be inspected to determine that it is intact. The audit log must also be inspected to determine that there has been no unauthorized access to the precinct counter.

(6) If the seal is intact and the log appears in order, the seal should be broken and the ballots removed to a separate container. The polls are closed on the counter and a "totals" printout is printed. The electronic media prom pack should be removed and transferred to the accumulator.

(7) If the seal is not intact, the early voting results may not be used and the early voting ballots must be re-counted using the standard election day procedure.

(8) If the audit log indicates unauthorized activity, the early voting results may not be used and the early voting ballots must be re-counted using the standard election day procedure.

~~[(9) After the final totals have been printed, the third test must be run on the precinct counter.]~~

(9) [~~(10)~~] The Early Voting Clerk shall place a notice on the bulletin board of the hour and location of the seal breaks and running of totals.

(10) [~~(11)~~] The audit log shall be preserved for 60 days after election day, or 22 months following election day in an election involving a federal office.

(11) [~~(12)~~] Any deviation from this procedure must be approved in writing by the Secretary of State.

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

Filed with the Office of the Secretary of State on July 17, 2017.

TRD-201702702
Lindsey Aston
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 463-5650

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SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.62

The Office of the Secretary State, Elections Division received a petition (as amended) for the adoption of rules under Section 2001.021 of the Texas Government Code and 1 TAC §71.16, requesting, among other things, modifications to 1 TAC §81.62. In accordance with Section 2001.021(c)(2) of the Texas Government Code and 1 TAC §71.16, the Secretary of State proposes amendments to 1 TAC §81.62. The proposed amendments to Rule 81.62 will eliminate the requirement for a continuous feed printer dedicated to a real-time audit log to be included with a central accumulator. The requirement is no longer necessary as federal voting system guidelines have been revised to provide additional content and security requirements for internal audit logs. Currently, all central accumulators certified in Texas meet these federal standards. Further, in 2009, §§129.051 - 129.057 were added to the Texas Election Code, which provide for pre-election security procedures, secure transportation of voting system equipment, secure access to voting equipment, and a prohibition on voting system equipment being connected to the internet. The improvements to the internal audit logs and the additional security provisions eliminate the requirement for the continuous feed printer.

Keith Ingram, Director of Elections, has determined that for the first five-year period the rule as amended is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as amended. The elimination of the outdated requirement for a continuous audit log printer is expected to reduce costs for local governments, and potentially open opportunities for more vendors to submit their central accumulators for voting system certification in Texas.

Mr. Ingram has determined that for the first five-year period the public benefit anticipated as a result of the amendments will be to eliminate outdated requirements and references, and improve certification procedures. There will be no effect on small businesses or micro-businesses. There will be no anticipated economic cost to the state or local governments.

Interested persons may submit written comments on the proposed amendments to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via E-mail to: *elections@sos.texas.gov.* For comments submitted electronically, please include "Proposed Amendment of Rule §81.62" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed amendments in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed amendments. Questions concerning the proposed amendments may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The amendments are proposed pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The amendments are also proposed pursuant to §122.001 and §122.032 of the Texas Election Code, which provide the Office of the Secretary of State the authority to prescribe additional procedures related to certification and operation of voting systems.

No other code or statute is affected by the amendments.

§81.62. Audit Logs for an Election Management System's Central Accumulator [~~Continuous Feed Printer Dedicated to the Central Accumulator Audit Log~~].

(a) For any Election Management System's central accumulator to be certified for use in Texas elections, the central accumulator

shall include a [~~continuous feed printer dedicated to a~~] real-time audit log. All significant election events and their date and time stamps shall be maintained in [~~printed to~~] the audit log.

[~~(b) The definition of "significant election events" in subsection (a) of this rule includes but is not limited to:~~]

[~~(1) error and/or warning messages and operator response to those messages;~~]

[~~(2) number of ballots read for a given precinct;~~]

[~~(3) completion of reading ballots for a given precinct;~~]

[~~(4) identity of the input ports used for modem transfers from precincts;~~]

[~~(5) users logging in and out from election system;~~]

[~~(6) precincts being zeroed;~~]

[~~(7) reports being generated;~~]

[~~(8) diagnostics of any type being run; and~~]

[~~(9) change to printer status.~~]

(b) [~~(c)~~] The [~~continuous-feed printed~~] audit logs [~~log~~] for an election shall be retained by the custodian of election records for the appropriate preservation period.

(c) [~~(d)~~] The "Election Management System" as used in [~~subsection (a) of~~] this rule is defined as a system that consists of any or all of the following elements: functions and databases within a voting system that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.

(d) [~~(e)~~] The "central accumulator" as used in [~~subsection (a) of~~] this rule is the part of an Election Management System that tabulates and/or consolidates the vote totals for multiple precincts/devices.

(e) An Election Management System that uses a central accumulator may not be used in an election unless the central accumulator creates in real time an audit log that includes a date and time stamp of each significant election event.

(f) An audit log produced by a central accumulator is considered part of the election records.

(g) A poll watcher may request a printed copy of an audit log produced by a central accumulator:

(1) before any votes are tabulated;

(2) after early voting results are tabulated; and

(3) immediately following the completion of the vote tabulation.

(h) After the automatic counting of ballots for each precinct is completed, the manager of a central counting station shall print a copy of the entire audit log to retain with other election records.

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

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TRD-201702703

Lindsey Aston
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER J. OUTPATIENT PHARMACY SERVICES

1 TAC §353.905

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Chapter 353, Subchapter J, §353.905, concerning Managed Care Organization Requirements.

BACKGROUND AND PURPOSE

42 Code of Federal Regulations (CFR) §455.410 requires that all ordering and referring physicians or other professionals providing services under the Medicaid state plan or under a waiver of the plan be enrolled as participating providers.

Section 353.905 is no longer aligned with federal law, as it requires a managed care organization (MCO) to allow pharmacy providers to fill prescriptions for covered outpatient drugs ordered by any licensed prescriber, regardless of the prescriber's network participation, without additionally requiring Medicaid enrollment. In accordance with 42 CFR §455.410, the proposed amended rule will require that an MCO allow pharmacy providers to fill prescriptions for covered outpatient drugs ordered only when the prescribing provider is enrolled in Texas Medicaid.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §353.905(f) clarifies that an MCO can only allow a pharmacy provider to fill prescriptions that are written by (1) a licensed prescriber who is enrolled as a Texas Medicaid provider or (2) a physician resident participating in a postgraduate training program and under the supervision of a teaching physician who is enrolled as a Texas Medicaid provider.

The proposed amendment of §353.905(k) clarifies that a teaching physician as described in subsection (f) is not required to co-sign orders written by a resident, as long as the Medicaid recipient's medical record clearly documents the teaching physician's identifiable supervision of the resident.

FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to costs and revenues of state or local governments as a result of enforcing and administering the section as proposed.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. There is no cost to providers

to enroll in Medicaid for the single purpose of ordering, referring, or prescribing for Medicaid clients.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Jami Snyder, State Medicaid Director, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the proposed amendment. The public benefit anticipated as a result of enforcing or administering the section will be the implementation of fraud, waste, and abuse screening of providers who are not currently enrolled in Texas Medicaid and who order drugs for Medicaid clients.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 1R023" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHS 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.

The proposed amendment affects Texas Human Resources Code Chapter 32 and Government Code, Chapter 531.

§353.905. Managed Care Organization Requirements.

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

(f) A health care MCO must allow pharmacy providers to fill prescriptions for covered outpatient drugs ordered by any licensed prescriber, regardless of the prescriber's network participation, who is:

(1) enrolled as a Texas Medicaid provider; or

(2) a physician resident participating in a postgraduate training program and under the supervision of a teaching physician who is enrolled as a Texas Medicaid provider.

(g) - (j) (No change.)

(k) A teaching physician as described in subsection (f) of this section is not required to co-sign orders written by a resident, provided the Medicaid recipient's medical record clearly documents the teaching physician's identifiable supervision of the resident.

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 July 11, 2017.

TRD-201702617
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 487-3434

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 4. LIMITATIONS

1 TAC §354.1863

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Chapter 354, Subchapter F, §354.1863, concerning Prescription Requirements.

BACKGROUND AND PURPOSE

42 Code of Federal Regulations (CFR) 455.410 requires that all ordering and referring physicians or other professionals providing services under the Medicaid state plan or under a waiver of the plan be enrolled as participating providers.

Section 354.1863 is no longer aligned with federal law, as it only requires a prescribing provider to be licensed in order for HHSC to reimburse the pharmacy. In accordance with 42 CFR 455.410, the proposed amended rule will require that the prescriber also be enrolled in Texas Medicaid.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §354.1863(a) adds that HHSC can only pay for pharmaceuticals if the prescribing practitioner is (1) enrolled as a Texas Medicaid provider or (2) is a physician resident participating in a postgraduate training program and under the supervision of a teaching physician who is enrolled as a Texas Medicaid provider.

The proposed amendment of §354.1863(f) clarifies that a teaching physician as described in subsection (a) is not required to co-sign orders written by a resident as long as the Medicaid recipient's medical record clearly documents the teaching physician's identifiable supervision of the resident.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to costs and revenues of state or local governments as a result of enforcing and administering the section as proposed.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. There is no cost to providers to enroll in Medicaid for the single purpose of ordering, referring, or prescribing for Medicaid clients.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Jami Snyder, State Medicaid Director, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be the implementation of fraud, waste, and abuse screening of providers who are not currently enrolled in Texas Medicaid and who treat and prescribe drugs to Medicaid clients.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed by midnight on the last day of the comment period. When faxing or emailing comments, please indicate "Comments on Proposed Rule 1R023" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHS 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.

The amendment affects Human Resources Code Chapter 32 and Government Code, Chapter 531.

§354.1863. Prescription Requirements.

(a) Payment for pharmaceuticals can be made only when these pharmaceuticals are prescribed by a practitioner:

(1) licensed to prescribe legend drugs and enrolled as a Texas Medicaid provider; or

(2) a physician resident participating in a postgraduate training program and under the supervision of a teaching physician who is enrolled as a Texas Medicaid provider.

(b) - (e) (No change.)

(f) A teaching physician as described in subsection (a) of this section is not required to co-sign orders written by a resident, provided the Medicaid recipient's medical record clearly documents the teaching physician's identifiable supervision of the resident.

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 July 11, 2017.

TRD-201702618
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 487-3434

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission (the Commission) proposes amendments to §91.101, concerning definitions and interpretations. The proposed amendments to §91.101 add one new definition, modify four definitions, and delete two definitions. Interactive teller machine is now defined in this section, while the definitions of catastrophic act and construction or development loan have been deleted as no longer necessary. The definitions of "improved residential property", "loan-to-value ratio", and "loan and extension of credit" have been expanded to enhance consistency with federal regulations. Finally, the definition of "office" was modified to include interactive teller machines.

In general, the purpose of the amendments to §91.101 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* on April 21, 2017 (42 TexReg 2269), and the rules are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

Overall the proposed changes provide clarification, better readability and technical corrections.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic

cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3.

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

~~[(7) Catastrophic act-any natural or man-made disaster such as a flood, tornado, earthquake, major fire or other disaster resulting in physical destruction or damage.]~~

(7) ~~[(8)]~~ Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues,

(ii) whether the members participate in furtherance of the goals of the association,

(iii) whether the members have voting rights,

(iv) whether there is a membership list,

(v) whether the association sponsors activities,

(vi) what the association's membership eligibility requirements are, and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who

(i) live in,

(ii) worship in,

(iii) attend school in, or

(iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

~~[(9) Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income-producing property or convert the use of income-producing property to a different or expanded use from its former use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income-producing property that do not change its use.]~~

(8) ~~[(10)]~~ Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls

on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(9) [~~(11)~~] Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(10) [~~(12)~~] Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(11) [~~(13)~~] Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(12) [~~(14)~~] Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(13) [~~(15)~~] Improved residential property--residential real estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily [~~consisting of a~~] residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use. [~~dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.~~]

(14) Interactive teller machine (ITM)-a video-based interactive technology which allows members to conduct transactions and credit union services driven by a centrally based teller, in a real time video or audio interaction.

(15) [~~(16)~~] Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(16) [~~(17)~~] Loan-to-value ratio--the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien [~~all sources on an item of collateral~~] divided by the current [~~market~~] value of the collateral [~~used to secure the loan~~].

(17) [~~(18)~~] Loan and extension of credit--a direct or indirect advance of funds to or on behalf of a member based on an obligation of the member to repay the funds or repayable from the application of the specific property pledged by or on behalf of the member. [~~, or on that member's behalf, that is conditioned upon the repayment of the funds by the member or the application of collateral.~~] The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(18) [~~(19)~~] Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(19) [~~(20)~~] Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and acting in their own best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(20) [~~(21)~~] Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U. S. Office of Management and Budget.

(21) [~~(22)~~] Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(22) [~~(23)~~] Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned ITM or other electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(23) [~~(24)~~] Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(24) [~~(25)~~] Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(25) [~~(26)~~] Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(26) [~~(27)~~] Principal office--the home office of a credit union.

(27) [~~(28)~~] Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(28) [~~(29)~~] Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(29) [~~(30)~~] Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(30) [~~(31)~~] Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(31) [~~(32)~~] Resident of this state--a person physically located in, living in or employed in the state of Texas.

(32) [~~(33)~~] Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(33) [~~(34)~~] Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(34) [~~(35)~~] Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(35) [~~(36)~~] TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(36) [~~(37)~~] Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code [~~(TAC)~~], Banking and Securities, which contains all of the department's rules.

(37) [~~(38)~~] Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(38) [~~(39)~~] Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(39) [~~(40)~~] Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

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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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.115

The Credit Union Commission (the Commission) proposes amendments to §91.115 concerning user safety at unmanned teller machines (UTM). The proposed amendments to §91.115 will reduce regulatory burden by authorizing delivery of notice by electronic means in certain circumstances. In addition, the proposed amendments would provide clarification, better readability, and technical corrections.

In general, the purpose of the amendments to §91.115 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, and L under Texas Government Code, §2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* on April 21, 2017, (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

Subsection (d) currently requires a credit union to furnish it members with a printed notice of basic safety precautions that a member should employ while using an unmanned teller machine. This requirement has not been altered since 1996, despite significant public experience gained in over twenty years of usage and the proliferation of electronic communications between consenting parties.

As proposed to be amended, §91.115(d) will require a credit union to provide notice of basic UTM safety precautions to its members whenever an access device is issued or renewed. Further, the amendment will permit the notice to be delivered to a member electronically if the member has agreed to conduct transactions by electronic means and will further clarify that in the event the credit union furnishes an access device to more than one member on the same account.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §59.310, which provides that the commission shall adopt rules to implement Subchapter D of Finance Code, Chapter 59.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Title 3, Subtitle A, Chapter 59, Subchapter D.

§91.115. Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, [~~§59.307~~] have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For the purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

(c) Safety evaluations.

(1) The credit union owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually, unless the machine is exempted under the Finance Code §59.302.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The credit union owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the credit union owner or operator of the machine.

(d) Notice. A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each member whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The credit union issuer must furnish the notice to its member whenever an access device is issued or renewed. If the credit union furnishes an access device to more than one member on the same account, the credit union is not required to furnish the notice to more than one of the members. [~~Access devices. The notice shall be delivered personally or mailed to each member, whose mailing address is in this state, when an access device is issued, renewed or replaced.~~]

(2) Content of notice. The notice of basic safety precautions required by this subsection [~~section must be provided in written form which can be retained by the member and~~] may include recommendations or advice regarding:

(A) security at walk-up or drive-up unmanned teller machines;

(B) protection of the member's code or personal identification numbers;

(C) procedures for reporting a lost or stolen access device;

(D) reaction to suspicious circumstances;

(E) safekeeping and secure disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(F) the inadvisability of surrendering information about the member's access device over the telephone or the Internet, unless to a trusted merchant in a call or transaction initiated by the member;

(G) safeguarding and protecting the member's access device, such as a recommendation that the member treat the access device as if it was cash;

(H) protection against unmanned teller machine fraud, such as a recommendation that the member promptly review the member's monthly statement and compare unmanned teller machine receipts against the [~~member's monthly~~] statement; and

(I) other recommendations that the credit union reasonably believes are appropriate to facilitate the security of its unmanned teller machine users.

(e) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If a credit union owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the credit union shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

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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7 TAC §91.121

The Credit Union Commission (the Commission) proposes amendments to §91.121, concerning the form of consumer complaint notification. The proposed amendment will allow the required notice to be in a form that is substantially similar to the current required notice. In addition, the proposed changes will alter the content of the required notice to include the department's facsimile number and an email address as well as provide clarification and better readability.

In general, the purpose of the amendments to §91.121 is to implement changes resulting from the commission's review of Chapter 91, Subchapters A, B, J and L, under Texas Government Code, §2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L, was published in the *Texas Register* on April 21, 2017, (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

Currently, §91.121(b) provides a form consumer complaint notice that must be duplicated exactly when the notice is required to be communicated to credit union members. Proposed amended §91.121(b) would state that this consumer complaint must only substantially conform to the form complaint notice that is currently provided by §91.121(b). This will allow a credit union to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §15.409 which requires the Commission to adopt rules for directing complaints to the Department.

The specific section affected by the proposed amendments is Texas Finance Code, §15.409.

§91.121. Complaint Notification.

(a) Definition [~~Definitions~~]. For purposes of this section "required notice" means a notice in the form set forth or provided for in subsection (b)(1) of this section.

[~~(1) "Privacy notice" means any notice which a credit union gives regarding a member's right to privacy, as required by a state or federal law].~~

[~~(2) For purposes of subsection (b) of this section and unless the context reads otherwise, "notice" means a complaint notification in the form set forth in subsection (b)(1) of this section.~~]

(b) Required Notice.

(1) Credit unions must provide their members with a [~~the following~~] notice [~~describing the process for filing complaints:~~] that substantially conforms to the language and form of the following notice in order to let its members know how to file complaints: "If you have a problem with the services provided by this credit union, please contact us at: (Your Name) Credit Union; Mailing Address; Telephone Number or e-mail address. The credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. If any dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department through one of the means indicated below: In Person or U.S. Mail: [~~at~~] 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Facsimile Number: (512) 832-0278; email: complaints@cud.texas.gov, Website: www.cud.texas.gov."

(2) The title of this notice shall be "COMPLAINT NOTICE" and must be in all capital letters and boldface type.

(3) The credit union must provide the notice as follows:

(A) In each area [~~office~~] where a credit union typically conducts business on a face-to-face basis, the required notice[~~, in the form specified in paragraph (1) of this subsection~~] must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) If a credit union maintains a website, [~~it must include~~] the required notice or a link to the required notice must be conspicuously posted [~~in a reasonably conspicuous place~~] on the homepage of the website.

(C) If a credit union distributes a newsletter, it must include the notice on approximately the same date at least once each year in any newsletter distributed to its members.

(D) If a credit union does not [~~have an Internet website or does not~~] distribute a newsletter, the notice must be included with any privacy notice the credit union is required to give or send its members.

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. ORGANIZATION PROCEDURES

7 TAC §91.205

The Credit Union Commission (the Commission) proposes amendments to §91.205 concerning the name of a credit union. The proposed amendment further expounds on the point that credit unions are solely responsible for any unauthorized use or infringement on a business trade name. In addition, the proposed changes will emphasize the need for a credit union to use appropriate due diligence in selecting a credit union name.

In general, the purpose of the amendments to §91.205 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, §2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* on April 21, 2017, (42 TexReg 2269). The department did not receive any comments on the notice of intention to review.

Choosing a credit union name is more than the relatively narrow exercise of deciding what "fits" and creating an identity for itself. Instead, credit unions need to include a broad search on where their proposed name fits with other business trade names to reduce the risk that a proposed name will infringe upon or cause confusion with an existing trade name.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule and less chance of public confusion regarding the name under which a credit union operates. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.003 which sets out requirements for a credit union name.

The specific section affected by the proposed amendments is Texas Finance Code, §122.003.

§91.205. Credit Union Name.

(a) Unless a name change or assumed name has been approved by the commissioner in accordance with the Act and these rules, a credit union shall do business under the name in which its certificate of incorporation was issued.

(b) Subject to the requirements of this rule, a credit union may adopt an assumed name. The credit union's official name, however, must be used in all official or legal communications or documents, which includes account and membership agreements, loan contracts, title documents (except for vehicle titles, which may also be under the credit union's assumed name), account statements, checks, drafts, and correspondence with the Department or the National Credit Union Administration. The assumed name may also be used in those materials so long as it is identified as such (e.g. Generic Credit Union dba GCU). Further, a credit union using an assumed name shall clearly disclose the credit union's official name when the assumed name is used on any signs, advertising, mailings, or similar materials.

(c) A credit union shall not use any name other than its official name until it has received a certificate of authority to use an assumed business name from the commissioner and has registered the designation with the Secretary of State and the appropriate county clerk.

(d) The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business with an office in this state.

(e) Credit union officials are responsible for complying with state and federal law applicable to corporate and assumed names. The Department does not have the power to determine or settle competing claims to a name under other statutes or under common law. Even though the Department may have issued a certificate of authority (based on the above criteria), a credit union could still be infringing on the naming rights of other parties. In particular, if the name a credit union selects is similar to a name already protected by state or federal trademark, a credit union could be forced to stop using the name. This can also be the case if another entity is already using a similar name in a related field, even if the entity does not own a state or federal registration.

(f) Before using an assumed name, a credit union shall take reasonable steps to ensure that use of the name will not cause a reasonable person to believe the credit union's different facilities are different credit unions or to believe that shares or deposits in one facility are separately insured from those of another of its facilities. [~~facility.~~]

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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7 TAC §91.209

The Credit Union Commission (the Commission) proposes amendments to §91.209, concerning the submission of call reports and other information requests. The proposed amendment would eliminate the specific due date for submission of call reports to avoid any conflict or confusion should the National Credit Union Administration (NCUA) establish a different due date for submitting Form 5300.

In general, the purpose of the amendments to §91.209 is to implement changes resulting from the commission's review of Chapter 91, Subchapters A, B, J, and L under Texas Government Code, §2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* on April 21, 2017, (42 TexReg 2269). The Department did not receive any comments on the notice of intention to review.

NCUA has established, in recent years, various deadlines for the submission of its Form 5300, which have been inconsistent with the Department's existing deadline. To avoid the need to amend §91.209 each time NCUA institutes a new due date, the proposed change would prescribe that a timely filed Form 5300 with the NCUA will comply with the reporting requirements of this rule, unless the commission orders otherwise. Therefore, a duplicate copy of Form 5300 with the Department would not be required.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater ease of use of the rule and the lessening of regulatory burden on credit unions by avoiding duplicative information reporting on different dates. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15, and Title 3, Subchapter D, of the Texas Finance Code, and under Texas Finance Code §122.101, which directs credit unions to submit call report to the commissioner.

The specific section affected by the proposed amendments is Texas Finance Code, §122.101.

§91.209. Call Reports and Other Information Requests.

(a) Each credit union shall prepare and submit file, in a manner prescribed by the commissioner, [file] a quarterly financial and statistical report [with the Department no later than 22 days after the end of each calendar quarter] with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of $100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty $50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to cause the NCUA to reduce or negate its own penalty assessment against the credit union [being assessed a civil money penalty] under Section 202 of the Federal Credit Union Act (12 U.S.C. §1782) for late or false/misleading filing of a quarterly call report (Form 5300). The Department shall abate the penalty, [This penalty shall be abated] in part[,] if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, assessed by the Department, however, shall not be decreased below the amount authorized to be assessed [levied] under subsection (a) 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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SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1003

The Credit Union Commission (the Commission) proposes amendments to §91.1003, concerning voluntary mergers and consolidations. The proposed amendment would require credit unions to include in their merger plan a description of any arrangements providing a material increase in compensation or benefits, of any sort, to a board member or senior management employee in connection with the merger/consolidation. The proposed change will ensure the credit unions have more complete information about financial arrangements that would not otherwise be received if the merger/consolidation is not completed.

In general, the purpose of the amendments to §91.1003 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, §2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* on April 21, 2017, (42 TexReg 2269). The department did not receive any comments on the notice of intention to review.

As proposed, amended §91.1003 would require that financial arrangements, which might have the potential to undermine the impartiality of an individual, are disclosed before a credit union considers whether to approve a merger/consolidation proposal. The proposed disclosure of financial arrangements is intended to be broad in scope, applying to any material increase in compensation or benefits that would not be provided but for the merger/consolidation, regardless of whether the increase is made before or after the completion of the merger/consolidation.

With the proposed amendment the Department does not intend to substitute its business judgment for that of the boards of the credit unions on marketplace demands and reasonable compensation arrangements. The proposed rule change simply focuses on transparency and the principle that full disclosure usually results in more informed and better credit union decisions.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater transparency of financial arrangements that might create conflicts of interest for certain individuals involved in a merger/consolidation. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §122.156, which sets out the requirements for rules adopted for mergers or consolidations.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.156.

§91.1003. Mergers/Consolidations.

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

(1) Acquirer credit union--The credit union that will continue in operation after the merger/consolidation.

(2) Acquiree credit union-- The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) Merger inducement--A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.

(4) Substantial--An amount that is large in size, value, or importance. For purposes of this section, an amount is substantial if it exceeds $1,000.00 in total.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

(c) Notice of Intent to Merge/Consolidate. The credit unions shall notify the commissioner in writing of their intent to merge/consolidate within ten days after the credit unions' boards of directors formally agree in principle to merge/consolidate.

(d) Plan for Merger/Consolidation. Upon approval of a proposition for merger/consolidation by the boards of directors, the credit unions must prepare a plan for the proposed merger/consolidation. The plan shall include:

(1) The terms and conditions of the merger/consolidation including a detailed description of any substantial remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other substantial financial rewards or benefits that any board member or senior management employee of the acquiree credit union may receive in connection with the merger/consolidation;

(2) [~~(1)~~] the current financial reports of each credit union;

(3) [~~(2)~~] the combined financial reports of the two or more credit unions;

(4) [~~(3)~~] an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

(5) [~~(4)~~] an explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;

(6) [~~(5)~~] a summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;

(7) [~~(6)~~] a summary of the advantages and disadvantages of the merger/consolidation;

(8) [~~(7)~~] the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(9) [~~(8)~~] any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(e) Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;

(C) the proposed Notice of Special Meeting of the members;

(D) a copy of the ballot form to be sent to the members;

(E) the current delinquent loan summaries for each credit union;

(F) if the acquiree credit union has $65.2 million or more in assets on its latest call report, a statement as to whether the transaction is subject to the Hart-Scott Rodino Act premerger notification filing requirements; and

(G) a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the acquirer credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(3) Notice of the proposed merger must be published in the *Texas Register* and Department Newsletter as prescribed in §91.104 (relating to Notice of Applications).

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval.

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the acquirer credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the acquirer credit union after merger/consolidation are proposed to be substantially the same as those of the acquiree and acquirer credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) specify the purpose of the meeting and state the date, time, and place of the special meeting;

(B) state the reasons for the proposed merger/consolidation;

(C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner;

(D) provide the name and location of the acquirer credit union;

(E) specify the methods permitted for casting votes; and

(F) if applicable, be accompanied by a mail ballot.

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree credit union will be canceled.

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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7 TAC §91.1010

The Credit Union Commission (the Commission) proposes new §91.1010, concerning voluntary liquidations. The proposed new rule will provide guidance to credit unions when they are considering a voluntary liquidation of the institution. The guidelines contained in this proposed new rule will enable the board of directors or liquidating agent to conduct the liquidation of the credit union in a more orderly and expeditious manner and to arrange distribution of the assets to the members without undue delay.

In general, the proposed new §91.1010 is resulting from the commission's review of Chapter 91, Subchapter J, under Texas Government Code, §2001.039. The notice of intention to review Chapter 91, Subchapter J, was published in the *Texas Register* on April 21, 2017, (42 TexReg 2269). The department did not receive any comments on the notice of intention to review, however, the Department has previously received inquiries seeking information regarding voluntary liquidations.

A voluntary liquidation is the dissolution of a solvent credit union with the assets being sold or collected, liabilities paid, and shares and deposits distributed under the direction of the board of directors or a duly appointed liquidating agent. Voluntary liquidation is an option only if the credit union is solvent. Texas Finance Code §126.101 prescribes that the commissioner shall issue a conservatorship order and appoint a conservator to manage a credit union if the commissioner finds the credit union is insolvent or in imminent danger of insolvency.

Overall, the proposed new rule will serve as a guide for conducting the voluntary liquidation of a credit union. The purpose for each new subsection is provided in the following paragraphs.

Subsection (a) Definitions, defines the terms, "voluntary liquidation," "liquidation date," and "liquidating agent."

Subsection (b) Initiating voluntary liquidation process, describes the timeframes and the required processes, once it is determined that liquidation is advisable and other alternatives are not acceptable, and the board of directors has voted to present the question of liquidation to the credit union's membership.

Subsection (c) Notice of liquidation, explains the initial requirements upon an affirmative vote by the membership to liquidate, including notifying the Department, members, and creditors, and the publishing of a public notice, if so directed by the Department.

Subsection (d) Transaction of business during liquidation, delineates the activities that must be suspended, discontinued, or require prior approval after affirmative vote by the membership to liquidate. The subsection also prescribes that members must receive specific notice to discontinue the use of share and credit cards by a specified date.

Subsection (e) Liquidation plan, imposes a requirement that the board of directors develop a formal written plan for liquidation of the credit union's assets and the payment of shares/deposits. The plan must address prescribed areas and provide for the liquidation of the credit union within one year of the liquidation date.

Subsection (f) Approval of the liquidation proposal by membership, specifies that if the membership does not approve the recommendation, the board of directors may only seek the Department's consent to resume business, resubmit the question to the membership, or request the appointment of a conservator.

Subsection (g) Distribution of assets, stipulates the order upon which all legitimate creditor claims shall be paid. The subsection also specifies the action necessary after all assets have been converted to cash and the books are closed.

Subsection (h) Continued supervision of voluntary liquidation, reaffirms that a liquidating credit union continues to be subject to the regulation and supervision of the Department. The Department may require the liquidating credit union to submit reports and the Department may conduct examination of the credit union as necessary or appropriate.

Subsection (i) Retention of records, provides that certain records of the liquidating credit union must be retained for a period of five years. The board of directors must designate a person to be responsible for the retained records.

Subsection (j) Certificate of dissolution and liquidation, establishes a deadline of 120 days after final distribution for the board of directors to provide certification to the Department that the credit union has been successfully dissolved and liquidated.

Subsection (k) Inquiries after liquidation, prescribes that the person designated by the board of directors to retain the records of the liquidating credit union is also responsible for the timely response to any inquires received after the liquidation has been completed.

Before action is taken to voluntarily liquidate a credit union, the board of directors is encouraged to determine whether liquidation is advisable by carefully considering all factors leading to the proposal and carefully considering all available options. Generally, voluntary liquidation should only be considered in extreme cases because voluntary liquidation may cause at least a portion of members' shares/deposits to not be available during the liquidation. This inability of members to access their funds would likely impose significant personal hardships on the members. An example of an extreme case that may possibly justify a voluntary liquidation is a situation in which the credit union has determined that failure to voluntary terminate the credit union within the next 24 months will most likely result in insolvency or involuntary liquidation.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Mr. Feeney has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity as to what is expected of a credit union that elects to voluntarily liquidate. There will be no effect on small or micro businesses as a result of adopting the new rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the new rule if adopted.

Written comments on the proposed new rule may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The new rule is proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §§126.451, 126.452, 125.453, 126.454, 126.455, 126.456, 126.457, and 126.458, which sets out the requirements for voluntary liquidations.

The specific section affected by the proposed new rule is Texas Finance Code, §§126.451, 126.452, 125.453, 126.454, 126.455, 126.456, 126.457, and 126.458.

§91.1010. Voluntary Liquidation.

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

(1) Voluntary liquidation means the dissolution of a credit union with the assets being sold or collected, liabilities paid, and shares/deposits distributed under the direction of the board of directors.

(2) Liquidation date means the date the membership votes to approve liquidation.

(3) Liquidating agent means the person or persons appointed by the board of directors to take possession of, manage, and liquidate the credit union.

(b) Initiating voluntary liquidation process.

(1) Unless the commissioner has issued a liquidation order, the board of directors may, by resolution, recommend the voluntary dissolution of the credit union and direct submission of the question to the members of the credit union.

(2) Within five days after the date the resolution is adopted, the chairman of the board shall notify the commissioner, in writing, of the reasons for the proposed liquidation including a balance sheet and income statement as of the previous month-end.

(3) The board shall act promptly to obtain the membership's approval in accordance with subsection (e) of this section.

(4) Not later than the 10th day before the date of the meeting to request the membership's approval, notice of the meeting shall be mailed by first-class mail to each member of the credit union and the commissioner. The notice shall inform members that they have the right to vote on the liquidation proposal in person at the membership meeting called for that purpose or by written ballot, included with the notice. Written ballots must be received no later than the time and date stated on the notice.

(5) A majority of the members casting votes at the meeting or by mail may vote to approve the board's recommendation and dissolve and liquidate the credit union. If less than a majority vote to approve, the credit union may, subject to the commissioner's approval, resume normal business, resubmit the question of liquidation to the membership or request the appointment of a conservator under the Act and the rules adopted under it.

(6) After an affirmative vote by the members to dissolve and liquidate the credit union, the board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for fair and equitable distribution of the assets to the members.

(7) Within 5 days of an affirmative vote to dissolve and liquidate the credit union the chairman, or president, and the secretary shall notify the commissioner of the intention to liquidate together with a list of the officers and directors.

(c) Notice of liquidation.

(1) If the vote to dissolve and liquidate the credit union is affirmative, the credit union shall:

(A) File a notice with the Department within five days of the liquidation date; and

(B) Mail a copy of the notice of liquidation shareholders/depositors, other known creditors, and know claimants of the credit union within ten days of the liquidation date.

(2) A credit union shall publish public notice of liquidation, if so directed by the Department.

(3) Creditors shall be provided at least 30 days from the liquidation date to submit their claims.

(d) Transaction of business during liquidation.

(1) Immediately after notice of the special meeting to consider voluntary liquidation is mailed to the membership, admission of new members shall be suspended. No new extensions of credit shall be funded during the period between the board of directors' adoption of the resolution recommending voluntary liquidation and the membership meeting called to consider voluntary liquidation, except for the issuance of loans fully secured by a pledge of shares and the funding of outstanding loan commitments approved before adoption of the board resolution. Collection of loans and interest, payments of necessary expenses, clearing of share drafts and credit card charges shall continue.

(2) If the vote to dissolve and liquidate the credit union is affirmative, payments on shares/deposits, withdrawal of shares/deposits (except for transfer of shares/deposits to loans and interest), transfer of shares/deposits to another share/deposit account, granting of loans, and making of investments other than short-term investments shall be discontinued. Collection of loans and interest and payment of necessary expenses will continue during the period of liquidation. Members shall be notified to discontinue the use of share drafts and credit cards, and items will not be cleared 15 days from the liquidation date.

(3) Approval of the Department must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders/depositors dollar-for-dollar, principal plus any interest accrued or due to the shareholder/depositor, through the liquidation date.

(e) Liquidation Plan. The board of directors shall develop and approve a written plan for the liquidation of the assets and payment of shares/deposits. The liquidation plan should provide for the liquidation of the credit union within one year of the liquidation date. At a minimum, credit union's liquidation plan should address the following areas:

(1) Qualifications and experience of the proposed liquidating agent and the compensation and expenses attributable to the service of such person or persons;

(2) Income and expense items must be projected to determine that sufficient funds will be available to finance the liquidation of the credit union;

(3) Payment of all debts and liabilities owed by the credit union should be scheduled;

(4) Partial distributions of shares/deposits should be considered as funds become available from the liquidation of assets;

(5) Distribution of the credit union's assets that remain after settlement of debts and liabilities to all persons entitled to them;

(6) Disposition or maintenance of any remaining or unclaimed funds, real or personal property, or other assets;

(7) Surety bond coverage of all person who will handle or have access to funds of the credit union and the proposed discovery period after final distribution of assets; and

(8) Retention of the credit union's records after liquidation.

(f) Approval of the liquidation proposal by membership.

(1) A majority of the members casting votes at the meeting or by mail may vote to approve the board's recommendation and dissolve and liquidate the credit union. If less than a majority vote to approve, the credit union may, subject to the commissioner's approval, resume normal business, resubmit the question of liquidation to the membership or request the appointment of a conservator under the Act and the regulations adopted under it.

(2) Within 5 days of an affirmative vote to dissolve and liquidate the credit union the chairman or president, and the secretary shall notify the commissioner of the intention to liquidate together with a list of the officers and directors.

(g) Distribution of assets.

(1) The liquidating agent shall use the credit union's assets to pay, in the following order:

(A) Secured creditors to the extent of the value of their collateral;

(B) Liquidation expenses, including a surety bond;

(C) Depositors;

(D) General creditors, including secured creditors to the extent that their claims exceed the value of their collateral; and

(E) Distributions to members in proportion to the shares/deposits held by each member.

(2) After all assets of the credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectible and all obligations of the credit union have been paid/settled, except for shares/deposits due its members, the books shall be closed and the pro rata distribution to the members shall be computed. The computation shall be based on the total amount in each share/deposit account as of the liquidation date or the date on which all share drafts have cleared, whichever is later.

(3) Payments must be made to members promptly after the pro rata distribution has been computed. The credit union may mail a check to his or her last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means authorized by a member.

(4) Unclaimed share/deposit accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be escheated in accordance with Texas laws.

(5) The Department shall be notified in writing within five days when the final distribution of assets to the members is started.

(h) Continued supervision of voluntary liquidation.

(1) A voluntary liquidation of a credit union shall be conducted only with the continued supervision of the Department. The commissioner may conduct any examinations of the credit union the commissioner considers necessary or appropriate.

(2) The credit union shall submit a report to the Department at the start of liquidation showing the credit union's balance sheet as of the start of liquidation. The liquidating credit union shall submit a report of progress as requested by the Department.

(3) If the commissioner has reason to conclude the voluntary liquidation of a credit union is not being safely or expeditiously conducted, the commissioner may take possession of the business and property of the credit union in the same manner, with the same effect, and subject to the same rights accorded the credit union as if the commissioner had issued a liquidation order. The commissioner may appoint a new liquidating agent and proceed to liquidate the affairs of the credit union as provided in the Finance Code, Title 3, Subtitle D, Subchapter E.

(i) Retention of records.

(1) The board of directors shall appoint a custodian for the credit union's records which are to be retained after the final distribution of assets.

(2) All records of the liquidating credit union necessary to establish that creditors were paid and that assets were fair and equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

(j) Certificate of dissolution and liquidation. Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Department.

(k) Inquiries after liquidation. It will be the responsibility of the custodian for the credit union's records to respond timely to inquiries after liquidation.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER A. DEFINITIONS

19 TAC §105.1

The State Board of Education (SBOE) proposes an amendment to §105.1, concerning the Foundation School Program. The proposed amendment would ensure that the definition of tax collections for purposes of the Texas Education Code (TEC), §42.004,

and as used in issuing additional state aid for ad valorem tax credits under the TEC, §42.2515, complies with Texas Tax Code, Chapter 313.

The rule in 19 TAC Chapter 105, Subchapter A, establishes definitions for tax collections used to calculate state aid under the TEC, Chapters 42 and 46, and to implement the wealth-equalizing provisions of the TEC, Chapter 41.

Specifically, 19 TAC §105.1 establishes maintenance and operations (M&O) tax collections as those taxes collected during the fiscal year that are associated with the levy of local M&O tax rates, including current and delinquent taxes and any delinquent taxes related to former county education districts, but not including penalties and interest that accrue on delinquent M&O tax levies.

The proposed amendment to §105.1 would update the rule to comply with Texas Tax Code, Chapter 313, and exclude Chapter 313 tax credits from tax collections used to calculate state aid under TEC, Chapter 42, and recapture under TEC, Chapter 41. Additional state aid for ad valorem tax credits issued under the TEC, §42.2515, would be issued in accordance with Texas Tax Code, Chapter 313.

The SBOE approved the amendment for first reading and filing authorization at its June 23, 2017 meeting.

The proposed amendment would require school districts to report tax collections in accordance with the amended rule, but there would be no changes to the mechanisms for reporting tax collections.

The proposed amendment would have no new locally maintained paperwork requirements. However, school districts are required to work with their local tax assessor/collector to ensure that taxes imposed on companies with Chapter 313 agreements are net of the Chapter 313 tax credit.

FISCAL NOTE. Leo Lopez, associate commissioner for school finance / chief school finance officer, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs to state and local government as a result of enforcing or administering the proposed amendment because the Texas Tax Code, Chapter 313, unambiguously entitles persons granted value limitations to a tax credit rather than reimbursement by the district for taxes paid.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Lopez has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be aligning the accounting of tax collections with current law, delivering the correct state aid under TEC, Chapter 42, and calculating the correct recapture amount under TEC, Chapter 41. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

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

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §42.004, which requires the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with the TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §42.004.

§105.1. Rules for the Definition of Tax Levy and Tax Collection.

(a) General provisions. For the purpose of determining state aid under the Texas Education Code, Chapter 42 and Chapter 46, and in implementing the wealth-equalizing provisions of the Texas Education Code, Chapter 41, calculations that include tax collections as a data element shall reference subsection (b) of this section.

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

(1) Total levy. The sum of the maintenance and operation and debt service levies generated by applying a district's adopted tax rates to its locally assessed valuation of property for the current tax year.

(2) Tax collection.

(A) For districts with a fiscal year that begins on July 1, total taxes collected between July 1 and June 30 for the current and all prior years' levies.

(B) For districts with a fiscal year that begins on September 1, total taxes collected between September 1 and August 31 for the current and all prior years' levies.

(C) For a district that has been awarded a property value adjustment for a major taxpayer protest pursuant to Texas Education Code, §42.2531, the district may petition the commissioner to attribute taxes that had been withheld due to the protest of valuation to the year in which the taxes were originally levied.

(3) Types of tax collections.

(A) Maintenance and operations taxes are those taxes collected during the fiscal year that are associated with the levy of local maintenance and operations tax rates, including current and delinquent taxes and any delinquent taxes related to former county education districts, but not including penalties and interest that accrue on delinquent maintenance and operations tax levies or the tax credits authorized by the Texas Tax Code, Chapter 313.

(B) Interest and sinking fund taxes are those associated with the levy of local interest and sinking fund taxes, not including penalties and interest that accrue on delinquent interest and sinking funds tax levies.

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 July 17, 2017.

TRD-201702701
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 367. ENFORCEMENT

22 TAC §367.10

The Texas State Board of Plumbing Examiners (Board) proposes amendments to the rule set forth in 22 TAC §367.10, concerning Administrative Penalty, to implement SB 2065 (85th Regular Legislative Session), which grants the Board the authority to adopt a Default Final Order when a respondent fails to respond to the Notice of Alleged Violation and accept the recommended administrative penalty or request a hearing on the alleged violation.

The proposed amendments to §367.10 modify the Board's procedures for imposing an administrative penalty. New subsections (c) and (d) are added to allow the Enforcement Committee to present to the Board a motion for default order along with a proposed Default Order containing findings of fact and conclusions of law when a Respondent fails to respond to the Notice of Alleged Violation. All subsequent subsections are re-lettered accordingly. The amendments also allow the Board to grant the relief recommended in the proposed Default Order, or such other relief as may be justified by the evidence presented by the Enforcement Committee. The existing provision that requires the Enforcement Committee to set a formal hearing at SOAH if, within twenty days of receipt, a respondent fails to respond to the Notice of Alleged Violation is deleted.

Lisa G. Hill, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the amendments are in effect, there will be no fiscal impact on state or local government as a result of enforcing the amendments as proposed. Because the amendments do not create any new administrative penalties or change the amounts of existing penalties, there should be no significant fiscal impact on small or micro-businesses.

Ms. Hill has also determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing this proposal will be to have quicker resolution of enforcement cases.

Written comments regarding the proposed amendments to §367.10 may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200; or by email to info@tsbpe.texas.gov with the subject line "367.10." All comments must be received within 30 days.

The rules set forth in 22 TAC §367.10 are proposed under the authority of §1301.251 of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law; Subchapter N of the Occupations Code, which grants the Board the authority to impose administrative penalties for violations of Plumbing License Law; and SB 2065, which enacted changes to §1301.704 and §1301.705 of the Plumbing License Law.

No other statute, article, or code is affected by these proposed amendments.

§367.10. Administrative Penalty.

(a) If the Enforcement Committee decides to pursue an administrative penalty, a Notice of Alleged Violation must be issued to the Respondent. This notice will include a brief summary of the alleged violation, state the amount of the administrative penalty pursued, and inform the Respondent of the Respondent's right to a hearing before the State Office of Administrative Hearings on the occurrence of the violation or the amount of the penalty. There is a rebuttable presumption that the notice is received three (3) days after it was mailed.

(b) Not later than the 20th day after the Notice of Alleged Violation is received by the Respondent, the Respondent, in writing, must:

(1) agree to settle the matter without a formal hearing before the State Office of Administrative Hearings and accept the determination and settlement penalty recommended by the Enforcement Committee; or

(2) make a request for a formal hearing before the State Office of Administrative Hearings on the occurrence of the violation, the amount of the penalty, or both.

(c) If, within twenty (20) days of receipt, the Respondent fails to respond to the Notice of Alleged Violation and either accept the Enforcement Committee's determination and recommended administrative penalty, sanction, or both, or make a written request for a hearing on the determination, the Enforcement Committee may propose entry of a default order against the Respondent unless otherwise provided by applicable law.

(d) Where the Respondent fails to answer to the Notice of Alleged Violation, the Enforcement Committee may present to the Board a proposed Default Order containing findings of fact and conclusions of law. The Board may grant the relief recommended in the proposed Default Order, or such other relief as may be justified by the evidence presented by the Enforcement Committee.

(e) [~~(c)~~] If the Respondent agrees to settle the matter without a formal hearing and accepts the determination and amount of penalty recommended [~~pursued~~] by the Enforcement Committee, the Respondent must pay the penalty to the Board according to an agreed schedule, or if there is no agreed schedule, not later than sixty (60) [~~60~~] days following the date that the Notice of Alleged Violation was issued.

(f) [~~(d)~~] The Enforcement Committee must report the proposed agreement to the Board stating a summary of the facts or allegations against the Respondent and the amount of the recommended administrative penalty. The Board may approve the proposed agreement and its recommended penalty by order. If the Respondent subsequently violates the Board's Order adopting the agreement between the Respondent and the Enforcement Committee by failing to pay the penalty timely, the Board may:

(1) refuse to renew the Respondent's license or registration;

(2) refuse to issue a new license or registration to the Respondent, under §1310.451 of the Plumbing License Law;

(3) revoke the Respondent's license or registration; and

(4) may sue the Respondent to collect the penalty owed under §1301.712 of the Plumbing License Law.

(g) [~~(e)~~] The Enforcement Committee must set a formal hearing on the matter as a contested case before an administrative law judge at the State Office of Administrative Hearings if:

(1) the Respondent requests a formal hearing as required by subsection (b)(2) of this section; [~~not later than the 20th day after the Notice of Alleged Violation is received by the Respondent;~~]

[~~(2) the Respondent fails to respond in writing to the Notice of Alleged Violation not later than the 20th day after the Notice of Alleged Violation is received by the Respondent; or~~]

(2) [~~(3)~~] the parties do not agree to settle the matter as stated in subsection (e) [~~(c)~~] of this section; [~~section, or if~~]

(3) the Board declines to approve the proposed agreement in subsection (f) [~~(d)~~] of this section; or [~~section.~~]

(4) the Respondent attends at the time and place prescribed in the notice required by subsection (d) of this section.

(h) [~~(f)~~] Following the hearing the administrative law judge must issue a proposal for decision to the Board containing findings of facts and conclusions of law. While the administrative law judge may recommend a sanction, findings of fact and conclusions of law are inappropriate for sanction recommendations, and sanction recommendations in the form of findings of fact and conclusions of law are an improper application of applicable law and these rules. Sections 1301.451, 1301.701, and 1301.706 of the Plumbing License Law provide that the Board must impose the appropriate sanction. In all cases, the Board has the discretion to impose the sanction that best accomplishes the Board's legislatively-assigned enforcement goals. The Board is the ultimate arbiter of the proper penalty.

(i) [~~(g)~~] The Board may impose an administrative penalty alone or in addition to other sanctions permitted under the Plumbing License Law.

(j) [~~(h)~~] In determining the proper administrative penalty the Board will apply the factors to be considered set forth in §1301.702(b) of the Plumbing License Law. [~~In particular, these factors are:~~]

[~~(1) the seriousness of the violation, including:~~]

[~~(A) the nature, circumstance, extent, and gravity of any prohibited act; and~~]

[~~(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;~~]

[~~(2) the economic harm to property or the environment caused by the violation;~~]

[~~(3) the history of previous violations;~~]

[~~(4) the amount necessary to deter a future violation;~~]

[~~(5) efforts made to correct the violation; and~~]

[~~(6) any other matter that justice may require.~~]

(k) [~~(i)~~] The following table contains guidelines for the assessment of administrative penalties in disciplinary matters. This table is for standard violations under normal circumstances and does not necessarily include every possible violation of the Plumbing License Law or Board Rules. The table is divided into two classes of violations. Class A violations are those violations with greater potential to jeopardize public health, safety, welfare, property, or environment. Class B violations are those with less immediate potential to jeopardize public health, safety, welfare, property, or environment.

Figure: 22 TAC §367.10(k)

[~~Figure: 22 TAC §367.10(i)~~]

(l) [~~(j)~~] The amounts specified in the table in subsection (k) [~~(i)~~] of this section are guidelines only. The Board retains the right to increase or decrease the amount of an administrative penalty based on the circumstances in each case. In particular, the Board may increase the amount of administrative penalties when the Respondent has committed multiple violations (e.g., some combination of different violations).

(m) [~~(k)~~] Because it is the policy of the Board to pursue expeditious resolution of complaints when appropriate, administrative penalties in uncontested cases may be less than the amounts specified in the table in subsection (k) [~~(i)~~] of this section. Among other reasons, this may be because the Respondent admits fault, takes steps to rectify matters, timely responds to Board concerns, or identifies mitigating circumstances, and because settlements avoid additional administrative costs to the Board.

(n) [~~(l)~~] [~~Other Costs.~~] The cost of preparing the transcript of an administrative hearing is not an administrative penalty. Yet in all cases where the Board has determined that a violation occurred, the Board assesses the cost of the transcript of the administrative hearing to the Respondent.

(o) [~~(m)~~] Based on the proposal for decision, including the findings of fact and conclusions of law, the Board must issue an Order stating its decision in the contested case and a notice to the Respondent of the Respondent's right to judicial review of the Order.

(p) [~~(n)~~] When the Default Order adopted under subsection (d) of this section or the [~~Board's~~] Order adopted under subsection (o) of this section includes the imposition of an administrative penalty:

(1) not later than the 30th day after the date that the Default Order or [~~Board's~~] Order becomes final:

(A) the Respondent must pay the penalty to the Board; or

(B) the Respondent must file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, in accordance with §1301.707 or §1301.708 of the Plumbing License Law.

(2) after all opportunities for judicial review have passed and it is determined that the Respondent owes the penalty and fails to pay the penalty timely:

(A) the Board is authorized to refuse to renew the Respondent's license or registration and refuse to issue a new license or registration to the Respondent, under §1301.707 of the Plumbing License Law; and

(B) the Attorney General may sue the Respondent to collect the penalty under §1301.712 of the Plumbing License Law.

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 July 12, 2017.

TRD-201702629
Lisa G. Hill
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 936-5239

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.6, concerning Employee Training and Education Assistance Program.

Background, Justification and Summary

The amendment to §507.6 no longer lists a specific dollar amount but clarifies that the fees will be established by the Board.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification that the Board's fees will be regularly established by the Board.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 28, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§507.6. Employee Training and Education Assistance Program.

(a) Pursuant to the State Employees Training Act, Chapter 656, Subchapter C of the Texas Government Code, it is the policy and practice of the board to encourage an employee's professional development through training and education programs.

(b) The board may provide assistance for education and training for an employee if the executive director determines that the education or training will enhance the employee's ability to perform current or prospective job duties and will benefit both the board and the employee.

(c) Financial assistance may be awarded for some or all of the following expenses:

(1) tuition, including correspondence courses that fulfill degree, professional or General Equivalence Diploma (GED) program plan requirements;

(2) degree plan pertinent College Level Equivalency Program examinations if the employee receives college credit or waiver of course requirements;

(3) degree plan pertinent Life Experience Assessments if the employee receives college credit; and

(4) required fees, including lab fees, and books.

(d) Financial assistance granted under this program shall be established by the board [~~not exceed $3,600 per year per employee~~].

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 July 14, 2017.

TRD-201702668
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 305-7842

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CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §525.1, concerning Applications for the UCPAE, Issuance of the CPA Certificate, or a License.

Background, Justification and Summary

The amendment to §525.1 incorporates language from Chapter 53 of the Occupations Code regarding criminal convictions with additional revisions so that the rule addresses only individuals applying to take the UCPAE.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarity in that a rule that tracks the statutory language found in the Occupations Code regarding criminal convictions and to distinguish between an applicant to take the CPA exam from an application for license renewal.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 28, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§525.1. Applications for the UCPAE, Issuance of the CPA Certificate, or Initial [a] License.

(a) The board may prohibit [~~deny~~] an individual from taking [~~applicant's application to take~~] the UCPAE [~~for a period not to exceed five years from the date of application~~], and may [~~shall~~] not issue the CPA certificate, or [~~issue~~] an initial license, for a period not to exceed five years from the date of the application, for an offense that does not directly relate to the duties and responsibilities of the practice of public accountancy when the conviction of the offense occurred less than five years before the person applied for the license [~~or renew a license, and shall revoke a current license, if the board finds that the applicant or licensee has been convicted of a felony offense or upon revocation of applicant's or licensee's felony probation, parole, or mandatory supervision~~].

(b) Regardless of the date of the offense, the [~~The~~] board may prohibit an individual from taking [~~deny applicant's application to take~~] the UCPAE, and may not [~~the application to~~] issue the CPA certificate, or [~~the application to issue~~] an initial license, for up to five years from the date of the application, if the board finds that the applicant has been convicted of a felony, or misdemeanor offense which directly relates to the duties and responsibilities of the practice of public accountancy. In determining whether the felony or misdemeanor conviction directly relates to the [~~such~~] duties and responsibilities of the practice of public accountancy, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the board's statutory responsibility to ensure that persons professing to practice public accountancy maintain high standards of competence and integrity in light of the reliance of the public on professional accounting services;

(3) the extent to which a license to practice public accountancy might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a CPA or public accountant;

(5) fraud or dishonesty as an element of the offense; and

(6) all conduct indicating a lack of fitness to serve the public as a professional accountant.

(c) In addition to the factors stated in subsection (b) of this section, the board shall consider §53.023 (Texas Occupations Code) in determining the present fitness of an applicant who has been convicted of a crime.

(d) Because an accountant is often placed in a position of trust with respect to client funds, and the public in general relies on professional accounting services, the Texas State Board of Public Accountancy considers that the following crimes directly relate to the practice of public accountancy:

(1) any felony or misdemeanor of which fraud or deceit is an essential element;

(2) any felony or misdemeanor conviction which results in the suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action; and

(3) any crime involving moral turpitude.

(e) The following procedures shall apply in the processing of an application to take the UCPAE.

(1) The applicant will be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor.

(2) The board may submit identifying information to the Texas Department of Public Safety and or other appropriate agencies [~~on board letterhead~~] requesting conviction records on all applicants

about whom the executive director finds evidence to warrant a record search.

(3) The board will review the conviction records of applicants and will approve or disapprove applications as the evidence warrants. If the requested information is not provided by the Texas Department of Public Safety and or other appropriate agencies at least 10 days prior to the examination, an applicant may be permitted to take the UCPAE, with his or her scores subject to being voided. An applicant may have his or her scores voided or may be denied the opportunity to take the UCPAE on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

(4) The examination eligibility fee of an applicant whose application to take the UCPAE has been denied under this section or §511.70 of this title (relating to Grounds for Disciplinary Action of Applicants) and who has not taken any portion of the examination shall be refunded.

(f) An applicant who has not been permitted to sit for the UCPAE as a result of having been convicted of a felony offense must provide evidence of rehabilitation as the board may request.

(g) The following procedure shall apply in the processing of an application for issuance of the CPA certificate.

(1) The applicant shall be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor.

(2) The board may submit identifying information to the Texas Department of Public Safety and or other appropriate agencies [~~on board letterhead~~] requesting conviction records on an applicant requesting issuance of the CPA certificate.

(3) The board shall review the individual applications and the conviction records of applicants and shall approve or disapprove applications as the evidence warrants. No CPA certificate or initial license may be issued to an applicant whose application for a CPA certificate has been denied. The board may disqualify a person from receiving a CPA certificate or initial license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

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 July 28, 2017.

TRD-201702669
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 305-7842

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22 TAC §525.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §525.2, concerning Application for or Renewal of a License for Applicants or Licensees with Criminal Backgrounds.

Background, Justification and Summary

The amendment to §525.2 incorporates language from Chapter 53 of the Occupations Code regarding criminal convictions with additional revisions so that the rule addresses licensees applying for license renewal.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarity of a rule that tracks the statutory language found in the Occupations Code regarding criminal convictions and to distinguish between an application for license renewal from an applicant to take the CPA exam.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701, or faxed to his attention at (512) 305-7854, no later than noon on August 28, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§525.2. Applications for or Renewal of a License for [~~Applicants or~~] Licensees with Criminal Backgrounds.

(a) The following procedure shall apply when renewing a license annually.

(1) Each licensee shall be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor of which the board has not previously been informed. If the licensee responds in the negative and pays the required license fee, a renewal license shall be issued in accordance with established procedures. If the licensee responds affirmatively and pays the required license fee, the board may submit identifying information [~~on board letterhead~~] to the Texas Department of Public Safety and other appropriate agencies requesting conviction records on the licensee.

(2) The board shall review the conviction records and either approve or deny the application for a renewal license as the evidence warrants. The board shall refund any renewal fee submitted if the application is denied. The board may suspend or revoke or refuse to renew an annual license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

(b) The board may suspend the license or revoke the certificate [~~or decline to renew a licensee's valid license~~] as a result of a licensee's prior conviction of a crime relevant to the license and/or certificate following the opportunity for a hearing as provided for in the Act. The board shall notify the person in writing of the reasons for the suspension, revocation, denial or disqualification. [~~The board may deny an applicant a license or certificate or the opportunity to sit for the UCPAE or void the applicant's grades as a result of an applicant's prior conviction of a crime relevant to the license and/or certificate pursuant to the opportunity for a hearing as provided for in the Act. Following such an action, the board shall notify the person in writing:~~]

~~[(1) of the reasons for the suspension, revocation, denial, or disqualification;]~~

~~[(2) that the applicant or licensee, after exhausting administrative appeals, may file an action in district court in Travis County, for review of the evidence presented to the board and its decision in accordance with the Act;]~~

~~[(3) that an applicant or licensee shall begin the judicial review within 30 days after the board's decision is final and appealable; and]~~

~~[(4) that the earliest date an applicant or licensee may appeal is when a motion for rehearing is denied, or when the time for filing a motion for rehearing has expired and no motion has been filed.]~~

(c) The board shall revoke a certificate for a felony offense that does not relate to the duties and responsibilities of a licensee when the felony conviction occurred less than five years before the date the person applies for a license renewal or the board becomes aware of the conviction and shall revoke a certificate for an offense listed in Article 42A.054 of the Code of Criminal Procedure or a sexually violent offense as defined in 62.001 of the Code of Criminal Procedure.

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 July 14, 2017.

TRD-201702670
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 305-7842

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 11. GOVERNMENT GROWTH IMPACT STATEMENT

34 TAC §11.1

The Comptroller of Public Accounts proposes new §11.1, concerning government growth impact statements. This section is proposed to be located in new Chapter 11, entitled "Government Growth Impact Statements."

The proposal is to comply with Government Code, §2001.0221(c), which was enacted by House Bill 1290, 85th Legislature, 2017. Government Code, §2001.0221(c) requires the comptroller to adopt rules to implement Government Code, §2001.0221, concerning government growth impact statements.

Subsection (a) provides definitions.

Subsection (b) requires a state agency to prepare a government growth impact statement for each rule that is proposed for adoption in a formal rulemaking proceeding under Government Code, Chapter 2001, Subchapter B (Rulemaking).

Subsection (c) requires a state agency to incorporate the government growth impact statement into the notice required by Government Code, §2001.024 (Content of Notice).

Subsection (d) outlines the content of the government growth impact statement. As required by House Bill 1290, the government growth impact statement must address whether a proposed rule: creates or eliminates a government program; requires the creation of new employee positions or the elimination of existing employee positions; requires an increase or decrease in future legislative appropriations to the agency; requires an increase or decrease in fees paid to the agency; creates a new regulation; expands, limits, or repeals an existing regulation; increases or decreases the number of individuals subject to the rule's applicability; and positively or adversely affects this state's economy.

Subsection (e) requires a state agency to write the government growth impact statement in plain language.

Subsection (f) provides that in preparing the government growth impact statement, a state agency should use information that is readily available to the state agency.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by informing them of the impacts related to the implementation of state agency rules. The proposed new rule would have no fiscal impact on the state government, units of local government, or individuals. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to David Zimmerman, Assistant General Counsel, Agency Affairs, Comptroller of Public Accounts, at david.zimmerman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Government Code, §2001.0221(c).

The new section implements Government Code, §2001.0221.

§11.1. Government Growth Impact Statements.

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

(1) Regulation--A rule.

(2) Rule--

(A) a state agency statement of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of a state agency;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

(3) State agency--A state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. The term does not include:

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Department of Insurance, as regards proceedings and activities under Labor Code, Title 5 (Workers' Compensation), of the department, the commissioner of insurance, or the commissioner of workers' compensation; or

(E) an institution of higher education.

(b) A state agency shall prepare a government growth impact statement for each rule that is proposed for adoption in a formal rulemaking proceeding under Government Code, Chapter 2001, Subchapter B (Rulemaking).

(c) A state agency shall incorporate the government growth impact statement into the notice required by Government Code, §2001.024 (Content of Notice).

(d) A state agency shall reasonably describe in the government growth impact statement whether, during the first five years that the proposed rule would be in effect:

(1) the proposed rule creates or eliminates a government program;

(2) implementation of the proposed rule requires the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule requires an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule requires an increase or decrease in fees paid to the agency;

(5) the proposed rule creates a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

(8) the proposed rule positively or adversely affects this state's economy.

(e) The state agency must write the government growth impact statement in plain language.

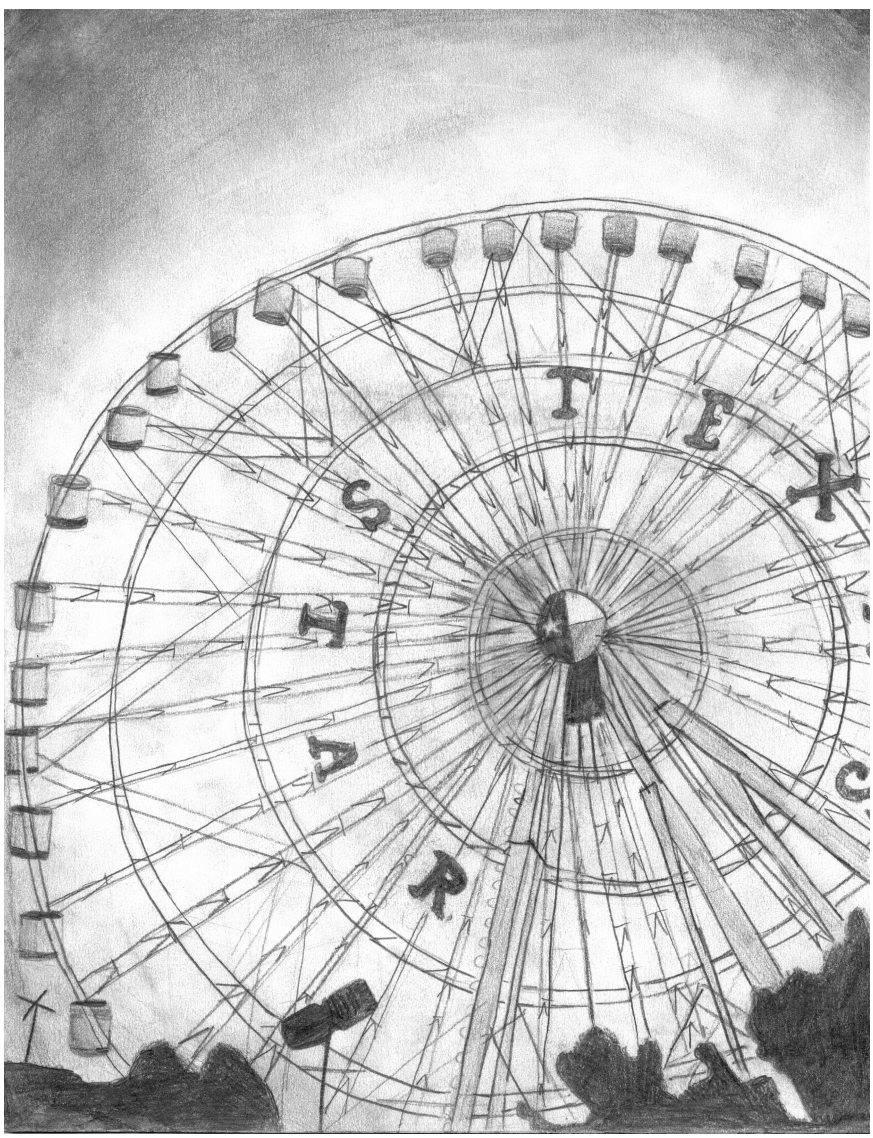
(f) In preparing the government growth impact statement, a state agency shall utilize information that is readily available to the state agency.

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 July 14, 2017.

TRD-201702641
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 27, 2017
For further information, please call: (512) 475-0387

♦ ♦ ♦


TEXAS

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 A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission withdraws the proposed amended §20.1 which appeared in the April 14, 2017, issue of the *Texas Register* (42 TexReg 1984).

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702645
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: July 14, 2017
For further information, please call: (512) 463-5800

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SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.56

The Texas Ethics Commission withdraws the proposed new §20.56 which appeared in the April 14, 2017, issue of the *Texas Register* (42 TexReg 1984).

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702650
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: July 14, 2017
For further information, please call: (512) 463-5800

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1 TAC §20.61

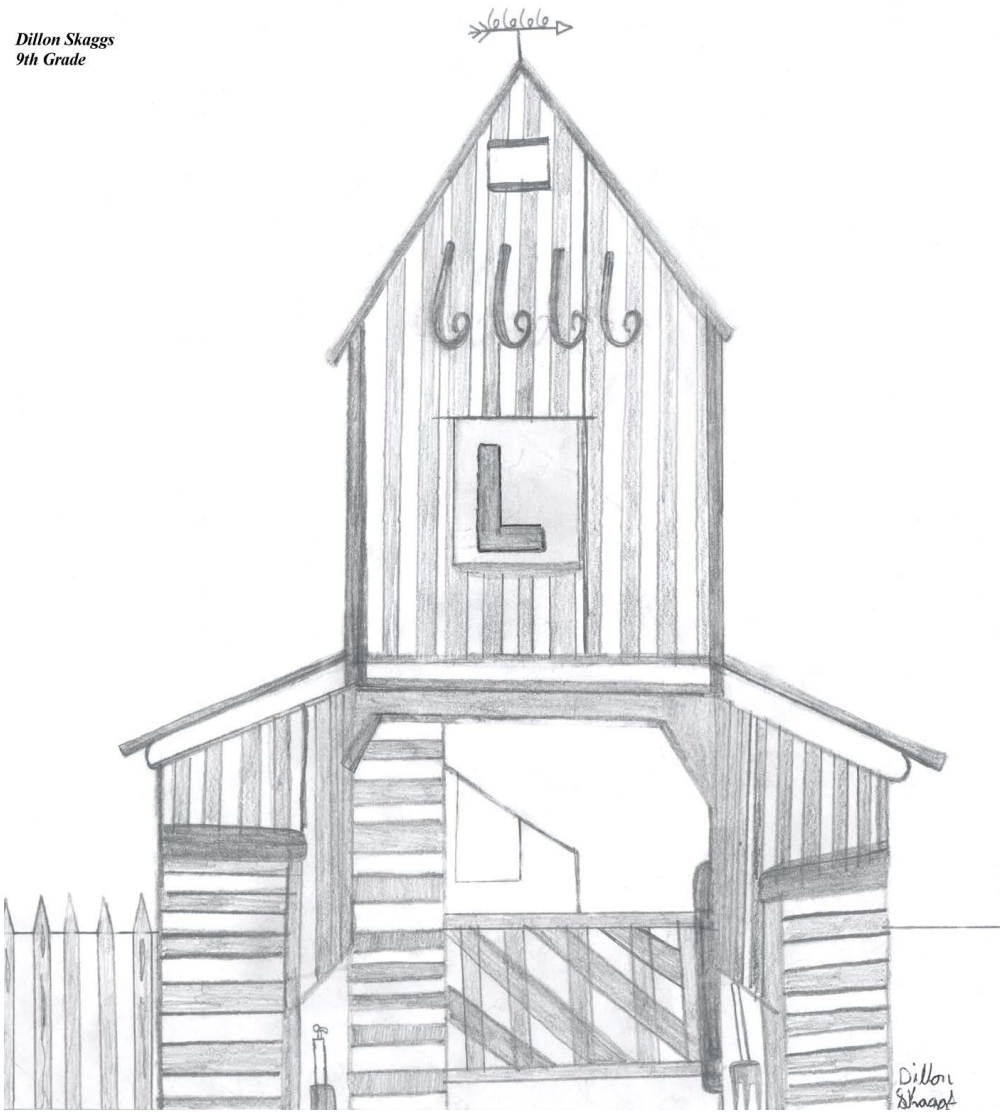
The Texas Ethics Commission withdraws the proposed amended §20.61 which appeared in the April 14, 2017, issue of the *Texas Register* (42 TexReg 1985).

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702647
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: July 14, 2017
For further information, please call: (512) 463-5800

♦ ♦ ♦

Dillon Skaggs
9th Grade



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 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rules §12.81, regarding sworn complaint allegations that are considered "technical, clerical, or *de minimis"* violations. The amendment is adopted without changes to the proposed text as published in the June 9, 2017, issue of the *Texas Register* (42 TexReg 2983), and will not be republished.

Current Texas Ethics Commission Rules §12.81 authorizes the executive director to resolve complaints containing certain types of allegations. Section 571.0631 of the Government Code requires the commission to adopt rules prescribing procedures for investigating and resolving technical and clerical violations of laws within the commission's jurisdiction. The rule creates a technical, clerical, or *de minimis* standard for purposes of violations in sworn complaints. The rule allows the executive director to determine whether all of the alleged violations in a sworn complaint meet that standard and to resolve those complaints by entering into an assurance of voluntary compliance or an agreed resolution with the respondent. The amendment to the rule would add to the list of technical, clerical, or *de minimis* allegations several additional types of allegations, including allegations related to political advertising, late or corrected reports, reporting violations, and certain other prohibited political contributions of relatively small amounts. The amendment furthers the purpose of the rule, which is to increase efficiency in resolving sworn complaints that allege only technical, clerical, or *de minimis* violations.

No public comments were received on this amended rule.

The amendment to §12.81 is adopted under Tex. Gov't Code §571.062 and §571.0631, which respectively authorize the commission to adopt rules concerning the laws administered and enforced by the commission and require the commission to adopt rules prescribing procedures for investigating and resolving technical and clerical violations of laws within the commission's jurisdiction.

The amendment to §12.81 affects §571.0631 of the Government Code.

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

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702642
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: August 3, 2017
Proposal publication date: June 9, 2017
For further information, please call: (512) 463-5800

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 97. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.104

The Credit Union Commission (Commission) adopts the repeal of Texas Administrative Code Title 7, §97.104, Petitions for Adoption or Amendment of Rules without changes to the proposal as published in the March 24, 2017, issue of the *Texas Register* (42 TexReg 1312).

In general, the purpose of the repeal of the rule is to implement changes resulting from the commission's review of Chapter 97 under Texas Government Code §2001.039. The rule is being replaced by §97.500, which is being adopted as published elsewhere in this issue of the *Texas Register.*

The department received one comment supporting the proposed repeal.

The repeal is adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Finance Code.

The specific sections affected by the adopted repeal are Texas Finance Code, §15.402, and Texas Government Code §2001.021.

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 July 14, 2017.

TRD-201702686

Harold E. Feeney
Commissioner
Credit Union Department
Effective date: August 3, 2017
Proposal publication date: March 24, 2017
For further information, please call: (512) 837-9236

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7 TAC §97.105

The Credit Union Commission (the Commission) adopts amendments to §97.105, concerning frequency of examination, without changes to the proposal as published in the March 24, 2017, issue of the *Texas Register* (42 TexReg 1313). The amended rule will not be republished.

In general, the purpose of the adoption of the amendments is to implement changes resulting from the commission's review of Chapter 97 under Texas Government Code §2001.039. The amendments clarify that the annual examination requirement means credit unions must be examined at least once during each twelve-month period. The proposed amendments also provide specific authority for the Department to extend the annual examination intervals to 18 months without prior written approval of the Commission.

The department received one comment in support of the proposed amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §126.051, concerning examinations.

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 July 14, 2017.

TRD-201702687
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: August 3, 2017
Proposal publication date: March 24, 2017
For further information, please call: (512) 837-9236

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SUBCHAPTER F. RULEMAKING

7 TAC §97.500, §97.501

The Credit Union Commission (Commission) adopts new Subchapter F of 7 TAC, Chapter 97, §97.500 and §97.501, concerning rulemaking, without changes to the proposed text as published in the March 24, 2017, issue of the *Texas Register* (42 TexReg 1313). The new subchapter will not be republished.

In general, the purpose of the adoption of the new subchapter regarding rulemaking is to implement changes resulting from the commission's review of Chapter 97 under Texas Government Code §2001.039. The new subchapter contains two new rules which describe procedures for petitions to initiate rulemaking proceedings and hearings on proposed rules. The new rules are adopted to comply with the provisions of Government Code §2001.021 and §2001.029, which requires a state agency to prescribe the procedures for the submission, consideration, and disposition of a petition to initiate rulemaking and provide an opportunity for a public hearing before the agency adopts a substantive rule.

Section 97.500, Petitions to Initiate Rulemaking Proceedings, replaces §97.104, which the Commission repealed, as published elsewhere in this issue of the *Texas Register.* The new rule sets out the procedure for an interested person to petition the Department to initiate rulemaking proceedings.

Section 97.501, Hearings on Proposed Rules, implements the provisions of Government Code §2001.029, which requires a state agency to grant an opportunity for a public hearing before it adopts a substantive rule, under certain circumstances, if a public hearing is requested. The new rule authorizes the commissioner or his designee to hold these hearings and set appropriate hearing processes and procedures.

The department received one comment supporting the adoption of the proposed new rules.

The new rules are adopted under the provisions of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Government Code §2001.021 and §2001.029, which direct the Commission to adopt rules for an interested person to petition the Department to initiate rulemaking proceedings and which provide an opportunity for a public hearing before the agency adopts a substantive 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 July 14, 2017.

TRD-201702690
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: August 3, 2017
Proposal publication date: March 24, 2017
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER K. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §5.2014

The Texas Department of Housing and Community Affairs (the "Department") adopts a new rule to 10 TAC, Chapter 5, Subchapter K, Emergency Solutions Grants ("ESG"), §5.2014, VAWA Requirements without changes to the proposed text as published in the May 12, 2017, issue of *Texas Register* (42 TexReg 2468).

REASONED JUSTIFICATION: On December 16, 2016, HUD made effective through a Final Rule requirements related to the Violence Against Women Reauthorization Act ("VAWA") of 2013. The purpose of the proposed new section in Chapter 5 is to effectuate compliance with the requirements under 24 Code of Federal Regulations ("CFR") §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking" for current ESG Subrecipients.

The Department accepted public comment from May 12, 2017, to June 12, 2017. No public comment was received.

The Board approved the final order adopting the amendment on June 29, 2017.

STATUTORY AUTHORITY: The new section is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt 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.

Filed with the Office of the Secretary of State on July 11, 2017.

TRD-201702601
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 31, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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CHAPTER 7. HOMELESSNESS PROGRAMS
SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §7.1002

The Texas Department of Housing and Community Affairs (the "Department") adopts an amendment to 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program ("HHSP"), §7.1002 without changes to the proposed text as published in the June 9, 2017, issue of the *Texas Register* (42 TexReg 2989), to allow for an annual allocation instead of a biennial allocation.

REASONED JUSTIFICATION: The Department reached out to the eight HHSP Subrecipients in April 2017, to gather input on adding victims of domestic violence into the allocation formula. Based on feedback received, it was determined that more information on the impact of adding weights for victims of family violence, and data for homeless subpopulations including veterans and persons with disabilities, is needed before adjusting the allocation formula. The amendment changed the formula allocation from each biennium to each year. The amendment also reflects the Texas Comptroller's policy that State Agencies must encumber an appropriation during the year for which the appropriation is made.

The Department accepted public comment from May 26, 2017, to June 15, 2017. One favorable comment was received.

The Board approved the final Order adopting the amendment on June 29, 2017.

STATUTORY AUTHORITY: The amendment is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt 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.

Filed with the Office of the Secretary of State on July 11, 2017.

TRD-201702602
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 31, 2017
Proposal publication date: June 9, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §7.2007

The Texas Department of Housing and Community Affairs (the "Department") adopts a new section to 10 TAC, Chapter 7, Subchapter C, Emergency Solutions Grants ("ESG"), §7.2007, VAWA Requirements, without changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2469).

REASONED JUSTIFICATION: On December 16, 2016, HUD made effective through a Final Rule requirements related to the Violence Against Women Reauthorization Act ("VAWA") of 2013. The purpose of the proposed new section in Chapter 5 is to effectuate compliance with the requirements under 24 Code of Federal Regulations ("CFR") §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

The Department accepted public comment from May 12, 2017, to June 12, 2017. No public comment was received.

The Board approved the final Order adopting the new section on June 29, 2017.

STATUTORY AUTHORITY: The new section is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt 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.

Filed with the Office of the Secretary of State on July 11, 2017.

TRD-201702603
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 31, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 23, §§23.1, 23.2, 23.20 - 23.32, 23.40 - 23.42, 2.50 - 2.52, 23.60 - 23.62, 23.70 - 23.72, without changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2484) and will not be republished.

REASONED JUSTIFICATION: The Department held four roundtable discussions in February of 2017 regarding the Single Family HOME Program, including proposed revisions to 10 TAC Chapter 23, HOME Single Family Program. Substantial changes to each subchapter within 10 TAC Chapter 23 were recommended; therefore the Department determined that repeal of the existing 10 TAC Chapter 23 and adoption of a new 10 TAC Chapter 23 was appropriate. The proposed repeal of 10 TAC Chapter 23, Subchapters A, B, C, D, E, F, and G and proposed 10 TAC Chapter 23 was approved by the Board on April 27, 2017.

The Department accepted public comment between May 12, 2017 and June 12, 2017. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on July 13, 2017.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702678
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702679
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702680
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702681
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702682
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702683
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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 July 14, 2017.

TRD-201702684
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 3, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 23, with changes to §§23.1, 23.2, 23.20-23.29, 23.30-23.32, 23.40-23.42, 23.50-23.52, 23.60-23.62, 23.70-23.72, concerning Single Family HOME Program as published in the May 12, 2017 issue of the *Texas Register* (42 TexReg 2486).

REASONED JUSTIFICATION. The Department held three roundtable discussions in February, 2017, regarding the Single Family HOME Program, including proposed revisions to 10 TAC Chapter 23, HOME Single Family Program. Substantial changes to each subchapter within 10 TAC Chapter 23; therefore the Department determined that repeal of the existing 10 TAC Chapter 23 and adoption of a new 10 TAC Chapter 23 was appropriate. The proposed repeal of 10 TAC Chapter 23, and proposed 10 TAC Chapter 23 was approved by the Board on July 13, 2017.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department accepted public comments between May 12, 2017, and June 12, 2017. Comments regarding the new sections were accepted in writing and by fax.

Twenty organizations submitted comments on the rule: Bee County (1), the City of Bay City (2), the City of Belton (3), the City of Bronte (4), the City of Carrizo Springs (5), the City of Eagle Lake (6), the City of Eldorado (7), the City of Hempstead (8), the City of Josephine (9), the City of Kountze (10), the City of Navasota (11), the City of O'Donnell (12), the City of Trinity (13), the City of Wolfe City (14), Culberson County (15), Jim Wells County (16), Refugio County (17), Langford Community Management Services (18), New Braunfels Housing Authority (19), and the Texas Historical Commission (20).

The substantive comments to the rule and corresponding Departmental responses are set out below. If comment resulted in recommended language changes to the draft rule as presented to the Board in April, such changes are indicated.

10 TAC Chapter 23 Subchapter B Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds

§23.25(b)(2)(E) General Threshold and Selection Criteria

COMMENT SUMMARY: Commenter 18 noted the proposed rule does not allow Applicants to receive the maximum number of points under the Previous HOME Award scoring criterion if the Applicant has requested deobligation of funds from a contract of

the same assistance type within five years of the date of Application.

STAFF RESPONSE: The comment as a general observation is true. The commenter did not include a suggestion as to whether this criterion should be amended; staff recommends no change to the proposed rule in response to this comment.

§23.25(b)(2)(F) General Threshold and Selection Criteria

COMMENT SUMMARY: Commenters 1-18 noted that Applicants may receive up to five points under competitive Applications under the general set-aside for attending First Thursday Income Eligibility Training. The commenters requested that the training either be conducted online or in each of the 13 state service regions because travel to attend training interrupts day-to-day operations of small entities. Seven commenters recommended removing the scoring item in its entirety, while 10 commenters recommended replacement of First Thursday Income Eligibility with an online fair housing training to be created and presented by TDHCA.

STAFF RESPONSE: Staff agrees that awarding points for attending First Thursday Income Eligibility Training in person may create an administrative and financial burden for some Applicants. Staff has included changes to the proposed rule to allow for additional HUD sponsored on-line training options which may provide a comparable benefit for scoring purposes. The additional options include completion of Financial Management 101: Introduction or Financial Management 201: A Closer Look, available through the HUD Exchange website.

§23.25(b)(2)(K) General Threshold and Selection Criteria

COMMENT SUMMARY: Commenter 18 noted that up to five points are given under a competitive application for Applicants who propose to serve at least one colonia. Commenter recommends striking the scoring item as it provides a scoring advantage to counties over cities.

STAFF RESPONSE: The scoring criterion that awards five points to entities applying under a competitive Application cycle was included to meet the requirement in Tex Gov't Code 2306.127 to give priority through its housing program scoring criteria to communities that are wholly or partly in a colonia. Staff recommends no change to the proposed rule in response to this comment.

§23.26(b) Contract Benchmarks and Limitations

COMMENT SUMMARY: Commenter 18 noted a reduction in the contract term from 24 months to 21 months. Commenter states that the contract period should be 24 months for ease of tracking and because the difference between 24 months and 21 months is insubstantial.

STAFF RESPONSE: On December 2, 2016, HUD published an interim final rule making changes with respect to HOME Program commitment and expenditure requirements. Beginning with FY 2015 HOME allocations, HUD is no longer using the cumulative method for measuring compliance with the requirement that Participating Jurisdictions ("PJs") commit HOME funds within 24 months of obligation. Instead HUD is determining compliance with the deadlines on a grant-specific basis instead of the "cumulative average" approach HUD previously employed. The rule was effective on January 3, 2017. Staff has determined that a significant amount of funds may be subject to a return to HUD treasury accounts unless HOME funds can be re-committed to HOME eligible projects. The reduction in the contract term from 24 months to 21 months is one of many strategies recommended by staff to preserve the HOME funds remaining at the end of the contract term. Staff recommends no change to the proposed rule in response to this comment.

§23.26(c) Contract Benchmarks and Limitations

COMMENT SUMMARY: Commenter 18 noted implementation of a new performance benchmark for environmental clearance of six months from the start date of the contract and extend the existing benchmark requiring submission of activities eligible for commitment of funds to nine months from the start date of the contract. Commenter recommends that both benchmarks should be extended by three months, making the environmental clearance benchmark nine months and the submission of activities twelve months. Commenter states that proposed revisions to 10 TAC Chapter 20 related to households with existing delinquent property tax impact the amount of time needed to qualify households for HRA.

STAFF RESPONSE: The current HOME Rules include only one performance benchmark for submission of eligible activities within 6 months of the contract start date. Achievement of environmental clearance is one requirement of submission of an eligible activity. The proposed rule allows up to nine months for submission of eligible activities, which is a three month increase in the benchmark deadline. This provision of additional time to meet the submission benchmark was included in the draft rule in response to feedback received at a series of roundtables which indicated that the benchmark was too onerous, and provides more time for the applicant homeowner to meet requirements in changes proposed related to payment of delinquent property tax in 10 TAC Chapter 20. While staff has agreed and proposed that the six month benchmark for activity submission be extended to nine months, it is imperative contracts progress in a timely manner; therefore an additional benchmark was included in the draft rule to allow staff to adequately track contract progress. Staff recommends no change to the proposed rule in response to this comment.

§23.26(f) Contract Benchmarks and Limitations

COMMENT SUMMARY: Commenter 18 noted that §23.26(f) allows for eligible administrative and Activity soft costs to be reimbursed if they were incurred within six months of the effective date of the contract in accordance with 24 C.F.R. §92.212 at the sole discretion of the Department. Commenter states that the costs should be further defined in 10 TAC §23.26(f) and that the Department should further describe how it will utilize its discretion.

STAFF RESPONSE: The federal regulations related to limitations set forth for pre-award costs are detailed in those regulations and the language in the proposed rule allows for limited flexibility in extenuating circumstances while allowing TDHCA to manage HUD's 25% limitation across its annual allocation. Staff recommends no change to the proposed rule in response to this comment.

10 TAC CHAPTER 23. SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

§23.31(a)(4) Homeowner Rehabilitation Assistance (HRA) Program Requirements

COMMENT SUMMARY: Commenter 18 noted that homes may be classified as "New Construction" if they were destroyed and will be rebuilt within five years of a disaster that made them uninhabitable but will be classified as "Reconstruction" if HOME

funds are committed within 12 months of the date that the home became uninhabitable. Commenter requests that all homes being rebuilt after a disaster are classified as "Reconstruction" and therefore eligible to be served under a conditional grant agreement rather than a loan.

STAFF RESPONSE: The HOME Final Rule at 24 C.F.R. §92.2 includes rebuilding of housing that was destroyed within 12 months of commitment of funds in the definition of Reconstruction. The proposed language in 10 TAC §23.31(a)(1) was written to provide maximum flexibility for rebuilding after a disaster while imposing the federally required period of affordability when necessary, hence the disparity in the form of assistance. Staff recommends no change to the proposed rule in response to this comment.

§23.31(d)(3) Homeowner Rehabilitation Assistance (HRA) Program Requirements

COMMENT SUMMARY: Commenter 20 noted that the Direct Activity Cost limitation for Rehabilitation Activities increased from $40,000 to $60,000, and appreciates the proposed $20,000 increase. The commenter recommends an increase in Direct Activity Costs limitation from $40,000 to $100,000 for Rehabilitation of homes listed in or eligible for listing in the National Register of Historic Places. Commenter states that less than 4% of homes reviewed by the Texas Historical Commission for HUD funded projects meet this criterion, and that the increase in Direct Activity Cost limitations proposed would help meet the objectives of the Texas Historical Commission with minimal fiscal impact to the HOME Program.

STAFF RESPONSE: Staff agrees with Commenter (20) and has made changes to the proposed rule to align with the commenter's recommendation. Conforming changes to Subchapter E concerning Contract for Deed and Subchapter G concerning Single Family Development which were not specifically cited within the comment have also been included in response to the comment in order to make requirements consistent across activity types.

§23.31(f) Homeowner Rehabilitation Assistance (HRA) Program Requirements

COMMENT SUMMARY: Commenters 1-18 noted that Direct Activity Cost limitations were increased, but Activity soft cost limitations did not increase. 7 commenters recommend increasing soft costs by $1,000 for Reconstruction projects, $2,000 for Rehabilitation projects, and $2,000 for manufactured housing unit ("MHU") replacement projects. 10 commenters recommended increasing the soft cost limitation by $3,000 for Reconstruction projects only. One commenter (18) stated that soft costs should be increased proportionate to the increase in Direct Activity Costs for all Activity types.

STAFF RESPONSE: In response to Commenters (1-18), staff agrees that an increase in the limitation for Activity soft costs is warranted due to an increase in expense for these types of services. Staff recommends changes to allow a $1,000 increase in Activity soft costs for Reconstruction to a total of $10,000 and a $2,000 increase in Activity soft costs for Rehabilitation to a total of $7,000. The contract management activities of a replacement MHU are not as extensive and do not require the same level of oversight expense as required of a stick built dwelling; therefore no changes are recommended to the limitation for MHU replacement projects. Conforming changes to Subchapter E concerning Contract for Deed which was not specifically cited within the comment have also been included in response to the comment in order to make requirements consistent across activity types.

§23.31(f)(4) Homeowner Rehabilitation Assistance (HRA) Program Requirements

COMMENT SUMMARY: Commenter 18 states that third party costs for tax certificates are not subject to a limitation, but that staff has required the purchase of tax certificates at a cost of $10 from the taxing jurisdiction rather than a third party tax service at a cost of about $43. Commenter states that third party tax service is customary and should be a reimbursable expense under this line item.

STAFF RESPONSE: Staff has applied the cost principles at 2 CFR §200.404 when requiring purchase and submission of tax certificates from the taxing jurisdiction rather than third party tax services. Staff recommends no change to the proposed rule in response to this comment.

§23.32(a)(10) Homeowner Rehabilitation Assistance (HRA) Administrative Requirements

COMMENT SUMMARY: Commenter (18) states that it is not always possible to submit a quote for flood insurance with the submission of the Activity prior to commitment of funds. Commenter refers to new regulations in the National Flood Insurance Program which require an elevation certificate prior to issuance of a quote for flood insurance. Commenter recommends reevaluating this provision in light of the new NFIP requirements.

STAFF RESPONSE: Staff has researched this issue based on this comment and agrees with Commenter. Conforming changes to Subchapter D concerning Homebuyer Assistance and Subchapter E concerning Contract for Deed which were not specifically cited within the comment have also been included in response to the comment in order to make requirements consistent across activity types.

10 TAC CHAPTER 23. SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

§23.61(e)(1)(A) Tenant-Based Rental Assistance (TBRA) Program Requirements

COMMENT SUMMARY: Commenter 19 noted that the lifetime limitation for households receiving tenant-based rental assistance may be up to sixty months if the tenant is on a waiting list for Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program. The commenter stated that Public Housing should be included on the list of eligible waiting lists since waiting lists for Public Housing are more accessible than the other assisted housing types, specifically Section 8 Housing Choice Vouchers.

STAFF RESPONSE: HOME Tenant-Based Rental Assistance ("TBRA") is a tenant-based program which serves populations normally at or below 50% AMI, and which provides tenants choice of where to live, allowing them to choose housing near services that promote self-sufficiency. There is not a programmatic limitation which precludes a TBRA recipient from applying for Public Housing, LIHTC, or another place based program. The existing limitations on the lifetime assistance term for a TBRA participant is an appropriate balance between having TBRA funds available for a greater number of households that need only short-term rental assistance while allowing those households who need longer term rental assistance or support

services to transition into a more permanent solution while retaining housing choice. Staff recommends no change to the proposed rule in response to this comment.

The Board approved the final order adopting the new rule on July 13, 2017.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.1. Applicability and Purpose.

(a) Applicability. This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR, Part 92 as amended. Chapter 20 of this title relating to Single Family Programs Umbrella Rule and other Chapters 1 and 2 of this title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application received on or after the date of adoption of this Chapter. Existing Agreements executed within the preceding twelve (12) months from the date of adoption of this Chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the action does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) Purpose. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, New Construction, Rehabilitation, and Tenant-Based Rental Assistance;

(3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and

(4) provide low, very low, and extremely low income families with affordable, decent, safe, and sanitary housing.

§23.2. Definitions.

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this title relating to Single Family Programs Umbrella Rule.

(1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI.

(2) CFR--Code of Federal Regulations.

(3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is filed within ten (10) days of the stated date of completion or the date of filing as outlined in Tex Prop. Code §53.106.

(5) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(6) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs, rental and utility subsidy and deposits, and Match Funds.

(7) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(8) Homeownership--Ownership in fee simple title in a 1 to 4 unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made).

(9) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.

(10) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(11) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) Construction of a new Single Family Housing Unit following acquisition; or

(C) Construction of a site-built Single Family Housing Unit which replaces a unit of manufactured housing.

(12) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(13) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(14) Predevelopment Costs--Costs consistent with 24 CFR §92. 212 related to a specific eligible Activity including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not

limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(15) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a 10 percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(16) Reconstruction--Defined term in 24 CFR Part 92.

(17) Rehabilitation--Improvements and repairs made to an existing Single Family Housing Unit which do not require demolition of the entire existing Single Family Housing Unit. Additionally, replacement of a unit of manufactured housing with a new unit of manufactured housing is Rehabilitation.

(18) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(20) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of Rehabilitation.

(21) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

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 July 14, 2017.

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Proposal publication date: May 12, 2017
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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.20. Availability of Funds and Regional Allocation Formula.

Funds subject to regional allocation formula shall be made available as described in paragraphs (1) - (3) of this section:

(1) Applicants applying in response to a Competitive Application Cycle NOFA will be ranked highest to lowest by region and subregion. Funds remaining after awarding all eligible Applications in a subregion shall collapse and be directed to the next Application across all regions and subregion regardless of the type of assistance being proposed, based on descending scoring order;

(2) Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and

(3) In the event of a tie between rankings of two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may be awarded through a random selection process.

§23.21. Application Forms and Materials and Deadlines.

(a) The Department will produce an Application, which if properly completed in accordance herein by an eligible Applicant and approved by the Department, can satisfy the Department's requirements to be qualified to administer HOME activities.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

§23.22. Contract Award Application Review Process for Open and Competitive Application Cycles.

(a) An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to

the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA. Applications will be reviewed and scored then ranked based on the score of the Application.

§23.23. Reservation System Participant Review Process.

An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under §1.303 of this title as amended or superseded and not denied under §23.24 of this Chapter, will be drafted and processed in the order in which it was accepted by to be executed and made effective.

§23.24. Administrative Deficiency Process.

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses are required to be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Director of the HOME Program, Executive Director, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) Administrative deficiencies for HOME Applications under an open application cycle NOFA, including an Application for an RSP Agreement. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. Austin local time on the fifth business day following the date of the deficiency notice, the application shall be terminated. Applicants that have been terminated may reapply.

(d) Administrative deficiencies for HOME Applications under a Competitive Application Cycle NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then one (1) point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m. Austin local time on the seventh business day following the date of the deficiency notice, then the Application shall be terminated.

§23.25. General Threshold and Selection Criteria.

(a) General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) an Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application;

(2) a Resolution signed and dated within the six (6) months preceding the Application submission date from the Applicant's direct governing body which includes:

(A) authorization of the submission of the Application;

(B) commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) source of funds for Match obligation and Match dollar amount, if applicable;

(D) name and title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated.

(3) any Applicant requesting $25,000 or more must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number;

(4) an Application fee of thirty dollars per Application;

(5) an Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

(b) Selection Criteria. Applications for competitive awards consistent with a NOFA will be scored and ranked based on the following criteria. Selection criteria for which points are awarded will become a contractual requirement if the Applicant is awarded a Contract.

(1) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any one selection criterion. Applicants must achieve a minimum staff determined score of fifteen (15) points to be awarded a Contract.

(2) Applicants may be awarded points under the following selection criteria:

(A) Homes Built to greater than or equal to IRC 2012 Standard. This selection criterion is applicable to Homeowner Rehabilitation Assistance ("HRA") Applications only. Applications may be awarded five (5) points if all reconstructed or newly constructed homes

under the Contract will be built to a code that meets or exceeds IRC 2012 standards.

(B) Purchased Home Will Meet TMCS. This selection criterion is applicable to Homebuyer Assistance ("HBA") Applications only. Applications may be awarded five (5) points if all homes for which HBA is provided under the Contract pass an inspection prior to purchase that meets or exceeds TMCS.

(C) Previous HOME Award. All Applications may receive a maximum of five (5) points for past experience in the HOME Program as follows:

(i) Applications may be awarded five (5) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and the Applicant must have met the 100 percent commitment benchmark of the Contract without requiring an amendment.

(ii) Applications may be awarded one (1) point for each reservation of the same assistance type which resulted in Commitment of Funds within twelve (12) months of the date that Applications are first accepted under the NOFA, but may not, in any event, receive more than four (4) points under this criterion.

(iii) Applications may be awarded two (2) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and all contractually required units must have been completed by the end of the Contract term in accordance with the original Contract, or as amended.

(D) Administrator Provides Expanded Services. This selection criterion is applicable to Tenant-Based Rental Assistance (TBRA) Applications only. Applicants may receive a maximum of five (5) points for the provision of services available to existing clients within twelve (12) months of the date that Applications are first accepted under the NOFA. Applicant must specify the types of services offered in the Application, and must provide documentation verifying the provision of each service within the specified timeframe. A maximum of one (1) point for each separate service may be awarded. Any service for which points are requested must be identified as provided under one of the following categories: Child Care, Nutrition, Job Training, Health, and Human Services. The services must be uniquely different as determined by the Department. The Department must be able to make a determination that the service stated in the Application was provided by the Applicant and qualifies for the corresponding point(s) when determining the points awarded under this criterion.

(E) Previous Monitoring History. All Applications may receive a maximum of five (5) points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three (3) years preceding the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered findings for the purpose of this point criterion.

(i) Applications will be limited to a maximum of two (2) points if the Applicant has a monitoring close-out letter that included findings related to violations of procurement requirements.

(ii) Applications will be limited to a maximum of three (3) points if the Applicant has a monitoring close-out letter that included findings on miscalculation of Household income.

(iii) Applications may be awarded a maximum of four (4) points if the Applicant has a monitoring close-out letter that included findings but the findings were not related to miscalculation of Household income or violations of procurement requirements.

(iv) Applications may be awarded a maximum of five (5) points if the Applicant has not received any monitoring findings, including Applicants with no previous monitoring history.

(F) Applicant Staff with Income Eligibility Training or Financial Management Training. All Applications may receive a maximum of five (5) points if a member of the Applicant's staff that will be involved in administration of the program if awarded, has attended TDHCA's 1st Thursday Income Eligibility training or has completed Financial Management 101: Introduction or Financial Management 201: A Closer Look, available through the HUD Exchange website, no earlier than one (1) year from the date that Applications are first accepted under the NOFA, or certifies that the staff member will attend TDHCA's 1st Thursday Income Eligibility training or HUD's on-line Financial Management 101 or 102 training prior to submission of a Activity for TDHCA approval. Activities may not be approved under a Contract until the staff member has attended 1st Thursday Income Eligibility training or HUD's on-line Financial Management trainings if points are awarded under this criterion.

(G) Section 8 Housing Choice Voucher Availability. This selection criterion is applicable to TBRA Applications only. Applications may be awarded a maximum of five (5) points if the waiting list(s) for the Section 8 Housing Choice Voucher ("HCV") program maintained by the Public Housing Authority ("PHA") with jurisdiction over the Service Area outlined in the Application exceeds a twelve (12) month wait time as of the date that Applications are first accepted under the NOFA, or if the PHA does not offer rental assistance under the HCV program. The Department must be able to make a determination that PHA's wait time exceeds twelve (12) months through documentation provided in the Application by the Applicant for requested points when determining the points awarded under this criterion.

(H) Lack of Single Family Activities within the Service Area within the Previous Two (2) Years. This selection criterion is applicable to HRA and HBA Applications only.

(i) Applications may be awarded a maximum of five (5) points if TDHCA HOME funds have not been awarded thorough a competitive award or been provided to an Activity of the same type as the assistance proposed in the Application, and within the Service Area designated in the Application within two (2) years of the date that Applications are first accepted under the NOFA.

(ii) Applications may be awarded a maximum of four (4) points if TDHCA HOME funds have been committed to Activities of the same type of assistance as that proposed in the Application, and within the Service Area designated in the Application, if the Applicant was not awarded funds to administer a Contract of the same type of assistance and was not the service provider for Activities submitted under an RSP agreement, within two (2) years of the date that Applications are first accepted under the NOFA.

(I) Program Restricted to First-Time Homebuyers. This selection criterion is applicable to HBA Applications only. Applications may be awarded a maximum of five (5) points if 100 percent of Households served are first-time homebuyers defined on the Department's Certification of First-Time Homebuyer Status Form.

(J) Program Restricted to Households at or below 60 percent AMFI. This selection criterion is applicable to HRA and TBRA Applications only. Applications may be awarded a maximum of five

(5) points if 100 percent of Households served will have incomes at or below 60 percent AMFI for the county in which the Activity will be located.

(K) Priority for Certain Communities. All Applications may receive a maximum of two (2) points if at least one Colonia is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of the Secretary of State's website.

§23.26. Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Rehabilitation Assistance and Homebuyer Assistance awards will have a Contract term of not more than twenty-one (21) months exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than thirty-six (36) months.

(c) Contract Award Benchmarks. Except for acquisition only Activities, Administrators must have attained environmental clearance for the contractually required number of Households served within six (6) months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine (9) months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six (6) months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this title relating to Single Family Programs Umbrella Rule.

§23.27. Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed thirty-six (36) months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. RSP Administrators may have no more than five (5) Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to thirty (30) at any given time. All required documentation for the Reservation must be submitted to the Department twenty (20) business days prior to the end of RSP Agreement term.

(c) Extremely Low-Income Households. Except for Households served with disaster relief, Homebuyer Assistance or Single Family Development assistance, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent area median family income for the county in which they will reside without the increase for poverty guidelines or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance.

(e) Completion of Construction. For Activities involving construction, construction must be complete within twelve (12) months from the Commitment of Funds for the Activity.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed twelve (12) months, except that the term for Tenant-Based Rental Assistance may not exceed twenty-four (24) months.

(g) Amendments to Household Commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Division Director may approve amendments that extend the terms of Household commitment contracts by not more than three (3) months, except that the term of a Household Commitment contract for Tenant-Based Rental Assistance may not be extended.

(2) The Division Director may approve amendments to a Household Commitment contract to increase Activity funds within the limitations set forth in this Chapter.

(3) The Executive Director may approve amendments to Household Commitment contracts except amendments to extend the terms of Household Commitment contracts by more than twelve (12) months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six (6) months prior to the effective date of the RSP Agreement.

(i) Administrators must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.28. General Administrative Requirements.

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (20) of this section, for the administration and use of HOME funds:

(1) complete training, as applicable;

(2) provide all applicable Department Housing Contract System access request information and documentation requirements;

(3) establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period;

(4) for non-development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five (5) years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria;

(5) in instances where a potential conflict of interest exists, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the conflict of interest provisions;

(6) perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable;

(7) develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan;

(8) complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application. For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the Administrator must:

(A) provide Rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that Rehabilitation would not meet the program requirements, explain these program requirements;

(B) unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and

(C) explain relocation as an available option under applicable Activities;

(9) determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350, and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income;

(10) except for Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household;

(11) for disaster relief set-aside Activities, provide evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than three (3) years prior to Administrator's Application for a RSP Agreement or Contract under which the Household applied for assistance;

(12) for single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator;

(13) submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;

(14) submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion;

(15) not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;

(16) submit any Program Income received by the Administrator or Developer to the Department within ten (10) business days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division;

(17) submit required documentation for project completion reports no later than sixty (60) days after the completion of the Activity;

(18) for Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;

(19) submit to the Department reports or information regarding the operations related to HOME funds provided by the Department;

(20) submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents;

(21) provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price; and

(22) if required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award.

§23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) The Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection to ensure affordability as defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the unit is sold, including through a short sale or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254 and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent of the area median family income and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in ex-

cess of the amount required by the loan, and any documented capital improvements in excess of $500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the grant amount under the conditional grant agreement may be forgiven, if the new Household qualifies for assistance in accordance with this subchapter.

(e) Forgiveness of installment payments under the loan may continue until maturity or the grant amount under conditional grant agreement may be forgiven if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements may be forgiven annually during the Department's affordability period and are not subject to recapture of the entire grant amount in the event the property is no longer the Principal Residence of any Household member. The outstanding amount owed will be based on the remaining affordability term.

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

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SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.30. Homeowner Rehabilitation Assistance (HRA) Threshold and Selection Criteria.

(a) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match:

(A) when the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) when the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

(b) The Department shall use population figures from the most recently available U.S. census bureau's American Community Survey (ACS) at the date that Applications are first accepted under the NOFA to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA.

(c) Documentation is required of a commitment of at least $40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(d) Selection criteria for this activity will be outlined in the NOFA.

§23.31. Homeowner Rehabilitation Assistance (HRA) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) the Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of a Manufactured Housing Unit (MHU) is not an eligible use of funds;

(2) the New Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(3) the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site contingent upon written approval of the Department;

(4) if a housing unit is uninhabitable, within the previous five (5) years from requested assistance, as a result of a natural or man-made disaster or a condemnation order from the unit of local government, or presents an imminent threat to the life, health, or safety of occupants as determined by the local government with jurisdiction over

the property, the Household may be eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification. If a housing unit is destroyed due to a disaster (housing unit may no longer be standing on the site), that unit is eligible for Reconstruction provided that the HOME funds are committed within twelve (12) months of the date of destruction; or

(5) if allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) a federal affordability period is required; or

(2) any existing mortgage has been in place for less than three (3) years from the date the Household applies for assistance; or

(3) the HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Direct Activity Costs, exclusive of Match funds, and are limited to:

(1) Reconstruction and New Construction of site-built housing: the lesser of $90 per square foot of conditioned space or $100,000 or for Households of five or more Persons the lesser of $90 per square foot of conditioned space or $110,000 for a four-bedroom unit;

(2) replacement with energy efficient MHU: $75,000;

(3) Rehabilitation that is not Reconstruction: $60,000, or up to $100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places; and

(4) refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to $35,000. To qualify, a Household's current total housing payment must be greater than 30 percent of their monthly gross income or their total monthly recurring debt payments must be greater than 45 percent of their gross monthly income. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(e) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed $10,000 maybe requested and if approved, used to pay for any of the following as applicable:

(1) necessary environmental mitigation as identified during the Environmental review process;

(2) installation of an aerobic septic system; or

(3) homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Reconstruction or New Construction: no more than $10,000 per housing unit;

(2) replacement with an MHU: no more than $3,500 per housing unit;

(3) Rehabilitation that is not Reconstruction: $7,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and

(4) third-party Activity soft costs related to costs incurred in connection with an Activity under this section, such as appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance are not subject to a maximum per Activity.

(g) Funds for administrative costs are limited to no more than 4 percent of the Direct Activity Costs, exclusive of Match funds.

(h) In the instances described in paragraphs (1) - (4) of this subsection, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(1) An MHU being replaced with newly constructed housing (site-built) on the same site;

(2) Any housing unit being replaced on another site;

(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (a)(4) of this section; and

(4) Any Activity that requires a federal affordability period.

(i) For any Activity involving refinancing described in subsection (d)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable loan at zero percent interest. The loan term shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to 20 percent of the Household's gross monthly income. The term shall not exceed thirty (30) years. Total debt service (back-end ratio) may not exceed 45 percent. Any Direct Activity Costs, exclusive of refinancing costs and Match funds, shall be structured as a deferred, forgivable loan with a 15-year term.

(j) In all other instances not described in subsections (h) and (i) of this section, the assistance to an eligible Household will be in the form of a grant agreement with a 5-year affordability period.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.32. Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (17) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) when assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property for the Rehabilitation or Reconstruction Activities;

(8) in the instance of relocation and in accordance with §23.31(a)(3) of this Chapter (relating to HRA General Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) identification of any Lead-Based Paint (LBP);

(10) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(11) consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) if applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) a title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ninety-nine (99) year leasehold. For loan projects, the effective date title commitment must be no more than thirty (30) days prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. For assistance provided in the form of a grant agreement, a title report may be submitted in lieu of a title commitment or policy. In instances of an MHU, a Statement of Ownership and Location (SOL) must be submitted. Together, these documents must evidence the definition of Homeownership is met;

(14) tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(15) in the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(16) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and

(17) any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post Rehabilitation or Reconstruction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eli-

gible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

(1) for construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the Construction Completion Date;

(2) for construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least forty (40) days after the Construction Completion Date;

(3) if applicable, a maximum of 50 percent of Activity funds for a Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(4) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(6) the executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all Program Rules;

(8) the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after the Construction Completion Date;

(10) for final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) for costs associated with title policies charged as Activity costs, the title policy must be submitted with the retainage request.

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

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SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.40. Homebuyer Assistance (HBA) Threshold and Selection Criteria.

(a) Except for Applications under the disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5 percent of Direct Activity Costs, exclusive of Match, requested.

(b) Documentation of a commitment of at least $20,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

§23.41. Homebuyer Assistance (HBA) General Requirements.

(a) Program funds under this subchapter are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) The Household must complete a homebuyer counseling program/class.

(c) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: the lesser of $20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income; or

(2) closing costs and downpayment: the lesser of $6,000 or the total estimated settlement charges shown on the closing disclosure that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three (3) months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth-in-lending statement must contribute the excess funds to the total estimated settlement charges as shown on the good faith estimate; and

(3) Rehabilitation for accessibility modifications: $20,000.

(4) No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the closing disclosure shows funds to be provided to the buyer at closing.

(5) Total assistance to the Household must be in an amount of no less than $1,000. Households who are not eligible for at least $1,000 in total homebuyer assistance are ineligible for assistance under this subchapter.

(d) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) acquisition and closing costs: no more than $1,500 per housing unit; and

(2) Rehabilitation for accessibility modifications: $5,000 per housing unit.

(e) Funds for Administrative costs are limited to no more than 4 percent of the Direct Activity Costs, exclusive of Match funds.

(f) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs, excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(g) Any forgiveness of the loan must follow §23.30 of this Chapter.

(h) To ensure affordability, the Department will impose the recapture provisions established in this Chapter.

(i) Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule, and Chapter 21 of this title. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§23.42. Homebuyer Assistance (HBA) Administrative Requirements.

(a) Reservation of Funds. The Administrator must submit true and complete information, certified as such, with a request for the Reservation of Funds, as described in paragraphs (1) - (7) of this subsection:

(1) head of Household name;

(2) a budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) a copy of the Household's intake application on a form prescribed by the Department;

(4) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(5) if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, or duplication of benefit;

(6) if applicable, construction cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion; and

(7) any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Commitment of Funds. In addition to the documents required under subsection (a) of this section, the Administrator must submit the documents described in paragraphs (1) - (8) of this subsection, with a request for the Commitment of Funds within ninety (90) days of approval of the Reservation:

(1) address of housing unit for which assistance is being requested;

(2) verification of environmental clearance;

(3) identification of Lead-Based Paint (LBP);

(4) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(5) a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than thirty (30) days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(6) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(7) appraisal which includes post Rehabilitation or Reconstruction improvements for Activities involving construction; and

(8) a loan estimate or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this Chapter.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are a part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for a Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) The property inspection must be signed and dated by the inspector and the Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for Administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) For Activities involving Rehabilitation, include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after the Construction Completion Date and until submission of documentation required for Activity completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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

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SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.50. Contract for Deed (CFD) Threshold and Selection Criteria.

Documentation of a commitment of at least $40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this section.

§23.51. Contract for Deed (CFD) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) refinance with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 60 percent (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.

(e) The Department will require a first lien position.

(f) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) refinance, acquisition and closing costs: $35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of $90 per square foot of conditioned space or $100,000, or for Households of five or more Persons the lesser of $90 per square foot of conditioned space or $110,000 for a four-bedroom unit;

(3) replacement with an energy efficient MHU: $75,000; and

(4) Rehabilitation that is not Reconstruction: $60,000, or up to $100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed $10,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process;

(2) installation of an aerobic septic system; or

(3) homeowner requests for accessibility features.

(h) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) acquisition and closing costs: no more than $1,500 per housing unit;

(2) Reconstruction or New Construction: no more than $10,000 per housing unit;

(3) replacement with an MHU: no more than $3,500 per housing unit;

(4) Rehabilitation that is not Reconstruction: $7,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than 4 percent of the Direct Activity Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is fifteen (15) years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.52. Contract for Deed (CFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(9) if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal which includes post Rehabilitation or Reconstruction improvements for Activities involving construction;

(11) a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than thirty (30) days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) in the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) a copy of the recorded contract for deed and a current payoff statement; and

(15) any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the Construction Completion Date;

(2) if applicable, a maximum of 50 percent of Activity funds for a Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after the Construction Completion Date;

(10) for final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation; and

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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

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SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.60. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

All Applicants and Applications must submit Documentation of a commitment of at least $15,000 for cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this section; and

(3) evidence that the Service Area for a Contract or RSP Agreement includes the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside.

§23.61. Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) The Household must participate in a self-sufficiency program.

(b) The amount of assistance will be determined using the Housing Choice Voucher method.

(c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.

(e) Activity funds are limited to:

(1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) months cumulatively, except that a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) security deposit: no more than the amount equal to two (2) month's rent for the unit.

(3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:

(1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) for a HOME assisted unit, the current applicable HOME rent; or

(4) . The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific household if the household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract.

(h) Activity soft costs are limited to $1,200 per Household assisted for determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area.

(i) Funds for administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds. Funds for administrative costs may be increased an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs.

(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with HQS established by HUD.

(k) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(l) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.610 of this title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (n) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.610 of this title)) will govern.

(m) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the project.

(n) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (9) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) identification of Lead-Based Paint (LBP);

(7) if applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) project address within ninety (90) days of preliminary set up approval, if applicable; and

(9) any other documentation necessary to evidence that the Activity meets the Program Rules.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (8) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (8) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for a Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Requests may come in not more than ten (10) days in advance of the first day of the following month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports;

(7) Household commitment contracts may be signed after the end date of an RSP only in cases where the Department has approved a project set-up with a project address to be determined at a later time; and

(8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: May 12, 2017
For further information, please call: (512) 475-2224

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SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to promulgate rules.

The adopted new rules affect no other code, article or statute.

§23.70. Single Family Development (SFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification. Applicants must meet the requirement for CHDO certification as defined in 10 TAC §13.2 of this title (relating to the Multifamily Direct Loan Rule).

(2) If the total of the Department's loan equals more than 50 percent of the total development cost, except for developments also financed with U.S. Department of Agriculture (USDA) funds, the Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least $80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least $80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least $80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this Chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction;

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

§23.71. Single Family Development (SFD) General Requirements.

(a) Program funds under this subchapter may be used for the acquisition and New Construction or acquisition and Rehabilitation of single family housing that complies with affordability requirements as defined at 24 CFR §92.254.

(b) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed $50,000 within any one year period, and may not draw more than $25,000 in CHDO operating funds in any 12 month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(c) The Household's income must not exceed 80 percent area median family income (AMFI) and the Household must complete a homebuyer counseling program/class. The Household must be income qualified as of the date of signature of the homebuyer's purchase contract.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

(1) for New Construction and Reconstruction, current applicable International Residential Code, local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the 24 CFR§92.251(a);

(2) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one

ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(5) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) Housing proposed to be constructed under this subchapter must meet the requirements in Chapters 20 and 21 of this title and plans submitted with the Application must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited as described in paragraphs (1) and (2) of this subsection:

(1) Reconstruction and New Construction of site-built housing: The hard construction costs are limited to $90 per square foot of conditioned space and $100,000 or for Households of five or more Persons the lesser of $90 per square foot of conditioned space or $110,000 for a four-bedroom unit; and

(2) Rehabilitation that is not Reconstruction: $60,000, or up to $100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed $10,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process;

(2) installation of an aerobic septic system; or

(3) homeowner requests for accessibility features.

(h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by 1 percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction or Rehabilitation of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(j) Construction period financing for each unit shall be structured as a zero percent interest loan with a twelve (12) month term, or with a term that coincides with the end date of the Household commitment contract under a Reservation System Participation Agreement. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, homebuyer closing costs, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(k) In the instance that the Combined Loan to Value equals more than 100 percent of the appraised value, the portion of the sales price that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price if the homebuyer is receiving downpayment assistance or a first lien mortgage from the Department. The cost to the Developer to close the homebuyer loan may be provided as a grant to the Developer.

(l) The HOME assistance to the homebuyer shall be structured as a first and/or second lien loan(s):

(1) the downpayment assistance is limited to ten percent of the total development costs and shall be structured as a ten (10) year deferred, forgivable loan with a subordinate lien; and

(2) a first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this title. If the Department is providing the first lien mortgage with HOME financing, the loan will be fully amortizing with a thirty (30) year term. The Department will require a debt to income ratio (back-end ratio) not to exceed 45 percent. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 20 percent and no greater than 30 percent of the Household's gross monthly income. Should the estimated housing payment be less than 20 percent of the Household's gross income, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5 percent.

(m) Earnest money is limited to no more than $1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(n) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(o) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.72. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (11) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) if applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal, which includes post Rehabilitation or Reconstruction improvements for Activities involving construction; and

(11) any other documentation necessary to evidence that the Activity meets the Program Rules.

(b) Loan closing. The Administrator or Developer must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than thirty (30) days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) within ninety (90) days after the loan closing date, the Administrator or Developer must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (10) of this subsection may be required with a request for disbursement:

(1) for construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least forty (40) days after the Construction Completion Date;

(2) if required or applicable, a maximum of 50 percent of Direct Activity Costs for a Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(8) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after the Construction Completion Date;

(9) for final disbursement requests, submission of documentation required for Activity completion reports; and

(10) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2224

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§361.1 - 361.3, 361.5, 361.7, 361.8, 361.10, 361.12 - 361.14

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 Tex. Admin. Code §§361.1 - 361.3, 361.5, 361.7, 361.8, 361.10, and 361.12 - 361.14. The amendments are adopted without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 359) and will not be republished.

The amendments to §361.1, concerning Definitions, update selected definitions to reflect current staff structure and Board policy, eliminate redundancies with existing statutes and rules, ensure consistency across all Board rules, correct punctuation, and improve clarity. The definition of "Act" is deleted and replaced with a new definition for "Plumbing License Law or PLL." The definition of "Administrative Act" is changed to "APA." The definition of "Administrator" is deleted and replaced with a new definition for "Executive Director." The definitions of "Adopted Plumbing Code," "Field Representative," "Maintenance Man or Maintenance Engineer," "Person," "Plumbing Company," and "Responsible Master Plumber" are streamlined. The definition of "Chief Field Representative" is deleted and replaced with a new definition for "Director of Enforcement." The definitions of "Contested Case" and "Party" are amended to more closely mirror the definitions of these terms found in the Administrative Procedure Act. The definitions of "Control Valve," "Drain Cleaner," "Drain Cleaner-Restricted Registrant," "Plumber's Apprentice," and "Residential Utilities Installer," are deleted, and a new subsection (b) is added to clarify that any term not defined in Chapter 361 has the definition provided by the Plumbing License Law. The definition of "Endorsement" is amended to include a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration. The definitions of "Medical Gas Piping Endorsement" and "Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement" are updated to be consistent with the proposed changes to the definition of "Endorsement." The definition of "Petitioner" is streamlined and updated to reflect the proposed changes to §361.14. New language is added to the definition of "Plumbing" to clarify that cleaning a drain or sewer line using a cable or pressurized fluid constitutes plumbing. The definition of "Pocket Card" is amended to conform with the proposed changes to the definition of "Endorsement." The definitions of "Regularly Employed" and "Work as a Master Plumber" are deleted. A new definition for "Registration" is added. The definitions of "Supervision" and "Tradesman Plumber-Limited Licensee" are updated.

The amendments to §361.2, concerning Purpose, conform with the proposed changes to the definitions of "Act" and "Administrative Act," and clarify the existing rule.

The amendments to §361.3, concerning Scope, conform with the proposed changes to the definition of "Act" and clarify the existing rule.

The amendments to §361.5, concerning Administration, conform with the proposed changes to the definitions of "Administrator" and "Executive Director."

The amendments to §361.7, concerning Employee Training and Education, conform with the proposed changes to the definitions of "Administrator" and "Executive Director" and add new subsection (f), which provides that the Executive Director is eligible to receive agency-supported training and education subject to the approval of the Board's Chair.

The amendments to §361.8, concerning Forms and Materials, add the Responsible Master Plumber Application and Military Service Member, Veteran, or Military Spouse Supplemental Information Form to the list of forms encompassed by the rule and add the word "and" to make the rule grammatically correct.

The amendments to §361.10, concerning the Historically Underutilized Business (HUB) Program, replace "Texas General Services Commission" with "Texas Facilities Commission" to reflect the change in the agency's name and reformat the reference to 1 Texas Administrative Code §§111.20 - 111.33.

The amendments to §361.12, concerning Advisory Committees, reformat the references to the Plumbing License Law and Texas Government Code.

The amendments to §361.13, concerning Board Committees and Enforcement Committee, conform with the proposed changes to the definition of "Administrative Act" and the proposed renumbering of 22 Tex. Admin. Code Chapter 363. New language is added to specify that the Enforcement Committee may designate an employee of the Board to investigate complaints, review complaint investigations to determine whether a violation of the Plumbing License Law or Board Rules has occurred, and recommend the imposition of administrative penalties and issue notices of alleged violations.

The amendments to §361.14, concerning Petition for Adoption of Rules, add language to clarify that a person may petition for the repeal or amendment of an existing rule in addition to the adoption of a new rule. Additions are also made to specify how the information that must be included in the petition will vary depending on whether a new rule, amendment, or repeal is requested. New subsection (b) is added to require the Board to deny the petition or initiate a rulemaking proceeding within 60 days of receipt of a petition.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under section 1301.251 of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the chapter and section 2001.039 of the Government Code, which requires

a state agency to review its rules every four years. No other statute, article, or code is affected by this adoption.

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

Filed with the Office of the Secretary of State on July 11, 2017.

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Lisa G. Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: September 1, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 936-5239

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22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.6. The amendments are adopted without changes to the proposed text as published in the June 9, 2017, issue of the *Texas Register* (42 TexReg 2991) and will not be republished.

The amendments to §361.6, concerning Fees, effect the following increases: Course Instructor Certification Training from $100 to $150 and duplicate license or registration from $10 to $25. The reference to a "duplicate license or registration" in subsection (b)(4)(C) is changed to "duplicate pocket card" to more accurately reflect current Board practices. A new provision is added to subsection (b)(4) to specify that the fee for a provisional Plumber's Apprentice Registration issued under §53.0211(c) of the Texas Occupations Code is equal to the fee for an initial registration. A new $15 fee for a license verification is also added to subsection (b)(4). Additional, non-substantive changes are made to improve the uniformity of the existing rule and conform to the proposed renumbering of 22 Texas Admin. Code Chapter 363.

No comments were received regarding the proposed amendments.

The amendments are adopted under §1301.253 of the Texas Occupations Code, which requires the Board to set fees in amounts that are reasonable and necessary to cover the cost of administering the Plumbing License Law and §2001.039 of the Government Code, which requires a state agency to review its rules every four years. No other statute, article, or code is affected by this adoption.

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

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For further information, please call: (512) 936-5239

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CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §§363.1 - 363.14

The Texas State Board of Plumbing Examiners (Board) adopts the repeal of 22 TAC Chapter 363, §§363.1 - 363.14, concerning Examination and Registration without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 368) and will not be republished. The Board adopts this repeal concurrently with the adoption of the new Chapter 363.

No comments were received regarding the proposed repeal of Chapter 363.

Chapter 363, §§363.1 - 363.14, is repealed under §1301.251 of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer Chapter 1301 (Plumbing License Law), and §2001.039 of the Government Code, which requires a state agency to review its rules every four years. No other statute, article, or code is affected by this adoption.

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

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22 TAC §§363.1 - 363.27

The Texas State Board of Plumbing Examiners (Board) adopts new 22 TAC Chapter 363, §§363.1 - 363.27, concerning Examination and Registration without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2646) and will not be republished. The Board adopts this new chapter concurrently with the adoption of the repeal of the existing Chapter 363.

New §363.1, concerning Definitions, creates new definitions for "Application" and "Directly Related to Plumbing."

The existing §363.1, concerning Qualifications, is replaced with thirteen separate rules.

New §363.2, concerning General Qualifications, includes the provisions from subsection (a) of the existing §363.1 as well as new language that explains exactly which endorsements each type of license or registration may contain. The existing §363.1(b) is rewritten and reorganized to better reflect the Board's current procedures regarding the submission of an Employer Certification Form (ECF) and new language requiring an employer to automatically provide a completed ECF to a Plumber's Apprentice or Tradesman-Limited Licensee upon separation of employment or the end of a contract is added. Provisions from subsections (c)(3), (d)(1)(B), (e)(1)(A), (f)(1), (j)(1), (k)(1), (l)(1), and (m)(1) of the existing §363.1 that prescribe the work status qualifications an applicant must satisfy

for each license and registration are also added to new §363.2 and deleted throughout the rest of the chapter.

New §363.3, concerning Qualifications for Applicants with Military Experience, includes the provisions from subsection (n) of the existing §363.1 as well new language to clarify that the Board will credit verified military service, training, or education toward the apprenticeship requirements for a license despite the provisions of the Plumbing License Law and Board Rules that prohibit an individual from receiving credit for work experience in the trade unless the individual is a registered Plumber's Apprentice or Tradesman Plumber-Limited Licensee. New language to allow the Board to consider an applicant's discharge status from the military when evaluating the competency of a military service member or military veteran for a particular license or registration is also added. Language from the existing §363.1 requiring the Board to expedite the issuance of a license by endorsement or reciprocity to a military service member or military veteran is deleted because the Board does not issue licenses in this manner.

New §363.4, concerning Master Plumber License, reorganizes and rewords the provisions contained in subsection (c) of the existing §363.1 to improve clarity.

New §363.5, concerning Journeyman Plumber License, consolidates all of the provisions related to the eligibility requirements for a Journeyman Plumber License into a single rule. Specifically, new §363.5 reorganizes and rewords the provisions contained in subsection (d) of the existing §363.1 to improve clarity and adds new language to exempt applicants for a Journeyman examination who have completed the classroom portion of a training program provided by a person approved by the Board and based on course materials approved by the Board, or hold a current Journeyman Plumber License issued in another state, from the required 48 hours of classroom training. New §363.5 also incorporates the provisions from subsections (b)(2), (c), (d), and (e) of the existing §363.12 that describe the training an applicant must complete to be eligible to take the Journeyman Plumber examination. The reference to "Construction Mandatory Topics Review" in subsection (c) of the existing §363.12 is changed to "Construction Industry Practices" to reflect the current name of the 10-Hour Outreach Training Program offered by the Occupational Safety and Health Administration.

New §363.6, concerning Tradesman Plumber-Limited License, consolidates all of the provisions related to the eligibility requirements for a Tradesman Plumber-Limited License into a single rule. Specifically, new §363.6 reorganizes and rewords the provisions contained in subsection (e) of the existing §363.1 to improve clarity and adds new language to exempt applicants for a Tradesman Plumber-Limited examination who have completed the classroom portion of a training program provided by a person approved by the Board and based on course materials approved by the Board, or hold a current Master or Journeyman Plumber License issued in another state, from the required 24 hours of classroom training. New language is also added to describe the training an applicant must complete to be eligible to take the Tradesman Plumber-Limited examination.

New §363.7, concerning Plumber's Apprentice Registration, includes the provisions from subsection (m) of the existing §363.1.

New §363.8, concerning Plumbing Inspector License, reorganizes and rewords the provisions contained in subsection (f) of the existing §363.1 to improve clarity.

New §363.9, concerning Medical Gas Piping Installation Endorsement, consolidates all of the provisions related to the eligibility requirements for the Medical Gas Piping Installation Endorsement into a single rule. Specifically, it includes the provisions contained in subsection (g) of the existing §363.1 and also incorporates the provisions from subsection (b) of the existing §363.11 that describe the training an applicant must complete to be eligible to take the Medical Gas Piping Installation Endorsement examination.

New §363.10, concerning Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement, consolidates all of the provisions related to the eligibility requirements for the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement into a single rule. Specifically, it includes the provisions contained in subsection (h) of the existing §363.1 and also incorporates the provisions from subsection (d) of the existing §363.11 that describe the training an applicant must complete to be eligible to take the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement examination.

New §363.11, concerning Water Supply Protection Specialist Endorsement, consolidates all of the provisions related to the eligibility requirements for the Water Supply Protection Specialist Endorsement into a single rule. Specifically, it includes the provisions contained in subsection (i) of the existing §363.1 and also incorporates the provisions from subsection (c) of the existing §363.11 that describe the training an applicant must complete to be eligible to take the Water Supply Protection Specialist Endorsement examination.

New §363.12, concerning Residential Utilities Installer Registration, includes the provisions from subsection (j) of the existing §363.1.

New §363.13, concerning Drain Cleaner Registration, includes the provisions from subsection (k) of the existing §363.1.

New §363.14, concerning Drain Cleaner-Restricted Registration, includes the provisions from subsection (l) of the existing §363.1.

New §363.15, concerning Consequences to an Applicant With Criminal Convictions, rewords and restructures the provisions from the existing §363.2 to improve clarity and changes the title to correct omissions. Subsections (a), (f), (g), and (i) of the existing §363.2 are deleted to eliminate redundancies with Chapter 53 of the Texas Occupations Code and other subsections of this rule. New language is added to specify that an applicant with one or more felony convictions is automatically required to submit a Supplemental Criminal History Form (SCHIF) along with his or application and an applicant with misdemeanor convictions is required to submit a SCHIF only if requested by the Enforcement Committee.

New §363.16, concerning Examination Schedule, rewords and restructures the provisions from the existing §363.3 to improve clarity and adds new subsections (b) and (c) to specify the order in which exam applications will be processed and require the Board to provide an applicant with a written notice of the date, time, and place of examination.

New §363.17, concerning Reporting for Examination, rewords and restructures the provisions from the existing §363.4 to improve clarity.

New §363.18, concerning Description of Examination, rewords and restructures the provisions from the existing §363.5 to improve clarity and adds new language requiring the Board to make

information about the scope of each examination available on its website to reflect existing Board policy and procedures.

New §363.19, concerning Non-Standard Examination Accommodations, rewords and restructures the provisions from the existing §363.6 to improve clarity.

New §363.20, concerning Test Score Requirements, is identical to the existing §363.7.

New §363.21, concerning Notification, is identical to the existing §363.8.

New §363.22, concerning Reexamination, rewords and restructures the provisions from the existing §363.9 to improve clarity.

New §363.23, concerning Disqualification, rewords and restructures the provisions from the existing §363.10 to improve clarity and changes the word "may" to "shall" to require, rather than permit, the Board to deny an applicant who furnishes false information on an application or uses fraudulent means of establishing his or her qualifications the right to receive a registration or the opportunity to take an examination.

New §363.24, concerning Providers and Instructors of Endorsement Training Programs, changes the title of the existing §363.11 and replaces subsection (a) with new subsections (a) through (h), which reword the existing provisions and add new language. Specifically, new subsection (a) prescribes that only a Course Provider or Instructor who is approved to provide or instruct Continuing Professional Education under §365.16 or §365.17 may provide or instruct a training program for an endorsement issued by the Board; new subsection (b) clarifies that only a Board-approved Course Instructor who holds a Master or Journeyman Plumber License with a Medical Gas Piping Installation Endorsement may instruct the training program for the medical gas endorsement; new subsection (c) clarifies that only a Board-approved Course Instructor who holds a Master, Journeyman, or Plumbing Inspector License with a Water Supply Protection Specialist Endorsement or a Multipurpose Residential Fire Protection Specialist Endorsement may teach the training program that corresponds to the endorsement they hold; new subsection (d) prohibits a Course Provider or Instructor whose approval to provide or instruct Continuing Professional Education is revoked or suspended from providing or instructing a training program for an endorsement; new subsection (f) requires a Course Provider to keep an electronic copy or record of each certificate of completion issued under this section; new subsection (g) requires a Course Provider to submit a course outline for an endorsement training program to the Board for approval; and new subsection (i) allows the Board to require a Course Provider to resubmit a previously-approved course outline for an endorsement training program at any time. As explained above, subsections (b), (c), and (d) of the existing §363.11 are deleted and moved to new §363.9, §363.11, and §363.10 respectively.

New §363.25, concerning Providers and Instructors of Training Programs for Journeyman Plumber and Tradesman Plumber-Limited License Applicants, changes the title and rewords and restructures subsections (f) through (j) of the existing §363.12. New language is added to require the presence of an approved Course Instructor if a Course Provider utilizes a person who is authorized by OSHA, but not Board-approved, to instruct the OSHA 10-Hour Outreach Training Program and to require a Course Provider to keep an electronic copy or record of each certificate of completion issued under this section. As explained above, subsections (b)(2), (c), (d), and (e) of the existing §363.12 are deleted and moved to new §363.5 and subsection (b)(1) is deleted and moved to new §363.6. As a result of this reorganization, subsection (a) of the existing §363.12 is deleted as redundant.

New §363.26, concerning Training Program for Responsible Master Plumber Applicants, rewords and restructures the provisions from the existing §363.13 to improve clarity and adds new language to require that an approved Course Instructor, governmental entity, educational entity, or individual utilized by a Course Provider to instruct a portion of the Responsible Master Plumber training program have expertise in the subject it will teach. New language is also added to require the presence of an approved Course Instructor if the Course Provider utilizes a governmental entity, educational entity, or individual who is not an approved Course Instructor to provide instruction and to require a Course Provider to keep an electronic copy or record of each certificate of completion issued under this section.

New §363.27, concerning Criminal Conviction Guidelines, deletes subsection (a) from the existing §363.14 because it is redundant and reorganizes and rewords the remaining provisions to improve clarity. The word "felony" is deleted from subsections (c)(15) - (17) and (c)(22) of the existing §363.14 to align the rule with §53.021(a) Of the Texas Occupations Code, which allows a licensing agency to consider both felony and misdemeanor convictions when reviewing an application for a license, exam, renewal, etc. A new subsection (e) is also added to require that applicants with convictions that place them in more than one level of risk are classified using the highest applicable level.

In addition to the specific changes noted above, non-substantive changes to punctuation, capitalization, and grammar appear throughout the new Chapter 363 to ensure uniformity across all Board Rules.

Two comments were received regarding the proposed new Chapter 363.

Comment: The Board should strike "so long as an approved Course Instructor is also present" from §363.25(b) of the new Chapter 363. Requiring the presence of a Board-approved Course Instructor when a Course Provider utilizes a person who is authorized by OSHA (but not Board-approved) to instruct the OSHA 10-Hour Outreach Training, which is part of the training program for Journeymen and Tradesman Plumber-Limited applicants, would have a dramatic negative effect on the commenter's training strategy. This change to what is currently allowed will limit the availability of these courses to Texas plumbers even though the commenter is not aware of any concerns with the quality of instruction being given by OSHA-authorized individuals. Course Providers are accountable for the instruction criteria and classroom standards adopted by the Board even if an individual who is not Board-approved is teaching this portion of the course. Furthermore, the belief that only plumbing experience should be considered relevant to training courses is not compelling since over 50% of the Board members are not plumbers precisely for the purpose of ensuring the infusion of fresh, relevant perspectives into the plumbing industry.

The same reasoning applies to requiring the presence of a Board-approved Course Instructor when a Course Provider utilizes a governmental entity, educational entity, or individual that is not Board-approved to teach a portion of the training program for Responsible Master Plumber applicants. Therefore, the Board should also strike "so long as an approved Course

Instructor is also present" from §363.26(c)(1)(B) of the new Chapter 363.

Agency Response: At an open meeting of the Board's Rules Committee held on November 18, 2016, public comments revealed that the new provisions requiring the presence of a Board-approved Course Instructor did not adversely affect the majority of Course Providers because many Board-approved Course Instructors are also OSHA certified. In addition, the Board believes it is prudent to have an instructor who has completed the training required by the Board present to maintain control of the classroom.

Comment: The Board should require that an applicant for the Multipurpose Residential Fire Sprinkler Protection Specialist Endorsement hold a Professional Qualification certification to the ASSE/ANSI 7010 standard in order to be eligible to take the endorsement examination. The Board should also add "(ASSE/ANSI 7010 Standard)" to §363.10(b) of the new Chapter 363.

Agency Response: An applicant for the Multipurpose Residential Fire Sprinkler Protection Specialist Endorsement examination is already required to complete a Board-approved training program, which incorporates the training criteria included in the American Society of

Sanitary Engineering Series 7000. The Board does not wish to impose any additional costs on these applicants by requiring additional training. Moreover, there is nothing in the rules that would prohibit a licensee from obtaining a Professional Qualification certification to the ASSE/ANSI 7010 standard.

The new Chapter 363, §§363.1 - 363.27, is adopted under §1301.251 of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer Chapter 1301 (Plumbing License Law), and §2001.039 of the Government Code, which requires a state agency to review its rules every four years. The new Chapter 363 is also adopted under Chapter 53 of the Occupations Code, which requires a licensing authority to issue guidelines relating to the practices of the licensing authority for determining whether a criminal conviction directly relates to an occupation and Chapter 55 of the Occupations Code, which requires a state agency that issues licenses to adopt rules regarding the licensure of military service member, military veterans, or military spouses. No other statute, article, or code is affected by this adoption. The adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §§365.1, 365.2, 365.4 - 365.8, 365.10, 365.13 - 365.23

The Texas State Board of Plumbing Examiners (Board) adopts amendments to the rules set forth in 22 Texas Administrative Code §§365.1, 365.2, 365.4 - 365.8, 365.10, and 365.13. The amendments are adopted with changes to the proposed text of §365.1(j) as published in the April 28, 2017, issue of the *Texas Register* (42 TexReg 2313). The change is in response to comments received during the public comment period and only §365.1 is republished.

The Board also adopts new 22 Texas Administrative Code §§365.14 - 365.23. The new rules are adopted with changes to the proposed text of §§365.14(c)(1) - (2), 365.15(d)(2)(E), 365.19(c) - (e), 365.19(h)(1), 365.20(a)(3), 365.20(d)(1)(C), 365.21(a), 365.21(c), and 365.21(f) as published in the April 28, 2017, issue of the *Texas Register* (42 TexReg 2313). The changes are in response to comments received during the public comment period and only those sections where changes were made are republished. The Board adopts these new rules concurrently with the repeal of the existing §§365.14 - 365.17.

The amendments to §365.1, concerning License, Endorsement and Registration Categories; Description; Scope of Work Permitted, delete "Description" from the title of the rule. New language is added to more closely align the scope of work a Responsible Master Plumber may perform with statute. References throughout the rule to "contracts...secured by a Responsible Master Plumber" are changed to "contracts...secured by a Responsible Master Plumber or a person who has secured the services of a Responsible Master Plumber in accordance with §367.3(a)(2) of the Board Rules" to clarify that a Responsible Master Plumber does not have to personally secure every contract for plumbing work performed under his or her license. New provisions are added to clarify that a Plumbing Inspector cannot perform inspections of plumbing work that can only be performed by individuals who hold a specific endorsement unless the inspector also holds that endorsement. New language is also added to clarify that a Plumbing Inspector may perform a Customer Service Inspection without a Water Supply Protection Specialist Endorsement. The provision related to the Residential Utilities Installer Registration is amended to clarify that the scope of work authorized under this registration extends to installations of yard water service piping and building sewers only.

The amendments to §365.2, concerning Exemptions, make changes to word choice, grammar, and punctuation to improve clarity.

The amendments to §365.4, concerning Issuance, change the title of the rule to "Issuance of License, Registration or Endorsement" and reword subsections (a) and (b) to improve clarity. New language is added to subsection (b) to specify that a Plumbing Inspector's status will be shown as unaffiliated until written confirmation of the inspector's employment or contract is submitted by an authorized representative of a political subdivision.

The amendments to §365.5, concerning Renewals, change the title of the rule to "Renewal of License, Registration or Endorsement" and reword subsections (a) and (c)-(h) to improve clarity. The deadline for providing notice of the impending expiration of a license, registration or endorsement contained in subsection (a) is changed from thirty days to thirty-one days to conform with

statute. Licensed Plumbing Inspectors are added to subsection (d), which is also updated to require successful completion of any required continuing professional education (CPE) course, in person or via correspondence, prior to renewal rather than the submission of proof of the successful completion of CPE. Language describing the instructional content of a medical gas CPE course is deleted from subsection (e) and moved to proposed §365.21, and language requiring completion of a medical gas CPE course in person is added. Subsection (f), which sets forth the circumstances under which a licensee or registrant may complete his or her CPE requirements via correspondence course, is deleted and replaced with an entirely new provision clarifying that a Plumbing Inspector who is unaffiliated, but has fulfilled all other renewal requirements, may renew his or her license but will not receive a pocket card until proof of affiliation is submitted by an authorized representative of a political subdivision. Subsection (g) is updated to conform with current statute, which gives a military service member an additional two years to complete any CPE requirements or other requirements for renewal of a license, registration or endorsement.

The amendments to §365.6, concerning Expirations, change the title of the rule to "Expiration of License, Registration or Endorsement" and add the word "endorsement" to subsection (a). Corrections are made to the description of the late renewal fee contained in subsections (b) and (c) to match the amounts set forth in statute and §361.6(4)(A) of the Board Rules. Subsection (d) is restructured and reworded to clarify what steps are necessary to reinstate a license, registration or endorsement that has been expired more than two years.

The amendments to §365.7, concerning, Duplicate License, change the title of the rule to "Duplicate Pocket Card" to more accurately reflect the procedures of the Board and replace all references to a "license or registration" with "pocket card." The rule is also broken down into subsections to improve clarity.

The amendments to §365.8, concerning Change of Name, Address, or Employment, replace the phrase "license or registration" with "pocket card" to more accurately reflect the procedures of the Board and make changes to improve clarity. The provision relating to a change of address is removed from subsection (a) and placed in a new subsection (d) to make it clear that a new pocket card is issued only after a name change and not a change of address.

The amendments to §365.10, concerning Application for License, Registration or Endorsement after Revocation, reword and restructure the existing rule to more accurately reflect the current procedures of the Board. A new subsection (b) is added to explain the application procedure to be used by an individual whose registration was previously revoked. A new subsection (c) is added to explain the application procedure to be used by an individual whose license or endorsement was previously revoked and make it clear that an individual must apply for a Plumber's Apprentice Registration and take all applicable examinations. A new subsection (d) updates the existing explanation of the review and approval process for applications submitted by individuals whose license, endorsement or registration has been revoked.

The amendments to §365.13, concerning Licensing of Guaranteed Student Loan Defaulters and Child Support Defaulters, change the title of the rule to "Licensing or Registration of Individuals in Default on a Guaranteed Student Loan or in Arrears on Child Support Payments." Subsections (a) and (b) are reworded to improve clarity, and the notice requirement regarding default status contained in subsection (c) is changed from thirty to thirty-one days to conform with the change in §365.5(a). Subsection (f) is broken into two parts and rewritten to more accurately reflect the requirements of Chapter 232 of the Texas Family Code.

New §§365.14-365.20 largely retain the requirements set forth in the existing §365.14, but restructures it to create a separate rule addressing each aspect of the provision of CPE programs. The term "Provider of Course Materials" is replaced with "Publisher of Course Materials" throughout, and references to the existing §365.14 are changed to conform to the section numbers of the proposed rules.

New §365.14, concerning Course Year for Continuing Professional Education Programs, more clearly states the start and end date for the CPE course year and adds new provisions and a graphic explaining how license expiration dates align with the course year. Subsections (a)(16) and (b)(18) of the existing §365.14 are included as well as new language setting a deadline for the submission of a written request to utilize course materials prior to July 1 for an industry-related program or conference and requiring that such a request include a statement from the publisher that the course materials will be available on the date they will be utilized.

New §365.15, concerning Course Materials for Continuing Professional Education Programs, restructures subsections (a)(1)-(3) and (5)-(9) of the existing §365.14 to improve clarity. New language is added to require that a draft of the course materials submitted for Board approval must contain a separate table of contents and a notice informing students of the provisions contained in proposed §365.20(d)-(f), which set forth standards of conduct for Course Instructors. Subsection (f) is added to allow the Board to post a copy of the table of contents for each set of approved course materials on its website.

New §365.16, concerning Board Approval of Course Providers for Continuing Professional Education Programs and Publishers of Course Materials, consolidates provisions from the existing §365.14 related to the process used to approve Course Providers and Publishers of Course Materials into a single rule to eliminate redundancies. Subsections (a)(12), (14)-(15), and (17) as well as (b)(15)-(17) and (19) from the existing §365.14 are included. New language is added to require the electronic submission of an application for approval as a provider or publisher and to require a publisher to submit an example of correspondence course materials that includes a sample set of 150 questions along with his or her application. New language is also added to require the Board to schedule a special meeting for the purpose of approving applications in the event that the January meeting is cancelled and to require that written notification of the refusal or denial of an application be provided to an applicant within seven business days. Language from the existing subsection (b)(15)(L) is deleted to conform with the deletion of the existing §365.5(f), which limits the categories of students eligible to take a correspondence course.

New §365.17, concerning Board Approval of Course Instructors for Continuing Professional Education Programs, includes subsection (b)(12) of the existing §365.14. New language is added to require a Course Provider to submit the list of Course Instructors it plans to utilize electronically and to include each instructor's contact information. New language is also added to clarify that credentials need only be submitted for instructors that were not utilized by the Course Provider during the previous CPE course year and to require the submission of a copy of the certifi-

cate of authorization as an OSHA Construction Trainer for any individual a provider plans to utilize to teach the 10-Hour Outreach Training described in §363.5(f)(2) of the Board Rules. Another new provision requires the submission of documentation confirming that an instructor who was not utilized during the previous course year has completed at least one forty-hour unit of the required 160-hour training program and enrolled in both a training program on the course materials and the Course Instructor Certification Workshop. Finally, new provisions are added to require the Board to schedule a special meeting for the purpose of approving Course Instructors in the event the April meeting is cancelled, and to require the submission of a Course Instructor list at least twenty business days before the date of the Board meeting at which the list will be considered.

New §365.18, concerning Publishers of Course Materials for Continuing Professional Education Programs, includes subsections (a)(4), (9)-(11), (13), and (18) of the existing §365.14. New language is added to require a publisher to have the technology necessary to receive orders via electronic mail; to specify that training in the use of the course materials must be conducted at least once during the period between Board approval of the course materials and the beginning of the CPE course year; and to allow the Board to revoke approval as a publisher for failure to comply with Chapter 1301 of the Texas Occupations Code and Board Rules.

New §365.19, concerning Course Providers of Continuing Professional Education Programs, includes subsections (b)(1)-(8), (10)-(12), (14), (15)(G)(i), (J) and (K), (20), and (21) of the existing §365.14. The new rule prohibits a Course Provider from offering a correspondence course during the first CPE course year the provider is approved by the Board and decreases the amount of time a provider has to notify the Board of a change in the employment status of a Course Instructor from 10 days to 5. New language is added to clarify time allotted for breaks may not be counted toward the six clock hours of required instruction. The number of military service members a Course Provider may allow an instructor to admit in excess of the forty-five student limit is capped at four to keep maximum class sizes below fifty students. A new provision prohibiting a Course Provider from allowing a third party to advertise or promote the sale of a good, product or service during the instructional hours of a CPE course is included, and expenditures by a third party that is allowed access to students before or after class or during breaks are limited to $10 per student. Another new provision is added to require a Course Provider that schedules two or more CPE courses on the same date and time to hold each course at a separate location or in separate spaces within the same location. The amount of time a provider has to notify the Board of a class cancellation is decreased from seventy-two to forty-eight hours, and new language is added to specify that a Course Provider must self-monitor each of its Course Instructors at least once per CPE course year. To assist the Board with its monitoring of Course Providers, a provision allowing the Board to post a student survey on its website is added. In addition, a provider that administers its own student surveys will be required to keep a copy of each completed survey for at least two years and provide copies to the Board if requested. Finally, new language is added to specify that a complaint against a Course Provider will be investigated in the same manner as a complaint against a licensee or registrant.

New §365.20, concerning Course Instructors of Continuing Professional Education Programs, includes subsection (c) from the existing §365.14. New language is added to clarify that a Course Instructor must hold a current Journeyman, Master Plumber, or Plumbing Inspector License and complete training in the course materials and may not advertise or promote the sale of goods, products or services in his or her capacity as a Course Instructor. Language allowing the Board to randomly monitor Course Instructors is added to reflect current Board procedures. New language to allow the Board to revoke approval as a Course Instructor for failure to comply with Chapter 1301 of the Texas Occupations Code and Board Rules is also added.

New §365.21, concerning Continuing Professional Education Programs for the Medical Gas Piping Installation Endorsement, is a completely new rule articulating the Board's policies related to medical gas CPE courses. It sets forth requirements for the minimum length of a medical gas CPE course, states who may provide or instruct this type of course, and prescribes the formats in which the course may be presented. The rule also describes the form and content of the course materials, sets a ceiling on the fee a student must pay to obtain them, prohibits a Course Provider or Instructor from offering any incentive intended to persuade a student not to retain the materials, and prevents a student from having to purchase multiple sets of the same course materials in the event the National Fire Protection Association 99 Health Care Facilities Code is not updated for an extended period of time.

New §365.22, concerning Licensing Procedures for Military Spouses, replaces the existing §365.15 and §365.16 and combines them into a single rule. Subsection (a) of the existing §365.15 is deleted as redundant because it simply repeats the definition of "military spouse" found in statute and §361.1 of the Board Rules. Subsection (b) of the existing §365.15 is divided into two separate subsections, and the provision related to a military spouse who previously held a Texas license is updated to more accurately reflect Chapter 55 of the Occupations Code and Board procedures. Subsection (c) of the existing §365.15 is deleted as unnecessary. New language is added to require a military spouse to submit proof to the Board that his or her spouse is serving on active duty and to allow the Executive Director to waive any prerequisite for obtaining a license or registration on a case-by-case basis. Subsections (b) and (c) of the existing §365.16 are deleted to eliminate redundancies with statute.

New §365.23, concerning Transfer of License, replaces the existing §365.17. The rule is restructured and reworded to improve clarity. A new provision requiring the submission of a notarized Transfer of License Affidavit signed by the transferor or a valid will executed by the transferor is added to better reflect existing Board procedures.

In addition to the specific changes noted above, changes to punctuation, capitalization, and grammar appear throughout the proposed amendments to ensure uniformity across all Board Rules.

The comments received in response to the proposed amendments and new rules are summarized below.

Comment: All references to "contact hour" should be changed to hour or clock-hour because contact hour has a well-established meaning of 50 minutes among members of the education community

Agency Response: All references to "contact hour" have been changed to "clock hour(s)."

Comment: The Board should not limit the scope of work permitted under a Residential Utilities Installer (RUI) Registration to new construction only. As a practical matter, there is very little difference between installing a new water or sewer line and repairing or replacing one, and this change would put repair companies at a disadvantage without any justification as to why limiting a RUI to work on new construction is safer or less risky. The Board made the decision many years ago that a RUI should be able to do more than just new installations, and it's unfair to change things in midstream because someone has decided that "this is what we really meant." If that is what was intended, it should have been enforced that way all along.

Agency Response: The Board is aware that the current demand for qualified plumbers is extremely high and acknowledges that enacting this change will decrease the number of individuals able to work on residential water and sewer lines at this time. Therefore, it has deleted the provision limiting RUIs to new construction projects only.

Comments: Removing the limitations on who may take continuing professional education (CPE) via correspondence course from §365.5 would diminish the valuable learning experience of attending a live class because the in-person interactions, questions, comments, etc. cannot be duplicated outside the classroom. In addition, there is no way to ensure that the licensee or registrant taking the correspondence course is the person who actually completes the 150-question test and no way to prevent people from completing the test as a group.

Allowing anyone to take a correspondence course would be a nightmare for business owners who take it upon themselves to make sure all of their employees keep their licenses current. There is often a lack of motivation on the part of the licensee or registrant to fill out the test and return it in a timely fashion, so it falls on the business owner to follow up continuously and make sure the test is sent back to the provider. This delay can cause an employee's license to expire and remain expired longer than necessary.

Agency Response: The Board acknowledges that taking CPE via correspondence may result in a less robust educational experience overall. However, this concern is outweighed by the benefits of opening up the correspondence option to all licensees and registrants. As members of a regulated profession, the Board expects that licensees and registrants will take the CPE requirement seriously; those who do not, do so to the detriment of their professional growth and job performance. Furthermore, there is nothing to ensure that an individual who attends a class in person pays attention or absorbs and retains the material presented.

As for any burden this rule would place on business owners, the Board believes that any issues that may arise due to an employee's failure to fulfill their responsibility to return the 150-question test is between the employer and employee and is most appropriately addressed through a company policy regarding the timely renewal of a license.

Comment: As proposed, §365.14(c)(2) does not accurately describe how license expiration dates that fall on or after July 1st align with the CPE course year.

Agency Response: The Board agrees that §365.14(c)(2) contains substantive errors and has made the necessary corrections.

Comments: The Board received several verbal comments in response to the proposed version of §365.19(c). The majority of the verbal comments expressed two main themes: licensees and registrants are not going to respond well to a mandate that lengthens the amount of time they must spend attending CPE, and decisions about the amount of time spent on breaks and meals should be left to the discretion of providers, instructors, and students. The Board also received five written comments.

As proposed, §365.19(c) feels like the Board is micromanaging and lengthening the six-hour CPE course, which has been successfully taught as-is since 1994. The Board should not create a "cookie cutter" class format and should leave the current requirements in place so licensees and registrants can choose the class, instructor, and presentation that best fulfills their expectations. If this proposed change is the result of a few disgruntled students complaining that the lunch served was not to their wishes, then perhaps their sole reason for attending was to be fed and pampered and not to receive any educational benefit. Real working plumbers in the field don't stop working and actively search out a "sit-down" lunch. The bottom line should be the quality of education delivered.

The Board should not dictate the length of lunch breaks because the Instructor and students have a feel for what they need and expect with regard to a lunch break. While the commenter does take a 30-minute break, the commenter noted that this decision is based on past experience with the licensees and registrants that attend the commenter's class.

The rule as proposed is very ambiguous because it is unclear if it requires the provision of a meal or if it requires a break only in the event a meal is provided. As written, the rule specifically references lunch but presumably would apply to any meal. To standardize CPE course duration, the Board should follow the Occupational Health and Safety Administration, which requires one break for every two consecutive hours of instruction and a 30 minute meal break for any course in excess of six hours.

§365.19(c) should be modified to read, "If a break for lunch is given, it shall be at least thirty (30) minutes long." If a thirty minute lunch break is required, it would actually add an additional 45 minutes to an hour to the commenter's class due to the fact that the building is locked so the Instructors can eat lunch.

A mandatory lunch break works for the students and gives the instructor a break. The commenter has been breaking for lunch for years and has had no complaints

Agency Response: This rule was proposed to provide students with 30 minutes of unencumbered time if the Course Provider chooses to serve a meal, and to ensure that students with dietary restrictions that are not accommodated by the meal served will not miss out on instruction if they leave to obtain a suitable meal. The bulk of the verbal comments received made it clear that the number and length of breaks provided varies widely among providers and instructors and that it is common for instruction to continue while students eat their lunch or other meal. It is also clear that the rule as proposed needs to be clarified and expanded to apply to breaks for any meal--not just lunch.

The Board believes it is important to provide students with some sort of break so they may return phone calls, eat a snack, use the restroom, etc., without missing instruction. However, the Board did not want to go so far as to propose a rule that mandated the provision of a meal or the exact number and length of breaks to be provided. Due to the overwhelming consensus that the flexibility allowed under the current system works best for instructors and students, the Board has deleted this change and replaced

it with a stipulation that any breaks given many not be counted toward the six clock hours of required instruction.

Comment: As proposed, §365.19(h)(1) does not take into account variations in class size because it sets a fixed limit of $75 on expenditures by a third party. The rule should be changed to include a limit on expenditures of $10 per student.

Agency Response: The Board agrees that class sizes can vary greatly and has changed §365.19(h)(1) to include an expenditure limit of $10 per student.

Comment: As proposed §365.19(l) would pose a hardship to providers and should be changed to require only random self-monitoring of instructors once or twice per CPE course year. The newly-added provision allowing the Board to post an electronic survey on the agency's website will help with monitoring the quality of instructors as does the random monitoring of CPE courses by the Board's Field Representatives.

Agency Response: The existing version of §365.14(b)(11) already requires a Course Provider to "perform self-monitoring of its classes and Course Instructors to ensure compliance with the Act and Board rules and reporting as required by the Board." The Board believes that subsection (l) of the new §365.19 does not drastically depart from the current self-monitoring requirement even though it more specifically states that a provider must monitor each of its instructors at least once per CPE course year.

Comment: Because §365.20(a)(1) requires that a Course Instructor hold a Plumbing Inspector License "issued by the Board," this rule should be interpreted to prevent an unaffiliated Plumbing Inspector who does not also hold a Master or Journeyman License from obtaining approval as a Course Instructor. In other words, because an unaffiliated Plumbing Inspector is not issued a pocket card, he or she cannot satisfy the requirement that a Course Instructor hold a Plumbing Inspector License issued by the Board. Furthermore, CPE constitutes plumbing because it is a prerequisite for certain licensure exams and the renewal of all licenses. If CPE is plumbing, then an instructor must carry his or her pocket card on his or her person while teaching CPE in order to comply with §1301.351 of the Occupations Code. An unaffiliated Plumbing Inspector should not be approved to teach CPE because her or she is not issued a pocket card and cannot fulfill this requirement.

Agency Response: The Board disagrees with the commenter's interpretation of the phrase "issued by the Board." This phrase is intended to make clear that an instructor must hold a license issued in Texas and not any other jurisdiction in order to obtain Board approval. It does not speak to whether the license has been physically issued to the licensee. The Board also disagrees with the argument that CPE constitutes plumbing because CPE does not fall within the definition of plumbing set forth in §1301.002(7) of the Occupations Code. Accordingly, the rule should not be read to prohibit the approval of an unaffiliated Plumbing Inspector as a Course Instructor.

Comments: Overall, the comments received on proposed §365.20(a)(3) focused on the burden this rule would place on both Course Providers and Course Instructors and the possibility that this change will have the unintended consequence of preventing experienced instructors from being able to maintain Board approval. Emphasis was placed on the fact that it is ultimately the Course Provider's responsibility to ensure the quality of its instructors and that the Board rules already provide adequate safeguards against poor quality instruction through mechanisms like student surveys and the three different types of training required.

There were a number of comments that gave specific reasons why this new requirement is unrealistic and could limit the number of instructors a provider can employ. Many instructors have a full-time job in addition to teaching CPE, which limits their availability. Several instructors don't teach the six-hour CPE course at all, and instruct only the training programs for certain examinations or endorsements or Apprenticeship programs. Other instructors teach several courses throughout the year, but these courses aren't necessarily scheduled to occur at least once per quarter. Having the ability to utilize a large pool of instructors from across the state helps to keep down the price charged for courses, and some instructors are employed expressly for the purpose of serving as back-ups. The rule also fails to take into account extenuating circumstances, like having to go out of town for work for three months or more, that may cause an instructor to miss teaching a class one quarter.

Several commenters also raised concerns that providing courses in all areas of the state requires flexibility in the assignment of instructors to classes. In addition, some of the more remote areas don't generate enough demand to necessitate scheduling one class per quarter, and asking the instructors who teach in these areas to travel long distances to teach the extra classes needed to fulfill this new requirement is unduly burdensome.

Finally, an observation was made that the rule does not state the penalty for non-compliance, which should be loss of the ability to teach CPE the following year, and provides no enforcement mechanism.

Suggested changes to §365.20(a)(3) as proposed included: requiring a minimum number of classes per year instead of per quarter, expanding this requirement to include the instruction of one plumbing-related course per quarter instead of limiting it to the six-hour CPE course, basing the number of courses an instructor is required to teach on years of experience as an instructor, and requiring a minimum of six hours of instruction per quarter instead of requiring the instruction of a specific type of course. Suggested language included: "Instruct at least one (1) six-hour CPE course per quarter, instruct in a Board-approved training program or instruct related instruction in a training program that is approved by the United States Department of Labor, Office of Apprenticeship, for the occupation of Plumber."

Agency Response: This rule was intended to boost the quality of instruction by requiring that a Course Instructor teach a minimum of four CPE courses per course year at regular intervals. The comments received discuss the wide range of unintended consequences generated by this rule, and the Board has decided to delete this new requirement.

Comments: At least one Course Provider offers a medical gas CPE course immediately following the 6-hour CPE course at no additional charge and uses a pamphlet published by Beacon-Madeas that summarizes the changes from one version of the National Fire Protection Association 99 Health Care Facilities Code (NFPA 99) to the next as course materials. The provider believes that limiting the contents of the course materials is a burden the state should not impose and suggests adding a third free option, like the BeaconMadeas pamphlet, to §365.21(c). As written, this rule could have the effect of requiring a licensee to purchase multiple copies of the same edition of the code or Handbook because the cycle for updating the NFPA 99 does not

necessarily align with the three-year renewal cycle for a medical gas endorsement.

As proposed, §365.20(a) requires that a licensee complete a medical gas CPE course in the same year that his or her Medical Gas Piping Installation Endorsement expires. This is too restrictive and should be changed back to the current rule that simply prevents a licensee from using a single medical gas CPE course to fulfill the continuing education requirement for multiple renewal periods.

The 50-question exercise required by §365.20(c) should not be limited to only the most recent changes and updates to the NFPA 99 because there may not be enough new material for 50 questions.

Agency Response: The Board believes that a licensee taking medical gas CPE should receive either a copy of the code itself or the Handbook, and that requiring this by rule puts all Course Providers on a level playing field. However, the Board does not wish to require a licensee to purchase multiple copies of the same code or Handbook and has adjusted the language of the rule to prevent this from happening.

The Board understands the concerns raised about restricting when a licensee may complete the medical gas CPE course and has replaced the provision in §365.20(a) with a provision similar to what is in the existing rule. This change was intended to ensure that a licensee would receive continuing education on the most recent version of the NFPA 99, but the uncertainty in the code cycle creates logistical problems that outweigh the merits of this goal.

The Board also agrees that the 50-question exercise should cover topics beyond the most recent changes and updates to the code book and has amended §365.20(c) accordingly.

The amendments and new rules are adopted under the authority of §1301.251 of the Texas Occupations Code, which requires the Board to adopt rules necessary to administer and enforce Chapter 1301 (the Plumbing License Law); Chapter 55 of the Occupations Code, which requires a state agency that issues licenses to adopt rules regarding the licensure of military service member, military veterans, or military spouses; and §2001.039 of the Government Code, which requires a state agency to review its rules every four years. The proposed amendments have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

§365.1. License, Endorsement and Registration Categories; Scope of Work Permitted.

(a) Pursuant to §1301.002 and §1301.351of the Plumbing License Law and §361.1 of the Board Rules, the scope of plumbing work an individual may perform is dictated by the type of license, endorsement, registration or combination thereof held by the individual.

(b) An individual who holds a current Master Plumber License and meets the requirements of a Responsible Master Plumber (RMP) under §1301.3576 of the Plumbing License Law and §367.3(a) of the Board Rules:

(1) May advertise or otherwise offer to perform or provide plumbing to the general public;

(2) May enter into contracts or agreements to perform plumbing;

(3) Shall obtain plumbing permits to perform plumbing work;

(4) May perform plumbing work without supervision; and

(5) Shall supervise plumbing work performed by other licensees or registrants.

(c) An individual who holds a current Journeyman or Master Plumber License may perform or supervise plumbing work:

(1) under the supervision of a RMP; and

(2) only under contracts or agreements to perform plumbing work secured by a RMP or a person who has secured the services of a RMP in accordance with §367.3(a)(2) of the Board Rules.

(d) An individual who holds a current Tradesman Plumber-Limited License may:

(1) perform or supervise plumbing work on one or two-family dwellings:

(A) under the supervision of a RMP; and

(B) only under contracts or agreements to perform plumbing secured by a RMP or a person who has secured the services of a RMP in accordance with §367.3(a)(2) of the Board Rules; or

(2) assist in the installation of plumbing other than for one or two-family dwellings under the on-the-job supervision of a Journeyman or Master Plumber.

(e) An individual who holds a current Plumbing Inspector License may perform plumbing inspections as an employee or independent contractor of a political subdivision or state agency for compliance with health and safety laws and ordinances.

(1) An individual who holds a current Plumbing Inspector License with a current Medical Gas Piping Installation Endorsement may perform inspections of piping that is used solely to transport gases used for medical purposes.

(2) An individual who holds a current Plumbing Inspector License with a current Water Supply Protection Specialist Endorsement may perform inspections of plumbing work associated with the treatment, use and distribution of rainwater to supply a plumbing fixture, appliance, or irrigation system.

(3) An individual who holds a current Plumbing Inspector License with a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement may perform inspections of multipurpose residential fire protection sprinkler systems installed in a one or two-family dwelling.

(f) An individual who holds a current Journeyman or Master Plumber License with a current Medical Gas Piping Installation Endorsement may install piping that is used solely to transport gases used for medical purposes:

(1) under the supervision of a RMP who holds a current Medical Gas Piping Installation Endorsement; and

(2) only under contracts or agreements to perform medical gas piping installations secured by a RMP who holds a current Medical Gas Piping Installation Endorsement or a person who has secured the services of a RMP, in accordance with §367.3(a)(2) of the Board Rules, who holds a current Medical Gas Piping Installation Endorsement.

(g) An individual who holds a current Journeyman or Master Plumber License with a current Water Supply Protection Specialist Endorsement may:

(1) perform Customer Service Inspections pursuant to 30 Tex. Admin. Code §290.46(j). Minimum Acceptable Operating Practices for Public Drinking Water Systems; or

(2) install, service or repair plumbing associated with the treatment, use and distribution of rainwater to supply a plumbing fixture, appliance, or irrigation system:

(A) under the supervision of a RMP who holds a current Water Supply Protection Specialist Endorsement; and

(B) only under contracts or agreements to perform, install, service, and repair plumbing associated with the use and distribution of rainwater to supply a plumbing fixture, appliance, or irrigation system secured by a RMP who holds a current Water Supply Protection Specialist Endorsement or a person who has secured the services of a RMP, in accordance with §367.3(a)(2) of the Board Rules, who holds a current Water Supply Protection Specialist Endorsement.

(3) A Water Supply Protection Specialist Endorsement shall not be used in lieu of a Plumbing Inspector License to perform plumbing inspections required under §1301.255 and §1301.551 of the Plumbing License Law; however, a Plumbing Inspector may perform the inspection described in paragraph (1) of this subsection even if the individual does not hold a Water Supply Protection Specialist Endorsement.

(h) An individual who holds a current Journeyman or Master Plumber License with a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement may install a multipurpose residential fire protection sprinkler system in a one or two-family dwelling:

(1) under the supervision of a RMP who holds a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement; and

(2) only under contracts or agreements to perform multipurpose residential fire protection sprinkler system installations secured by a RMP who holds a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement or a person who has secured the services of a RMP, in accordance with §367.3(a)(2) of the Board Rules, who holds a current Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement.

(i) An individual who holds a current Plumber's Apprentice Registration may assist a licensee with the installation of plumbing:

(1) under the direct supervision of a person licensed by the Board;

(2) under the supervision of a RMP; and

(3) only under contracts or agreements to perform plumbing work secured by a RMP or a person who has secured the services of a RMP.

(j) In addition to the scope of work described in subsection (i) of this section, an individual who holds a current Plumber's Apprentice Registration and a current Residential Utilities Installer Registration may construct and install only yard water service piping and building sewers for one or two-family dwellings:

(1) under the supervision of a RMP; and

(2) only under contracts or agreements to perform plumbing work secured by a RMP or a person who has secured the services of a RMP in accordance with §367.3(a)(2) of the Board Rules.

(k) In addition to the scope of work described in subsection (d) or (i) of this section, an individual who holds a current Tradesman Plumber-Limited License or Plumber's Apprentice Registration and a current Drain Cleaner Registration may install cleanouts and remove and reset p-traps for the purposes of eliminating obstructions in building drains and sewers:

(1) under the supervision of a RMP; and

(2) only under contracts or agreements to perform plumbing work secured by a RMP or a person who has secured the services of a RMP in accordance with §367.3(a)(2) of the Board Rules.

(l) In addition to the work described in subsection (i) of this section, an individual who holds a current Plumber's Apprentice Registration and a current Drain Cleaner-Restricted Registration may clear obstructions in sewer and drain lines through any existing code-approved opening:

(1) under the supervision of a RMP; and

(2) only under contracts or agreements to perform plumbing work secured by a RMP or a person who has secured the services of a RMP in accordance with §367.3(a)(2) of the Board Rules.

§365.14. Course Year for Continuing Professional Education Programs.

(a) The course year for Continuing Professional Education Programs begins on July 1st of each calendar year and ends on June 30th of the next calendar year.

(b) The authority of a Course Provider approved under §365.16 of this chapter to provide CPE courses or a Course Instructor approved under §365.17 of this chapter to teach CPE courses runs concurrently with the course year that starts on July 1st of the calendar year in which the provider or instructor is approved by the Board.

(c) A licensee or registered Drain Cleaner, Drain Cleaner-Restricted or Residential Utilities Installer shall complete at least six (6) hours of CPE before he or she may renew his or her license or registration. Paragraphs 1 and 2 of this section and Figure 1 explain how license expiration dates align with the CPE course year.

(1) An individual whose license or registration expires between January 1st and July 1st must take CPE between July 1st of the calendar year prior to the year in which the license or registration will expire and the expiration date of their license.

(2) An individual whose license or registration expires between September 1st and December 31st must take CPE between July 1st of the calendar year in which the license or registration will expire and the expiration date of their license.
Figure: 22 TAC §365.14(c)(2)

(d) The authority of a Publisher of Course Materials approved under §363.15 of this chapter to sell course materials begins on July 1st of the calendar year in which the materials are approved and continues until the course materials are no longer required for the renewal of an expired license or registration.

(1) The Board may authorize the use of course materials prior to July 1st for industry-related programs or conferences if the person offering the program or conference submits:

(A) a written request stating the date, time, and place the materials will be used; and

(B) a statement from the Publisher whose course materials will be used verifying that the materials will be available on the date included in the request.

(2) A request submitted pursuant to paragraph (1) of this subsection, shall be submitted no later than fifteen (15) business days before the regularly-scheduled January or April meeting of the Board.

§365.15. Course Materials for Continuing Professional Education Programs.

(a) The course materials are the printed materials provided to the licensees and registrants attending a CPE course for use in the class-

room or in conjunction with a correspondence course and for future reference.

(1) The Board shall publish a list of the approved subjects that course materials may cover and update the list as needed.

(2) The course materials shall not advertise or promote the sale of goods, products or services.

(b) The course materials shall be comprehensive enough to support a minimum of six (6) classroom hours of study.

(1) Three (3) hours shall cover the subjects of health protection, energy conservation and water conservation.

(2) Three (3) hours shall cover subjects from the list of approved subjects published by the Board and include information concerning the Plumbing License Law, Board Rules, and current industry practices and codes.

(3) All of the information covered shall present:

(A) issues relevant to the plumbing trade in the current market;

(B) changes to the plumbing trade; or

(C) topics which increase or support the students' development of skill and competence in the plumbing trade.

(c) A Publisher of Course Materials, Course Provider or Course Instructor shall encourage the student to retain the course materials for future reference and shall not offer to buy back used course materials from a student or offer any other incentive intended to persuade a student not to retain the course materials.

(d) The Board shall annually approve course materials for the CPE course required for the renewal of a Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited or Plumbing Inspector License under §1301.404 of the Plumbing License Law or the renewal of a Drain Cleaner, Drain Cleaner-Restricted or Residential Utilities Installer Registration under §1301.405 of the Plumbing License Law.

(1) A Publisher of Course Materials shall electronically submit a draft version of the course materials, and a separate table of contents, to the Board for approval.

(2) The draft submitted shall:

(A) be free of all typos and grammar, spelling and punctuation errors;

(B) include illustrations and graphics to show concepts not easily explained in words;

(C) include a statement that the most current Board forms used for doing business with licensees, registrants, and the public are available on the Board's website or by mail upon request;

(D) include a notice informing students of the provisions contained in §365.20(d)-(f) of this chapter; and

(E) prominently display in bolded 10-point type, or larger, the following disclaimer: "THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE TEXAS STATE BOARD OF PLUMBING EXAMINERS FOR USE IN THE (state year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS OF THE COURSE MATERIAL. FURTHER, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS IS NOT MAKING ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE TEXAS STATE BOARD OF PLUMBING EXAMINERS."

(e) Upon Board approval, final copies of the course materials shall be printed for distribution to students in a bound version meeting the following minimum technical specifications for printing and production:

(1) Binding--Perfect or Metal Coiled;

(2) Ink--Full Bleed Color;

(3) Cover Material--80 Pound Gloss Paper; and

(4) Page Material--70 Pound.

(f) The Board may post a copy of the table of contents of each set of approved course materials on its website.

§365.19. Course Providers of Continuing Professional Education Programs.

(a) A Board-approved Course Provider may offer a CPE course required for the renewal of a license, endorsement or registration. A Course Provider may not offer a correspondence course during the CPE course year that begins on July 1st of the calendar year in which the provider is first approved by the Board.

(b) A Course Provider shall only allow Board-approved Course Instructors to teach the CPE courses it offers. A Course Provider shall notify the Board as soon as practicable, and no later than five (5) days, after any change in an instructor's employment status with the Course Provider.

(c) A Course Provider shall present a CPE course in one of the following formats:

(1) a single day consisting of six (6) clock hours of instruction in the classroom;

(2) two (2) days that fall within the same seven (7) day period, each consisting of three (3) clock hours of instruction in the classroom; or

(3) a Board-approved correspondence format.

(d) A Course Provider shall not count time allotted for breaks toward the six (6) clock hours of instruction required by subsection (c) of this section.

(e) A Course Provider shall spend a minimum of three (3) clock hours covering the subjects of health protection, energy conservation and water conservation.

(1) All instruction provided shall be based on the course materials described in §365.15 of this chapter and any other materials approved by the Board.

(2) In addition to the course materials, Course Providers may utilize videos, films, slides or other appropriate types of illustrations and graphic materials so long as they relate to a subject covered by the course materials.

(f) A Course Provider shall limit the number of students for any CPE course to forty-five (45). A Course Provider may allow a Course Instructor to admit four (4) additional students, for a maximum of forty-nine (49), regardless of when the students apply for admittance, if the additional students:

(1) are currently on active duty as members of the United States Armed Forces, a reserve component of the United States Armed Forces or the state military forces; and

(2) present valid identification to the Course Instructor confirming the active duty status required by paragraph (1) of this subsection.

(g) In addition to the price to be charged a licensee or registrant enrolled in a course offered by the provider, a Course Provider that is not also a Publisher of Course Materials may impose a fee for the course materials that is less than or equal to the cost it incurs to purchase the materials from a Board-approved publisher.

(h) A Course Provider shall not advertise or promote the sale of any goods, products or services during the instructional portion of a CPE course, or allow a third party to advertise or promote the sale of any goods, products or services during the instructional portion of a CPE course.

(1) If a Provider allows a third party access to its students before or after class, or during a break, the third party shall not expend more than ten dollars ($10) per student in connection with any food, drink, or promotional item provided to the students.

(2) A Provider may not allow two or more third party vendors to provide food or drink at a single CPE course.

(i) At least seven (7) days before conducting a course, a Course Provider shall give notice to the Board via electronic mail of its intent to conduct the course or post notice of the course schedule on the Course Provider's website.

(1) The notice shall contain the time(s) and place(s) where the course(s) will occur and the name of the Course Instructor scheduled to teach each course.

(2) A Course Provider shall give notice even if attendance at a course is limited to a specific group or organization.

(3) A Course Provider that schedules two (2) or more courses on the same date and time shall hold each course at a separate location or in separate spaces within the same location.

(j) A Course Provider shall establish a system that allows it to receive immediate notification from a Course Instructor in the event the Course Instructor is unable to provide instruction for a scheduled course.

(1) A Course Provider shall provide a substitute Course Instructor in order to avoid cancelling the scheduled course.

(2) If cancellation of the course is unavoidable, the Course Provider shall:

(A) immediately notify each student affected by the cancellation;

(B) reschedule the cancelled course as soon as possible; and

(C) notify the Board of the cancellation within forty-eight (48) hours.

(k) A Course Provider shall furnish a certificate of completion of CPE to each licensee and registrant who completes a CPE course it offers.

(1) The certificate of completion shall state:

(A) the name of the Course Provider and Course Instructor;

(B) the name and license or registration number of the student;

(C) the course year; and

(D) the date the instruction was completed.

(2) Within forty-eight (48) hours of issuing a certificate of completion, a Course Provider shall, at its own expense and in a format approved by the Board, electronically submit certification of each student's completion of CPE requirements.

(A) The Board may provide training to the Course Provider in the submission method selected, including the use of any computer software.

(B) The Board may charge a fee to recover its costs for computer software used to facilitate the submission and training in the use of the software to the Course Provider.

(l) At least once per CPE course year, a Course Provider shall perform self-monitoring of each of its Course Instructors to ensure compliance with the Plumbing License Law, Board Rules, and any reporting requirements adopted by the Board.

(m) A Course Provider shall submit a report detailing its implementation of the strategic plan required by §365.16(c)(4) of this chapter to the Board as follows:

(1) A Course Provider receiving Board approval for the first time shall submit quarterly reports no later than March 15th, June 15th, September 15th and December 15th of the calendar year in which it received approval.

(2) A Course Provider that is re-approved shall submit a report no later than September 15th of the calendar year in which it was re-approved; the report shall cover the implementation for the preceding CPE course year.

(3) The requirements of this subsection and §365.16(c)(4) of this chapter do not apply to a Course Provider that:

(A) is a business that offers CPE courses to its employees only, and not to the general public; or

(B) is an individual who will not employ a Course Instructor other than himself or herself.

(n) The Board shall annually monitor each approved Course Provider to ensure the quality of the instruction provided and the equitable provision of course across the state of Texas.

(1) To assist with this task, the Board may post a survey on its website that allows licensees and registrants who have completed a CPE course to provide feedback about a Course Provider or Instructor.

(2) If a Course Provider administers student surveys, the Board may request a copy of the completed surveys to assist with this task. A Course Provider shall maintain a paper or electronic copy of each completed student survey for at least two (2) years after the survey was administered.

(o) A Course Provider's failure to comply with this section constitutes grounds for disciplinary action against the provider, including revocation of authority to provide CPE courses, or the denial of future applications for approval as a Course Provider. The Board shall investigate a complaint against a Course Provider in the same manner it investigates complaints against licensees and registrants.

§365.20. Course Instructors for Continuing Professional Education Programs.

(a) A Course Instructor shall:

(1) hold a current Journeyman, Master Plumber or Plumbing Inspector License issued by the Board;

(2) successfully complete a Course Instructor Certification Workshop conducted by the Board; and

(3) successfully complete training in the course materials required by §365.18(c) of this chapter.

(b) In addition to the training required in subsection (a) of this section, a Course, Instructor shall attend a Board-approved training program consisting of a total of 160 hours.

(1) The program shall be presented in four (4) units as follows:

(A) forty (40) hours covering the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs;

(B) forty (40) hours covering the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs;

(C) forty (40) hours covering the basic principles, techniques, theories, and strategies for establishing and maintaining effective relationships with students, co-workers, and other personnel in the classroom, industry, and community; and

(D) forty (40) hours covering the basic principles, techniques, theories, and strategies for communicating effectively using instructional media.

(2) A Course Instructor shall complete one of the units described in paragraph (1) of this subsection every twelve (12) months such that all four (4) units (160 hours) are completed within a four-year period.

(c) A Course Instructor shall not advertise or promote the sale of goods, products, or services in his or her capacity as a Course Instructor.

(d) A Course Instructor shall comply with the Plumbing License Law and Board Rules, including the standards of conduct set forth in §367.2 of the Board Rules.

(1) In addition, a Course Instructor has a responsibility to his or her students and employer to:

(A) be well-versed in and knowledgeable of the course materials and ensure that classroom presentations are based only on the course materials and other materials approved by the Board;

(B) maintain an orderly and professional classroom environment;

(C) ensure that only students who receive the required number of clock hours of instruction (excluding any time spent on breaks from instruction) receive credit for attending a CPE course;

(D) notify the Course Provider immediately, if the Course Instructor is unable to provide instruction for a CPE course that the instructor was scheduled to instruct, to allow the Course Provider to make every effort to provide a substitute Course Instructor to avoid cancelling the course; and

(E) coordinate with the Course Provider to develop an appropriate method for handling disorderly and disruptive students.

(2) A Course Instructor shall report to the Course Provider and the Board, any non-responsive or disruptive student who attends a CPE course. The Board may deny CPE credit to any such student and require, at the student's expense, successful completion of an additional CPE course to receive credit.

(e) The Board shall randomly monitor Course Instructors for quality of instruction and compliance with the PLL and Board Rules. The Board will charge a fee to recover its costs for conducting the workshop required by subsection (a)(2) of this section.

(f) A Course Instructor's failure to comply with this section constitutes grounds for disciplinary action against the instructor, including revocation of approval to instruct CPE courses, or the denial of future applications for approval as a Course Instructor. The Board shall investigate a complaint against a Course Instructor in the same manner it investigates complaints against licensees and registrants.

(g) At the beginning of each CPE course, the Course Instructor shall announce where the notice informing the students of the contents of subsections (d)-(f) of this section can be found in the course materials.

§365.21. Continuing Professional Education Programs for the Medical Gas Piping Installation Endorsement.

(a) A licensed Journeyman Plumber, Master Plumber or Plumbing Inspector who also holds a Medical Gas Piping Installation Endorsement shall complete a minimum of two (2) hours of CPE before he or she may renew his or her endorsement. A licensee may not use a single medical gas CPE course to fulfill the continuing education requirement for more than one renewal period.

(b) A medical gas CPE course shall be based on the most current edition of the National Fire Protection Association 99 Health Care Facilities Code (NFPA 99), and include comprehensive instruction on any updates to or changes from the previous edition of the code.

(c) The course materials for a medical gas CPE course shall include either a softbound copy of the current edition of the NFPA 99 or a hardbound copy of the NFPA 99 Handbook, a 50-question exercise covering the most-recent changes and updates to the NFPA 99 and the fundamentals of medical gas piping installation, and a notice informing students of the provisions contained in §365.20(d)-(f) of this chapter.

(1) The course materials shall not advertise or promote the sale of goods, products or services.

(2) A Course Provider or Course Instructor shall not offer to buy back used course materials from a student or offer any other incentive intended to persuade the student not to retain the course materials.

(3) In addition to the fee charged for a medical gas CPE course, a Course Provider may charge students a fee for the course materials that is less than or equal to the cost it incurs to purchase the materials from the NFPA.

(4) A Course Provider shall not require a student to purchase a softbound copy of the current edition of the NFPA 99 or a hardbound copy of the NFPA 99 Handbook if the student has previously completed a medical gas CPE course with the same provider that utilized the same course materials. As a substitute, the Course Provider may use any written material designed to supplement the NFPA 99 or the handbook.

(d) Only an individual, business or association approved as a Course Provider in accordance with §365.16 of this chapter may provide a medical gas CPE course. A Course Provider offering a medical gas CPE course is subject to all of the provisions of §365.19 of this chapter except subsections (c) and (e).

(e) A licensed Journeyman Plumber, Master Plumber or Plumbing Inspector may teach a medical gas CPE course if the licensee:

(1) holds a current Medical Gas Piping Installation Endorsement; and

(2) is approved as a Course Instructor in accordance with §365.17 of this chapter.

(f) A Course Provider shall present a medical gas CPE course in a single day consisting of at least two (2) clock hours of instruction in the classroom.

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 July 11, 2017.

TRD-201702614
Lisa G. Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: September 1, 2017
Proposal publication date: April 28, 2017
For further information, please call: (512) 936-5239

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22 TAC §§365.9, 365.14 - 365.17

The Texas State Board of Plumbing Examiners (Board) adopts the repeal of 22 TAC §§365.9, 365.14 - 365.17 without changes to the proposed text as published in the April 28, 2017, issue of the *Texas Register* (42 TexReg 2326) and will not be republished. The Board adopts this repeal concurrently with the adoption of new §§365.14 - 365.21 to replace the existing §365.14, new §365.22 that combines the existing §365.15 and §365.16, and new §365.23 that reorganizes and clarifies the existing §365.17.

No comments were received regarding the proposed repeal of 22 TAC §§365.9, 365.14 - 365.17.

Chapter 365, §§365.9, 365.14 - 365.17, is repealed under §1301.251 of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer Chapter 1301 (Plumbing License Law), and §2001.039 of the Government Code, which requires a state agency to review its rules every four years. No other statute, article, or code is affected by this adoption.

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

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TRD-201702610
Lisa G. Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: September 1, 2017
Proposal publication date: April 28, 2017
For further information, please call: (512) 936-5239

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.2

The Texas State Board of Public Accountancy adopts an amendment to §507.2, concerning Staff, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2899) and will not be republished.

The amendment to §507.2 has the rule more closely track the language in Chapter 901 of the Occupations Code.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702646
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: August 3, 2017
Proposal publication date: June 2, 2017
For further information, please call: (512) 305-7842

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22 TAC §507.3

The Texas State Board of Public Accountancy adopts an amendment to §507.3, concerning Independent Contractors, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2900) and will not be republished.

The amendment to §507.3 adds "consultants" to those that the Board may employ to perform services for the Board and adds references to the statutes that give the Board the authority to do so.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on July 14, 2017.

TRD-201702648

J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
Effective date: August 3, 2017
Proposal publication date: June 2, 2017
For further information, please call: (512) 305-7842

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22 TAC §507.4

The Texas State Board of Public Accountancy adopts an amendment to §507.4, concerning Confidentiality, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2901) and will not be republished.

The amendment to §507.4 notices that advisory committee members are required to not disclose confidential information and cites the relevant section of the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §507.7

The Texas State Board of Public Accountancy adopts an amendment to §507.7, concerning Eligibility, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2901) and will not be republished.

The amendment to §507.7 deletes subsection (g) so that it may be relocated to §507.8.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §507.8

The Texas State Board of Public Accountancy adopts an amendment to §507.8, concerning Procedures, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2902) and will not be republished.

The amendment to §507.8 adds language relocated from §507.7 and adds failure to regularly attend classes as a reason for possible termination of financial assistance including repayment of all funds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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For further information, please call: (512) 305-7842

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CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.2

The Texas State Board of Public Accountancy adopts an amendment to §509.2, concerning Emergency Rulemaking, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2903) and will not be republished.

The amendment to §509.2 clarifies the Board's emergency rulemaking procedures.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §509.6

The Texas State Board of Public Accountancy adopts an amendment to §509.6, concerning Rulemaking Procedures, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2904) and will not be republished.

The amendment to §509.6 clarifies the Board's rulemaking process to emphasize the Board's intent for the process to be a public process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 513. REGISTRATION
SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.16

The Texas State Board of Public Accountancy adopts an amendment to §513.16, concerning Death of a Sole Proprietor, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2905) and will not be republished.

The amendment to §513.16 adds "incapacitation" of a sole proprietor as a justification for the Executive Director to authorize the continued operation of a sole proprietorship, as well as adding "or Incapacitation" to the rule title.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.1

The Texas State Board of Public Accountancy adopts an amendment to §521.1, concerning Individual License Fees, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2906) and will not be republished.

The amendment to §521.1 adds the word "annual" in subsection (a) as well as in the title.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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22 TAC §521.3

The Texas State Board of Public Accountancy adopts an amendment to §521.3, concerning Fee for Certification by Reciprocity, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2907) and will not be republished.

The amendment to §521.3 no longer lists a specific dollar amount but clarifies that the fees will be established by the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §521.4

The Texas State Board of Public Accountancy adopts the repeal of §521.4, concerning Registration Fee for Foreign Accountants, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2907) and will not be republished.

The repeal of §521.4 is necessary because the rule is no longer applicable.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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22 TAC §521.6

The Texas State Board of Public Accountancy adopts an amendment to §521.6, concerning Duplication and Other Charges and Refund of Board Fees, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2908) and will not be republished.

The amendment to §521.6 clarifies that statutes by which the Board follows in charging fees for reproducing Board records will be in accordance with the Public Information Act and the rules promulgated by the Office of the Attorney General.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §521.11

The Texas State Board of Public Accountancy adopts an amendment to §521.11, concerning Fee for a Replacement Certificate, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2909) and will not be republished.

The amendment to §521.11 no longer lists a specific dollar amount but clarifies that the fees will be established by the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §521.13

The Texas State Board of Public Accountancy adopts an amendment to §521.13, concerning Firm License Fees, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2910) and will not be republished.

The amendment to §521.13 replaces the word "penalty" with "late fee."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy adopts an amendment to §523.140, concerning Program Standards, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2911) and will not be republished.

The amendment to §523.140 changes the requirement from five review questions for each CPE credit to three review questions for each CPE credit, to mirror the Uniform Accountancy Act and its Model Rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.3

The Texas State Board of Public Accountancy adopts an amendment to §525.3, concerning Criminal Background Checks, without changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2912) and will not be republished.

The amendment to §525.3 adds a confidentiality statement regarding criminal history record information and makes a grammatical correction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 526. BOARD OPINIONS

22 TAC §526.1

The Texas State Board of Public Accountancy adopts an amendment to §526.1, concerning Issuance of Opinions, without

changes to the proposed text as published in the June 2, 2017, issue of the *Texas Register* (42 TexReg 2913). The amended rule will not be republished.

The amendment to §526.1 clarifies that the Board will determine whether an opinion will be issued or not.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on July 14, 2017.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: August 3, 2017
Proposal publication date: June 2, 2017
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts the repeal of §§229.61 - 229.73, concerning Juice Hazard Analysis Critical Control Point (HACCP) Systems without changes; §§229.121 - 229.129, concerning Seafood HACCP without changes; the repeal of §§229.210 - 229.222, concerning Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing, or Holding Human Food without changes; new §§229.210 - 229.212, §229.214 - 229.223 and 229.225, concerning Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing, or Holding Human Food without changes; and new §229.803 and §229.807, concerning Sanitary Transportation of Human Food without changes to the proposed text as published in the March 3, 2017, issue of the *Texas Register* (42 TexReg 971). The sections will not be republished.

Sections 229.213, 229.224, 229.801, 229.802 and 229.804 - 229.806 are adopted with changes to the proposed text as published in the March 3, 2017, issue of the *Texas Register* (42 TexReg 971) and will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeals and new §§229.210 - 229.225 is to update the rules based on the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food, 21 Code of Federal Regulations Part 117 (PC rule) and Sanitary Transportation of Human and Animal Food (Sanitary Transportation rule) adopted by U.S. Food and Drug Administration in September 2015 and April 2016 respectively. The PC Rule and Sanitary Transportation rule were promulgated under the authority granted by the Food Safety Modernization Act. These new rules align our state rules with the PC and Sanitary Transportation rules. The incorporation of the federal PC Rule into the new rules were accomplished in two ways. First, Subparts A and B of the federal PC rule were incorporated in the language of the state rules in new §§229.211 - 229.225. Second, Subparts C, D, F, and G of the PC rule were adopted by reference in the new §229.210(d)(19). These rules will comply with Texas Health and Safety Code, §431.244, requiring DSHS to provide more transparency on which specific federal rules apply to industry and are enforced by DSHS as state rules adopted under Texas Health and Safety Code, §431.241 and §431.244. Section 229.210 lists each part of the Code of Federal Regulations that is a state rule.

The PC rule requirements specified in §229.210(d)(19) phase in over a three-year period as follows: very small businesses as defined by §229.211(74) - September 17, 2018; small businesses as defined by §229.211(65) - September 18, 2017; and all other business types upon the effective date of §§229.210 - 229.225.

The Sanitary Transportation rule requirements phase in over a two-year period as follows: small businesses as defined by §229.802(17) - April 6, 2018; and all other business types upon the effective date of §§229.801 - 229.807.

New §§229.210 - 229.225 include requirements for training food safety staff, perform hazard analyses on products produced, adopt a food safety plan, and institute preventive controls to mitigate identified hazards. The rules include requirements for risk-based environmental monitoring, product testing, and a supply chain program appropriate to the specific foods. In addition, the rules contain specific requirements for companies manufacturing products under modified atmosphere packaging. These requirements build on practices currently required under state and federal law.

The purpose of the new §§229.801 - 229.807 is to comply with new 21 CFR Part 1 Subpart O, (Sanitary Transportation Rule), adopted by U.S. Food and Drug Administration in April 2016. This was promulgated under the authority granted by the Food Safety Modernization Act. The new sanitary transportation rules include requirements for vehicles and transportation equipment, operations, training, and recordkeeping.

The rules are in compliance with Government Code, §2001.039, requiring state agencies to review and consider each rule for readoption. Sections 229.210 - 229.222 have been reviewed and DSHS has determined that reasons for adopting the sections continue to exist because rules on this subject are required by statute and provide guidance for the DSHS; however, revisions to the rules are necessary as outlined in this preamble.

COMMENTS

The 60-day comment period ended May 2, 2017.

During this period, DSHS received comments regarding the proposed rules from four commenters, including the Farm and Ranch Freedom Alliance. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. A summary of the comments relating to the rules and DSHS's responses follows.

Comment: A commenter asked if the definition of "animal food" listed in §229.802(2) is subject to Subchapter GG, Sanitary Transportation.

Response: DSHS agrees the inclusion of animal food in §§229.801 -229.807 is confusing as animal food is not covered under these state rules. DSHS has revised the rule and removed the definition of "animal food" in §229.802(2).

Comment: A representative from the Farm and Ranch Freedom Alliance commented that the preamble mentions "applying" for an exemption. The commenter's understanding is that no application is necessary. Producers who have a Tester-Hagan exemption simply submit a sworn statement that they qualify, and keep their records to prove it. The commenter asked if DSHS is going to require anything more or different.

Response: DSHS agrees with this comment. There is no requirement to apply for a qualified facility exemption. Facilities must meet the requirements detailed in §229.211(52) - (53) to qualify for an exemption from portions of 21 CFR Part 117 as detailed in §229.213(a). Facilities that qualify must comply with the requirements detailed in 21 CFR Subpart D. No change was made as a result of the comment.

Comment: Concerning §229.212, a commenter stated that the new training requirements can increase the cost of food production due to the cost needed for training and difficulty obtaining employees who have fulfilled requirements. Small businesses in food production have a small cost to profit ratio, therefore enacting these rules can put businesses and individuals out of employment due to the barrier cost of these training requirements.

Response: DSHS declines to make any change to the training requirements. The training requirements language in §229.212 only applies to facilities subject to 21 CFR Part 117. Facilities that are exempt from 21 CFR Part 117 but still required to comply with state food manufacturing rules are not subject to this training requirement. Companies that are subject to 21 CFR Part 117 are required to comply with this regulation at the federal level. Eliminating or amending the training requirements will not reduce any burden for facilities as the rule is already in place at the federal level.

Comment: A commenter was concerned that if the government is going to propose additional regulations on cross contact for allergens, it should provide free or low cost (less than $100/year) inspections and subsequent certifications for non-contaminated food products or food production facilities. If the certification is for a food production facility, the certifications should be valid for any business/food products that are produced in said facility.

Response: DSHS declines to make any changes to the allergen cross contact requirements. Only companies utilizing food allergens defined in §229.211(24) are required to take steps to mitigate allergen cross contact. Undeclared allergens cause over 30% of the recalls nationwide. In addition, even a miniscule amount of a protein/allergen can trigger allergic symptoms ranging from mild reactions to death. DSHS is required to collect a fee to recover the costs of conducting an inspection under Texas Health and Safety Code, §431.204.

Comment: A commenter stated that food businesses are self-motivated to provide sanitary transportation of food. A food manufacturer's biggest fear is making a customer sick from food borne illness because of the associated moral and financial costs. Requiring expensive changes to food delivery vehicles will prevent small businesses from being formed. No business that bootstraps or starts with small capital can afford to have a commercial food delivery vehicle when starting up.

Response: DSHS declines to make any changes to the sanitary transportation rules in §§229.801 - 229.807 as a result of this comment. The rules follow the same applicability requirements as the 21 CFR Part 1 Subpart O. Companies that are subject to 21 CFR Part 117 are required to comply with this regulation at the federal level. By eliminating or amending the training requirements will not reduce any burden for facilities as the rule is already in place at the federal level.

Comment: A commenter stated that it appears that there is a conflict between an exemption in the Texas Health and Safety Code, Chapter 431, §431.044(d), which exempts carriers from all other provisions of the Chapter 431 and the proposed new 25 TAC Chapter 229, Subchapter GG, §§229.801 - 229.807.

Response: DSHS agrees with the commenter that using the word "carrier" rather than the phrase "vehicle used to transport food" causes confusion. While DSHS has the authority to inspect vehicles being used to transport or hold food in commerce under Texas Health and Safety Code, §431.042, DSHS does not have the authority to inspect parcel delivery services, such as USPS, under Texas Health and Safety Code, §431.044. In order to maintain consistency with the use of terms and phrases in §§229.801 - 229.807 and Texas Health and Safety Code, §431.044, the proposed definition of "carrier" has been divided into three definitions for clarification as follows.

-§229.802(3) Carrier--Any person who transports food while operating as a parcel delivery service.

-§229.802(9) Food transporter--Any person who physically moves food by vehicle in commerce within the United States; and excludes carriers as defined in this subchapter.

-§229.802(22) Vehicle Used To Transport Food--A vehicle used to transport or hold food in commerce within Texas.

In proposed §229.802(3), the word "carrier" was originally defined as "A person who physically moves food by motor vehicle in commerce within the United States. The term carrier does not include any person who transports food while operating as a parcel delivery service."

Replacing the word "carrier(s)" with "food transporter(s)" in §229.801, §229.802 and §§229.804 - 229.806 does not substantively change the rules. By placing "carrier" in a separate definition only for parcel delivery services and using the phrase "food transporter" solely for moving food, the substance of all the rules remains the same.

A minor edit was made to §229.213(k)(1)(D) to include the word "title" to complete the rule reference as "§229.211 of this title." Edits were made in §229.224(c) and (d) to replace the word "licensee" with "facility" for consistency throughout the rules in Subchapter N.

SUBCHAPTER E. JUICE HAZARD ANALYSIS CRITICAL CONTROL POINT (HACCP) SYSTEMS

25 TAC §§229.61 - 229.73

The repeals are authorized by Texas Health and Safety Code, §431.241 and §431.244, which provide DSHS with the authority to adopt rules for efficient enforcement and adopt rules under the Federal Act; Government Code, §531.0055; and Texas

Health and Safety Code §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Review of §§229.210 - 229.222 implements Government Code, §2001.039.

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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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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SUBCHAPTER H. SEAFOOD HACCP

25 TAC §§229.121 - 229.129

The repeals are authorized by Texas Health and Safety Code, §431.241 and §431.244, which provide DSHS with the authority to adopt rules for efficient enforcement and adopt rules under the Federal Act; Government Code, §531.0055; and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Review of §§229.210 - 229.222 implements Government Code, §2001.039.

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SUBCHAPTER N. CURRENT GOOD MANUFACTURING PRACTICE AND GOOD WAREHOUSING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

25 TAC §§229.210 - 229.222

The repeals are authorized by Texas Health and Safety Code, §431.241 and §431.244, which provide DSHS with the authority to adopt rules for efficient enforcement and adopt rules under the Federal Act; Government Code, §531.0055; and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Review of §§229.210 - 229.222 implements Government Code, §2001.039.

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25 TAC §§229.210 - 229.225

The new sections are authorized by Texas Health and Safety Code, §431.241 and §431.244, which provide DSHS with the authority to adopt rules for efficient enforcement and adopt rules under the Federal Act; Government Code, §531.0055; and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Review of §§229.210 - 229.222 implements Government Code, §2001.039.

§229.213. Exemptions.

(a) Except as provided by 21 Code of Federal Regulations Part 117 Subparts E, C and G does not apply to a qualified facility. Qualified facilities are subject to the modified requirements in 21 Code of Federal Regulations, §117.201.

(b) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply with respect to activities that are subject to 21 Code of Federal Regulations Part 123, Fish and Fishery Products, at a facility if you are required to comply with, and are in compliance with, Part 123 with respect to such activities.

(c) 21 Code of Federal Regulations Part 117 Subparts C and G of this part do not apply with respect to activities that are subject to 21 Code of Federal Regulations Part 120, Hazard Analysis and Critical Control Point (HACCP) Systems, at a facility if you are required to comply with, and are in compliance with, Part 120 with respect to such activities.

(d) Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(1) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply with respect to activities that are subject to 21 Code of Federal Regulations Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers, at a facility if you are

required to comply with, and are in compliance with 21 Code of Federal Regulations Part 113 with respect to such activities.

(2) The exemption in paragraph (1) of this subsection is applicable only with respect to the microbiological hazards that are regulated under 21 Code of Federal Regulations Part 113.

(e) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply to any facility with regard to the manufacturing, processing, packaging, or holding of a dietary supplement that is in compliance with the requirements of 21 Code of Federal Regulations Part 111, Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, and the Federal Food, Drug, and Cosmetic Act, §761, Serious Adverse Event Reporting for Dietary Supplements.

(f) 21 Code of Federal Regulations Part 117 Subparts C and G of do not apply to activities of a facility that are subject to the Federal Food, Drug, and Cosmetic Act, §419, Standards for Produce Safety.

(g) Low Risk packing or holding activity/food combinations.

(1) The exemption in paragraph (3) of this subsection applies to packing or holding of processed foods on a farm mixed-type facility, except for processed foods produced by drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins, and drying/dehydrating fresh herbs to produce dried herbs), and packaging and labeling such commodities, without additional manufacturing/processing (such as chopping and slicing), the packing and holding of which are within the "farm" definition in §229.211 of this title (relating to Definitions). Activities that are within the "farm" definition, when conducted on a farm mixed-type facility, are not subject to the requirements of 21 Code of Federal Regulations Part 117 Subparts C and G and therefore, do not need to be specified in the exemption.

(2) For the purposes of paragraph (3) of this subsection and subsection (h)(3) of this section, the following terms describe the foods associated with the activity/food combinations. Several foods that are fruits or vegetables are separately considered for the purposes of these activity/food combinations (i.e., coffee beans, cocoa beans, fresh herbs, peanuts, sugarcane, sugar beets, tree nuts, seeds for direct consumption) to appropriately address specific hazards associated with these foods and/or processing activities conducted on these foods.

(A) Dried/dehydrated fruit and vegetable products includes only those processed food products such as raisins and dried legumes made without additional manufacturing/processing beyond drying/dehydrating, packaging, and/or labeling.

(B) Other fruit and vegetable products includes those processed food products that have undergone one or more of the following processes: acidification, boiling, canning, coating with things other than wax/oil/resin, cooking, cutting, chopping, grinding, peeling, shredding, slicing, or trimming. Examples include flours made from legumes (such as chickpea flour), pickles, and snack chips made from potatoes or plantains. Examples also include dried fruit and vegetable products made with additional manufacturing/processing (such as dried apple slices; pitted, dried plums, cherries, and apricots; and sulfited raisins). This category does not include dried/dehydrated fruit and vegetable products made without additional manufacturing/processing as described in subparagraph (A) of this paragraph. This category also does not include products that require time/temperature control for safety (such as fresh-cut fruits and vegetables).

(C) Peanut and tree nut products includes processed food products such as roasted peanuts and tree nuts, seasoned peanuts and tree nuts, and peanut and tree nut flours.

(D) Processed seeds for direct consumption include processed food products such as roasted pumpkin seeds, roasted sunflower seeds, and roasted flax seeds.

(E) Dried/dehydrated herb and spice products includes only processed food products such as dried intact herbs made without additional manufacturing/processing beyond drying/dehydrating, packaging, and/or labeling.

(F) Other herb and spice products includes those processed food products such as chopped fresh herbs, chopped or ground dried herbs (including tea), herbal extracts (e.g., essential oils, extracts containing more than 20 percent ethanol, extracts containing more than 35 percent glycerin), dried herb- or spice-infused honey, and dried herb or spice-infused oils and/or vinegars. This category does not include dried/dehydrated herb and spice products made without additional manufacturing/processing beyond drying/dehydrating, packaging, and/or labeling as described in subparagraph (E) of this paragraph. This category also does not include products that require time/temperature control for safety, such as fresh herb-infused oils.

(G) Grains include barley, dent or flint-corn, sorghum, oats, rice, rye, wheat, amaranth, quinoa, buckwheat and oilseeds for oil extraction (such as cotton seed, flax seed, rapeseed, soybeans, and sunflower seed).

(H) Milled grain products include processed food products such as flour, bran, and corn meal.

(I) Baked goods include processed food products such as breads, brownies, cakes, cookies, and crackers. This category does not include products that require time/temperature control for safety, such as cream-filled pastries.

(J) Other grain products include processed food products such as dried cereal, dried pasta, oat flakes, and popcorn. This category does not include milled grain products as described in subparagraph (H) of this paragraph or baked goods as described in subparagraph (I) of this paragraph.

(3) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply to on-farm packing or holding of food by a small or very small business, and 21 Code of Federal Regulations §117.201 does not apply to on-farm packing or holding of food by a very small business, if the only packing and holding activities subject to the Federal Food, Drug, and Cosmetic Act, §418 that the business conducts are the following low-risk packing or holding activity/food combinations-i.e., packing (or re-packing) (including weighing or conveying incidental to packing or re-packing); sorting, culling, or grading incidental to packing or storing; and storing (ambient, cold and controlled atmosphere) of:

(A) baked goods (e.g., bread and cookies);

(B) candy (e.g., hard candy, fudge, maple candy, maple cream, nut brittles, taffy, and toffee);

(C) cocoa beans (roasted);

(D) cocoa products;

(E) coffee beans (roasted);

(F) game meat jerky;

(G) gums, latexes, and resins that are processed foods;

(H) honey (pasteurized);

(I) jams, jellies, and preserves;

(J) milled grain products (e.g., flour, bran, and corn meal);

(K) molasses and treacle;

(L) oils (e.g., olive oil and sunflower seed oil);

(M) other fruit and vegetable products (e.g., flours made from legumes; pitted, dried fruits; sliced, dried apples; snack chips);

(N) other grain products (e.g., dried pasta, oat flakes, and popcorn);

(O) other herb and spice products (e.g., chopped or ground dried herbs, herbal extracts);

(P) peanut and tree nut products (e.g., roasted peanuts and tree nut flours);

(Q) processed seeds for direct consumption (e.g., roasted pumpkin seeds);

(R) soft drinks and carbonated water;

(S) sugar;

(T) syrups (e.g., maple syrup and agave syrup);

(U) trail mix and granola;

(V) vinegar; and

(W) any other processed food that does not require time/temperature control for safety (e.g., vitamins, minerals, and dietary ingredients (e.g., bone meal) in powdered, granular, or other solid form).

(h) Low risk manufacturing/processing activity/food combinations.

(1) The exemption in paragraph (3) of this subsection applies to manufacturing/processing of foods on a farm mixed-type facility, except for manufacturing/processing that is within the "farm" definition. Drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins, and drying/dehydrating fresh herbs to produce dried herbs), and packaging and labeling such commodities, without additional manufacturing/processing (such as chopping and slicing), are within the "farm" definition. In addition, treatment to manipulate ripening of raw agricultural commodities (such as by treating produce with ethylene gas), and packaging and labeling the treated raw agricultural commodities, without additional manufacturing/processing, is within the "farm" definition. In addition, coating intact fruits and vegetables with wax, oil, or resin used for the purpose of storage or transportation is within the "farm" definition. Activities that are within the "farm" definition, when conducted on a farm mixed-type facility, are not subject to the requirements of 21 Code of Federal Regulations Part 117 Subparts C and G and therefore, do not need to be specified in the exemption.

(2) The terms in subsection (g)(2) of this section describe certain foods associated with the activity/food combinations in paragraph (3) of this subsection.

(3) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply to on-farm manufacturing/processing activities conducted by a small or very small business for distribution into commerce, and 21 Code of Federal Regulations §117.201 does not apply to on-farm manufacturing/processing activities conducted by a very small business for distribution into commerce, if the only manufacturing/processing activities subject to the Federal Food, Drug, and Cosmetic Act, §418 that the business conducts are the following low-risk manufacturing/processing activity/food combinations:

(A) boiling gums, latexes, and resins;

(B) chopping, coring, cutting, peeling, pitting, shredding, and slicing acid fruits and vegetables that have a pH less than 4.2 (e.g., cutting lemons and limes), baked goods (e.g., slicing bread), dried/dehydrated fruit and vegetable products (e.g., pitting dried plums), dried herbs and other spices (e.g., chopping intact, dried basil), game meat jerky, gums/latexes/resins, other grain products (e.g., shredding dried cereal), peanuts and tree nuts, and peanut and tree nut products (e.g., chopping roasted peanuts);

(C) coating dried/dehydrated fruit and vegetable products (e.g., coating raisins with chocolate), other fruit and vegetable products except for non-dried, non-intact fruits and vegetables (e.g., coating dried plum pieces, dried pitted cherries, and dried pitted apricots with chocolate are low-risk activity/food combinations but coating apples on a stick with caramel is not a low-risk activity/food combination), other grain products (e.g., adding caramel to popcorn or adding seasonings to popcorn provided that the seasonings have been treated to significantly minimize pathogens, peanuts and tree nuts (e.g., adding seasonings provided that the seasonings have been treated to significantly minimize pathogens), and peanut and tree nut products (e.g., adding seasonings provided that the seasonings have been treated to significantly minimize pathogens);

(D) drying/dehydrating (that includes additional manufacturing or is performed on processed foods) other fruit and vegetable products with pH less than 4.2 (e.g., drying cut fruit and vegetables with pH less than 4.2), and other herb and spice products (e.g., drying chopped fresh herbs, including tea);

(E) extracting (including by pressing, by distilling, and by solvent extraction) from dried/dehydrated herb and spice products (e.g., dried mint), fresh herbs (e.g., fresh mint), fruits and vegetables (e.g., olives, avocados), grains (e.g., oilseeds), and other herb and spice products (e.g., chopped fresh mint, chopped dried mint);

(F) freezing acid fruits and vegetables with pH less than 4.2 and other fruit and vegetable products with pH less than 4.2 (e.g., cut fruits and vegetables);

(G) grinding/cracking/crushing/milling baked goods (e.g., crackers), cocoa beans (roasted), coffee beans (roasted), dried/dehydrated fruit and vegetable products (e.g., raisins and dried legumes), dried/dehydrated herb and spice products (e.g., intact dried basil), grains (e.g., oats, rice, rye, wheat), other fruit and vegetable products (e.g., dried, pitted dates), other grain products (e.g., dried cereal), other herb and spice products (e.g., chopped dried herbs), peanuts and tree nuts, and peanut and tree nut products (e.g., roasted peanuts);

(H) labeling baked goods that do not contain food allergens, candy that does not contain food allergens, cocoa beans (roasted), cocoa products that do not contain food allergens), coffee beans (roasted), game meat jerky, gums/latexes/resins that are processed foods, honey (pasteurized), jams/jellies/preserves, milled grain products that do not contain food allergens (e.g., corn meal) or that are single-ingredient foods (e.g., wheat flour, wheat bran), molasses and treacle, oils, other fruit and vegetable products that do not contain food allergens (e.g., snack chips made from potatoes or plantains), other grain products that do not contain food allergens (e.g., popcorn), other herb and spice products (e.g., chopped or ground dried herbs), peanut or tree nut products, (provided that they are single-ingredient, or are in forms in which the consumer can reasonably be expected to recognize the food allergen(s) without label declaration, or both (e.g., roasted or seasoned whole nuts, single-ingredient peanut or tree nut flours)), processed seeds for direct consumption, soft drinks and carbonated water, sugar, syrups, trail mix and granola (other than those containing milk chocolate and provided that peanuts and/or tree nuts are in forms in which the consumer can reasonably be expected to recognize the

food allergen(s) without label declaration), vinegar, and any other processed food that does not require time/temperature control for safety and that does not contain food allergens (e.g., vitamins, minerals, and dietary ingredients (e.g., bone meal) in powdered, granular, or other solid form);

(I) making baked goods from milled grain products (e.g., breads and cookies);

(J) making candy from peanuts and tree nuts (e.g., nut brittles), sugar/syrups (e.g., taffy, toffee), and saps (e.g., maple candy, maple cream);

(K) making cocoa products from roasted cocoa beans;

(L) making dried pasta from grains;

(M) making jams, jellies, and preserves from acid fruits and vegetables with a pH of 4.6 or below;

(N) making molasses and treacle from sugar beets and sugarcane;

(O) making oat flakes from grains;

(P) making popcorn from grains;

(Q) making snack chips from fruits and vegetables (e.g., making plantain and potato chips);

(R) making soft drinks and carbonated water from sugar, syrups, and water;

(S) making sugars and syrups from fruits and vegetables (e.g., dates), grains (e.g., rice, sorghum), other grain products (e.g., malted grains such as barley), saps (e.g., agave, birch, maple, palm), sugar beets, and sugarcane;

(T) making trail mix and granola from cocoa products (e.g., chocolate), dried/dehydrated fruit and vegetable products (e.g., raisins), other fruit and vegetable products (e.g., chopped dried fruits), other grain products (e.g., oat flakes), peanut and tree nut products, and processed seeds for direct consumption, provided that peanuts, tree nuts, and processed seeds are treated to significantly minimize pathogens;

(U) making vinegar from fruits and vegetables, other fruit and vegetable products (e.g., fruit wines, apple cider), and other grain products (e.g., malt);

(V) mixing baked goods (e.g., types of cookies), candy (e.g., varieties of taffy), cocoa beans (roasted), coffee beans (roasted), dried/dehydrated fruit and vegetable products (e.g., dried blueberries, dried currants, and raisins), dried/dehydrated herb and spice products (e.g., dried, intact basil and dried, intact oregano), honey (pasteurized), milled grain products (e.g., flour, bran, and corn meal), other fruit and vegetable products (e.g., dried, sliced apples and dried, sliced peaches), other grain products (e.g., different types of dried pasta), other herb and spice products (e.g., chopped or ground dried herbs, dried herb- or spice-infused honey, and dried herb- or spice-infused oils and/or vinegars), peanut and tree nut products, sugar, syrups, vinegar, and any other processed food that does not require time/temperature control for safety (e.g., vitamins, minerals, and dietary ingredients (e.g., bone meal) in powdered, granular, or other solid form);

(W) packaging baked goods (e.g., bread and cookies), candy, cocoa beans (roasted), cocoa products, coffee beans (roasted), game meat jerky, gums/latexes/resins that are processed foods, honey (pasteurized), jams/jellies/preserves, milled grain products (e.g., flour, bran, corn meal), molasses and treacle, oils, other fruit and vegetable products (e.g., pitted, dried fruits; sliced, dried apples; snack chips), other grain products (e.g., popcorn), other herb and spice products (e.g., chopped or ground dried herbs), peanut and tree nut products, processed seeds for direct consumption, soft drinks and carbonated water, sugar, syrups, trail mix and granola, vinegar, and any other processed food that does not require time/temperature control for safety (e.g., vitamins, minerals, and dietary ingredients (e.g., bone meal) in powdered, granular, or other solid form);

(X) pasteurizing honey;

(Y) roasting and toasting baked goods (e.g., toasting bread for croutons);

(Z) salting other grain products (e.g., soy nuts), peanut and tree nut products, and processed seeds for direct consumption; and

(AA) sifting milled grain products (e.g., flour, bran, corn meal), other fruit and vegetable products (e.g., chickpea flour), and peanut and tree nut products (e.g., peanut flour, almond flour).

(i) Alcoholic beverages.

(1) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply with respect to alcoholic beverages at a facility that meets the following two conditions:

(A) Under the Federal Alcohol Administration Act (27 United States Code 201 et seq.) or Chapter 51 of Subtitle E of the Internal Revenue Code of 1986 (26 United States Code 5001 et seq.) the facility is required to obtain a permit from, register with, or obtain approval of a notice or application from the Secretary of the Treasury as a condition of doing business in the United States, or is a foreign facility of a type that would require such a permit, registration, or approval if it were a domestic facility; and

(B) Under the Federal Food, Drug, and Cosmetic Act, §415, the facility is required to register as a facility because it is engaged in manufacturing, processing, packing, or holding one or more alcoholic beverages.

(2) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply with respect to food that is not an alcoholic beverage at a facility described in paragraph (1) of this subsection, provided such food:

(A) is in prepackaged form that prevents any direct human contact with such food; and

(B) constitutes not more than 5 percent of the overall sales of the facility, as determined by the Secretary of the Treasury.

(j) 21 Code of Federal Regulations Part 117 Subparts C and G do not apply to facilities that are solely engaged in the storage of raw agricultural commodities (other than fruits and vegetables) intended for further distribution or processing.

(k) Exemptions to Subchapter N.

(1) Except as provided by paragraph (2) of this subsection, Subchapter N of this chapter does not apply to any of the following:

(A) "farms;"

(B) fishing vessels that are not subject to the registration requirements of 21 Code of Federal Regulations Part 1, Subpart H in accordance with 21 Code of Federal Regulations §1.226(f);

(C) establishments solely engaged in the holding and/or transportation of one or more raw agricultural commodities;

(D) activities of "farm mixed-type facilities" as defined under mixed-type facility in §229.211 of this title that fall within the definition of "farm;" or

(E) establishments solely engaged in hulling, shelling, drying, packing, and/or holding nuts except in the case where the nut is cracked and/or shelled and is intended to be consumed raw (without additional manufacturing/processing, such as roasting nuts).

(2) If a "farm" or "farm mixed-type facility" dries/dehydrates raw agricultural commodities that are produce as defined in 21 Code of Federal Regulations Part 112, to create a distinct commodity, Subchapter N of this chapter applies to the packaging, packing, and holding of the dried commodities. Compliance with this requirement may be achieved by complying with Subchapter N of this chapter or with the applicable requirements for packing and holding in 21 Code of Federal Regulations Part 112.

§229.224. Good Warehousing Practice.

(a) Plant and grounds.

(1) Storage and transportation of food must be under conditions that will protect food against physical, chemical, and microbial contamination as well as against deterioration of the food and the container.

(2) Food storage facilities must be properly constructed and maintained. All walls, ceilings, and floors must be intact to preclude entry of vermin and environmental contaminants.

(3) Doors and loading docks must be tight-fitting and kept closed at all times when not in use, or adequately screened during normal operating hours to prevent entry of rodents, birds, or other pests.

(4) Outer premises, including trash receptacles, and non food storage areas must be kept clean and free of odors, debris, high weeds, or standing water which could harbor or attract vermin.

(5) Adequate lighting of at least 108 lux (10 foot candles) must be provided to facilitate cleaning and inspection of food storage areas.

(b) Sanitary facilities.

(1) Toilet Facilities. Each warehouse facility must provide employees with adequate, readily accessible toilet facilities. Toilet facilities must be kept clean and in good repair. Toilet facilities must be equipped with a hand washing sink with running water of at least 100 degrees Fahrenheit, hand cleaning agent, and single service towels or an air drying device.

(2) Handwashing Facilities:

(A) For warehouse facilities that have direct hand contact with food, the facility must provide hand-washing facilities separate from the toilet facilties designed to ensure that an employee's hands are not a source of contamination of food, food-contact surfaces, or food-packaging materials, by providing facilities that are adequate, convenient, and furnish running water at a suitable temperature. Facilities that utilize conventional handwashing must provide a conventional handwashing sink, hot running water of at least 100 degrees Fahrenheit, hand cleaning agent, and individual disposable towels, continuous towel system that supplies a user with a clean towel, or an air drying device.

(B) For warehouse facilities with no direct hand contact with food, hand-washing facilities separate from toilet facilities are not required.

(C) Wastewater must be disposed of in a manner approved by the regulatory authority.

(c) Sanitary operations.

(1) Food including raw ingredients and finished food products must be obtained from an approved source.

(2) All foods, including refrigerated and frozen foods, must be stored to prevent direct contact with the floor and away from walls to help prevent contamination by vermin (rodents and insects for example) and moisture, and to facilitate cleaning and inspection.

(3) All food packaging material that are intended to come in direct contact with food must be stored to prevent direct contact with the floor.

(4) Food storage facilities and transportation vehicles must be kept free of rodents, insects, birds, and other pests which may contaminate food which includes:

(A) no evidence of pest activity in non-food areas;

(B) no evidence of pest activity in food storage areas; and

(C) no evidence of pest activity in or on food products, food packaging or food preparation utensils, equipment or devices.

(5) Damaged, distressed, and infested foods and food packaging material must be stored in a designated "morgue area", adequately separated from undamaged foods and must be disposed of in a timely manner to preclude further contamination.

(6) Food that can support the rapid growth of undesirable microorganisms must be held at temperatures that will prevent the food from becoming adulterated during manufacturing, processing, packing, and holding.

(A) Time/temperature controlled for safety foods must be maintained at an internal temperature of 41 degrees Fahrenheit or below.

(B) Frozen foods must be kept frozen at all times.

(C) Shell eggs, after initial packing, must be transported and stored at the lower of 45 degrees Fahrenheit or as required by The United States Department of Agriculture.

(D) The temperature of molluscan shellfish from the harvester through the original shellfish dealer must be maintained in accordance with 25 TAC §§241.57 - 241.60 of this title (relating to Molluscan Shellfish). Raw molluscan shellfish must be adequately iced or refrigerated at 45 degrees Fahrenheit or less during all subsequent distribution, storage, processing, and sale.

(E) Seafood intended for wholesale distribution must comply with temperature requirements specified 21 Code of Federal Regulations Part 123, Seafood Safety.

(F) Milk received directly from a facility under the jurisdiction of the PMO must be received at an internal temperature of 45 degrees F or below. Further storage and transportation of the milk must be maintained at an internal 41 degrees or below.

(7) During warehousing and transporting, all chemicals must be properly stored and physically separated from foods to preclude contamination.

(8) Food storage facilities and transportation vehicles operated under the control of the facility must be kept clean and free of excessive dust, dirt, spillage, and other debris, including excess moisture.

(9) Food transport vehicles must be operated in compliance with federal regulations pertaining to back-hauling.

(10) Each incoming lot must be examined at the time of receipt and contaminated or adulterated foods must not be accepted.

(11) Swollen, leaking, and/or severely dented containers of food must be segregated and promptly placed in the "morgue area" and further contamination, attraction of vermin, or sale prior to reconditioning must be prevented.

(12) Only pesticides approved by the Environmental Protection Agency (EPA) for use in a food warehouse and/or food processing facility may be used. Pesticides must be used only according to label directions. Rodenticides must be placed inside enclosed bait boxes or other approved receptacles. Only a licensed pesticide applicator may apply restricted use pesticides.

(d) Other provisions.

(1) Distressed foods salvaged by the facility must be salvaged in accordance with §§229.541 - 229.555, 229.571 - 229.584, 229.601 - 229.614, and 229.631 - 229.644 of this title (relating to Regulation of Food, Drug, Device, and Cosmetic Salvage Establishments and Brokers).

(2) Food wholesalers engaged in the receipt and distribution of over-the-counter or prescription drugs must comply with §229.251 of this title (relating to Minimum Standards for Licensure).

(3) The facility must keep accurate distribution records so that any foods found to be unfit for human consumption may be recalled expeditiously.

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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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER GG. SANITARY TRANSPORTATION OF HUMAN FOODS

25 TAC §§229.801 - 229.807

The new sections are authorized by Texas Health and Safety Code, §431.241 and §431.244, which provide DSHS with the authority to adopt rules for efficient enforcement and adopt rules under the Federal Act; Government Code, §531.0055; and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Review of §§229.210 - 229.222 implements Government Code, §2001.039.

§229.802. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. Those definitions and interpretations of terms of the Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code, Chapter 431, are also applicable when used in this subchapter.

(1) Adequate--That which is needed to accomplish the intended purpose in keeping with good public health practice.

(2) Bulk vehicle--A tank truck, hopper truck, cargo tank, portable tank, freight container, or hopper bin, or any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

(3) Carrier--Any person who transports food while operating as a parcel delivery service.

(4) Cross-contact--The unintentional incorporation of a food allergen into food.

(5) Farm--Means:

(A) Primary production farm. A primary production farm is an operation under one management in one general (but not necessarily contiguous) physical location devoted to the growing of crops, the harvesting of crops, the raising of animals (including seafood), or any combination of these activities. The term "farm" includes operations that, in addition to these activities:

(i) pack or hold raw agricultural commodities;

(ii) pack or hold processed food, provided that all processed food used in such activities is either consumed on that farm or another farm under the same management, or is processed food identified in clause (iii)(II)(-a-) of this subparagraph; and

(iii) manufacture/process food, provided that:

(I) all food used in such activities is consumed on that farm or another farm under the same management; or

(II) any manufacturing/processing of food that is not consumed on that farm or another farm under the same management consists only of:

(-a-) drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), and packaging and labeling such commodities, without additional manufacturing/processing (an example of additional manufacturing/processing is slicing);

(-b-) treatment to manipulate the ripening of raw agricultural commodities (such as by treating produce with ethylene gas), and packaging and labeling treated raw agricultural commodities, without additional manufacturing/processing; and;

(-c-) packaging and labeling raw agricultural commodities, when these activities do not involve additional manufacturing/processing (an example of additional manufacturing/processing is irradiation); or

(B) secondary activities farm. A secondary activities farm is an operation, not located on a primary production farm, devoted to harvesting (such as hulling or shelling), packing, and/or holding of raw agricultural commodities, provided that the primary production farm(s) that grows, harvests, and/or raises the majority of the raw agricultural commodities harvested, packed, and/or held by the secondary activities farm owns, or jointly owns, a majority interest in the secondary activities farm. A secondary activities farm may also conduct those additional activities allowed on a primary production farm as described in subparagraph (A)(ii) and (iii) of this paragraph.

(6) Food allergen--A major food allergen is:

(A) Milk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans.

(B) A food ingredient that contains protein derived from a food specified in subparagraph (A) of this paragraph, except the following:

(i) any highly refined oil derived from a food specified in subparagraph (A) of this paragraph and any ingredient derived from such highly refined oil.

(ii) a food ingredient that is exempt under United States Code Title 21 Chapter 9, Subchapter IV, §343(w)(6) and (7).

(7) Food contact substance--Any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.

(8) Food not completely enclosed by a container--Any food that is placed into a container in such a manner that it is partially open to the surrounding environment. Examples of such containers include an open wooden basket or crate, an open cardboard box, a vented cardboard box with a top, or a vented plastic bag. This term does not include food transported in a bulk vehicle as defined in this subchapter.

(9) Food Transporter--Any person who physically moves food by vehicle in commerce within the United States; and excludes carriers as defined in this subchapter.

(10) Full-time equivalent employee--A term used to represent the number of employees of a business entity for the purpose of determining whether the business is a small business. The number of full-time equivalent employees is determined by dividing the total number of hours of salary or wages paid directly to employees of the business entity and of all of its affiliates and subsidiaries by the number of hours of work in 1 year, 2,080 hours (i.e., 40 hours x 52 weeks). If the result is not a whole number, round down to the next lowest whole number.

(11) Loader--A person that loads food onto a motor or during transportation operations.

(12) Non-covered business--A shipper, loader, receiver, or food transporter engaged in transportation operations that has less than $500,000, as adjusted for inflation, in average annual revenues, calculated on a rolling basis, during the 3-year period preceding the applicable calendar year. For the purpose of determining an entity's 3-year average revenue threshold as adjusted for inflation, the baseline year for calculating the adjustment for inflation is 2011.

(13) Operating temperature--A temperature sufficient to ensure that under foreseeable circumstances of temperature variation during transport, e.g., seasonal conditions, refrigeration unit defrosting, multiple vehicle loading and unloading stops, and type of food product, the operation will meet the requirements of §229.804(a)(3) of this title (relating to Transportation Operations).

(14) Pest--Any objectionable animals or insects including birds, rodents, flies, and larvae.

(15) Receiver--Any person who receives food at a point in the United States after transportation, whether or not that person represents the final point of receipt for the food.

(16) Shipper--A person, e.g., the manufacturer or a freight broker, who arranges for the transportation of food in the United States by a food transporter or multiple food transporters sequentially.

(17) Small business--A business employing fewer than 500 full-time equivalent employees except that for food transporters by motor vehicle that are not also shippers and/or receivers, this term would mean a business subject to §229.801(a) of this title (relating to Purpose and Scope) having less than $27,500,000 in annual receipts.

(18) Transportation--Any movement of food in by motor vehicle or in commerce within the United States.

(19) Transportation equipment--Equipment used in food transportation operations, e.g., bulk and non-bulk containers, bins, totes, pallets, pumps, fittings, hoses, gaskets, loading systems, and unloading systems. Transportation equipment also includes a trailer not attached to a tractor.

(20) Transportation operations--All activities associated with food transportation that may affect the sanitary condition of food including cleaning, inspection, maintenance, loading and unloading, and operation of vehicles and transportation equipment. Transportation operations do not include any activities associated with the transportation of food that is completely enclosed by a container except a food that requires temperature control for safety, compressed food gases, food contact substances, human food byproducts transported for use as animal food without further processing, or live food animals except molluscan shellfish. In addition, transportation operations do not include any transportation activities that are performed by a farm.

(21) Vehicle--A land conveyance that is motorized, e.g., a motor vehicle, which is used in transportation operations.

(22) Vehicle Used To Transport Food--A vehicle used to transport or hold food in commerce within Texas.

§229.804. Transportation Operations.

(a) General requirements.

(1) Unless stated otherwise in this section, the requirements of this section apply to all shippers, food transporters, loaders, and receivers engaged in transportation operations. A person may be subject to these requirements in multiple capacities, e.g., the shipper may also be the loader and the food transporter, if the person also performs the functions of those respective persons as defined in this subchapter. An entity subject to this subchapter (shipper, loader, food transporter, or receiver) may reassign, in a written agreement, its responsibilities under this subchapter to another party subject to this subchapter. The written agreement is subject to the records requirements of §229.806(d) of this title (relating to Records).

(2) Responsibility for ensuring that transportation operations are carried out in compliance with all requirements in this subchapter must be assigned to competent supervisory personnel.

(3) All transportation operations must be conducted under such conditions and controls necessary to prevent the food from becoming adulterated during transportation operations including:

(A) Taking effective measures such as segregation, isolation, or the use of packaging to protect food from contamination by raw foods and nonfood items in the same load.

(B) Taking effective measures such as segregation, isolation, or other protective measures, such as hand washing, to protect food transported in bulk vehicles or food not completely enclosed by a container from contamination and cross-contact during transportation operations.

(C) Taking effective measures to ensure that food that requires temperature control for safety is transported under food specific adequate temperature control.

(4) The type of food, and its production stage, e.g., raw material, ingredient or finished food, must be considered in determining the necessary conditions and controls for the transportation operation.

(5) Shippers, receivers, loaders, and food transporters, which are under the ownership or operational control of a single legal entity, as an alternative to meeting the requirements of subsections (b),

(d), and (e) of this section may conduct transportation operations in conformance with common, integrated written procedures that ensure the sanitary transportation of food consistent with the requirements of this section. The written procedures are subject to the records requirements of §229.806(e) of this title.

(6) If a shipper, loader, receiver, or food transporter becomes aware of an indication of a possible material failure of temperature control or other conditions that may render the food adulterated during transportation, the food shall not be sold or otherwise distributed, and these persons must take appropriate action including, as necessary, communication with other parties to ensure that the food is not sold or otherwise distributed unless a determination is made by a qualified individual that the temperature deviation or other condition did not render the food adulterated.

(b) Requirements applicable to shippers engaged in transportation operations.

(1) Unless the shipper takes other measures in accordance with paragraph (3) of this subsection to ensure that vehicles and equipment used in its transportation operations are in appropriate sanitary condition for the transportation of the food, i.e., that will prevent the food from becoming adulterated, the shipper must specify to the food transporter and, when necessary, the loader, in writing, all necessary sanitary specifications for the food transporter's vehicle and transportation equipment to achieve this purpose, including any specific design specifications and cleaning procedures. One-time notification shall be sufficient unless the design requirements and cleaning procedures required for sanitary transport change based upon the type of food being transported, in which case the shipper shall so notify the food transporter in writing before the shipment. The information submitted by the shipper to the food transporter is subject to the records requirements in §229.806(a) of this title.

(2) Unless the shipper takes other measures in accordance with paragraph (5) of this subsection to ensure that adequate temperature control is provided during the transportation of food that requires temperature control for safety under the conditions of shipment, a shipper of such food must specify in writing to the food transporter, except a food transporter who transports the food in a thermally insulated tank, and, when necessary, the loader, an operating temperature for the transportation operation including, if necessary, the pre-cooling phase. One-time notification shall be sufficient unless a factor, e.g., the conditions of shipment, changes, necessitating a change in the operating temperature, in which case the shipper shall so notify the food transporter in writing before the shipment. The information submitted by the shipper to the food transporter is subject to the records requirements in §229.806(a) of this title.

(3) A shipper must develop and implement written procedures, subject to the records requirements of §229.806(a) of this title, adequate to ensure that vehicles and equipment used in its transportation operations are in appropriate sanitary condition for the transportation of the food, i.e., will prevent the food from becoming unsafe during the transportation operation. Measures to implement these procedures may be accomplished by the shipper or by the food transporter or another party covered by this subchapter under a written agreement subject to the records requirements of §229.806(a) of this title.

(4) A shipper of food transported in bulk must develop and implement written procedures, subject to the records requirements of §229.806(a) of this title, adequate to ensure that a previous cargo does not make the food unsafe. Measures to ensure the safety of the food may be accomplished by the shipper or by the food transporter or another party covered by this subchapter under a written agreement subject to the records requirements of §229.806(a) of this title.

(5) The shipper of food that requires temperature control for safety under the conditions of shipment must develop and implement written procedures, subject to the records requirements of §229.806(a) of this title, to ensure that the food is transported under adequate temperature control. Measures to ensure the safety of the food may be accomplished by the shipper or by the food transporter or another party covered by this subchapter under a written agreement subject to the records requirements of §229.806(a) of this title and must include measures equivalent to those specified for food transporters under subsection (e)(1) - (3) of this section.

(c) Requirements applicable to loaders engaged in transportation operations.

(1) Before loading food not completely enclosed by a container onto a vehicle or into transportation equipment the loader must determine, considering, as appropriate, specifications provided by the shipper in accordance with subsection (b)(1) of this section, that the vehicle or transportation equipment is in appropriate sanitary condition for the transport of the food, e.g., it is in adequate physical condition, and free of visible evidence of pest infestation and previous cargo that could cause the food to become unsafe during transportation. This may be accomplished by any appropriate means.

(2) Before loading food that requires temperature control for safety, the loader must verify, considering, as appropriate, specifications provided by the shipper in accordance with subsection (b)(2) of this section, that each mechanically refrigerated cold storage compartment or container is adequately prepared for the transportation of such food, including that it has been properly pre-cooled, if necessary, and meets other sanitary conditions for food transportation.

(d) Requirements applicable to receivers engaged in transportation operations. Upon receipt of food that requires temperature control for safety under the conditions of shipment, the receiver must take steps to adequately assess that the food was not subjected to significant temperature abuse, such as determining the food's temperature, the ambient temperature of the vehicle and its temperature setting, and conducting a sensory inspection, e.g., for off-odors.

(e) Requirements applicable to food transporters engaged in transportation operations. When the food transporter and shipper have a written agreement that the food transporter is responsible, in whole or in part, for sanitary conditions during the transportation operation, the food transporter is responsible for the following functions as applicable per the agreement:

(1) A food transporter must ensure that vehicles and transportation equipment meet the shipper's specifications and are otherwise appropriate to prevent the food from becoming unsafe during the transportation operation.

(2) A food transporter must, once the transportation operation is complete and if requested by the receiver, provide the operating temperature specified by the shipper in accordance with subsection (b)(2) of this section and, if requested by the shipper or receiver, demonstrate that it has maintained temperature conditions during the transportation operation consistent with the operating temperature specified by the shipper in accordance with subsection (b)(2) of this section. Such demonstration may be accomplished by any appropriate means agreeable to the food transporter and shipper, such as the food transporter presenting measurements of the ambient temperature upon loading and unloading or time/temperature data taken during the shipment.

(3) Before offering a vehicle or transportation equipment with an auxiliary refrigeration unit for use for the transportation of food that requires temperature control for safety under the conditions of the

shipment during transportation, a food transporter must pre-cool each mechanically refrigerated cold storage compartment as specified by the shipper in accordance with subsection (b)(2) of this section.

(4) If requested by the shipper, a food transporter that offers a bulk vehicle for food transportation must provide information to the shipper that identifies the previous cargo transported in the vehicle.

(5) If requested by the shipper, a food transporter that offers a bulk vehicle for food transportation must provide information to the shipper that describes the most recent cleaning of the bulk vehicle.

(6) A food transporter must develop and implement written procedures subject to the records requirements of §229.806(b) of this title that:

(A) Specify practices for cleaning, sanitizing if necessary, and inspecting vehicles and transportation equipment that the food transporter provides for use in the transportation of food to maintain the vehicles and the transportation equipment in appropriate sanitary condition as required by §229.803(b) of this title (relating to Vehicles and Transportation Equipment);

(B) Describe how it will comply with the provisions for temperature control in paragraph (2) of this subsection; and

(C) Describe how it will comply with the provisions for the use of bulk vehicles in paragraphs (4) and (5) of this subsection.

§229.805. Training.

(a) When the food transporter and shipper have agreed in a written contract that the food transporter is responsible, in whole or in part, for the sanitary conditions during transportation operations, the food transporter must provide adequate training to personnel engaged in transportation operations that provides an awareness of potential food safety problems that may occur during food transportation, basic sanitary transportation practices to address those potential problems, and the responsibilities of the food transporter under this subchapter. The training must be provided upon hiring and as needed thereafter.

(b) Food transporters must establish and maintain records documenting the training described in subsection (a) of this section. Such records must include the date of the training, the type of training, and the person(s) trained. These records are subject to the records requirements of §229.806(c) of this title (relating to Records).

§229.806. Records.

(a) Shippers must retain records.

(1) That demonstrate that they provide specifications and operating temperatures to food transporters as required by §229.804(b)(1) and (2) of this title (relating to Transportation Operations) as a regular part of their transportation operations for a period of 12 months beyond the termination of the agreements with the food transporters.

(2) Of written agreements and the written procedures required by §229.804(b)(3) - (5) of this title for a period of 12 months beyond when the agreements and procedures are in use in their transportation operations.

(b) Food transporters must retain records of the written procedures required by §229.804(e)(6) of this title for a period of 12 months beyond when the agreements and procedures are in use in their transportation operations.

(c) Food transporters must retain training records required by §229.805(b) of this title (relating to Training) for a period of 12 months beyond when the person identified in any such records stops performing the duties for which the training was provided.

(d) Any person subject to this subchapter must retain any other written agreements assigning tasks in compliance with this subchapter for a period of 12 months beyond the termination of the agreements.

(e) Shippers, receivers, loaders, and food transporters, which operate under the ownership or control of a single legal entity in accordance with the provisions of §229.804(a)(5) of this title, must retain records of the written procedures for a period of 12 months beyond when the procedures are in use in their transportation operations.

(f) Shippers, receivers, loaders, and food transporters must make all records required by this subchapter available to a duly authorized individual promptly upon oral or written request.

(g) All records required by this subchapter must be kept as original records, true copies (such as photocopies, pictures, scanned copies, microfilm, microfiche, or other accurate reproductions of the original records), or electronic records.

(h) Except for the written procedures required by §229.804(e)(6)(A) of this title, offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. The written procedures required by §229.804(e)(6)(A) of this title must remain onsite as long as the procedures are in use in transportation operations. Electronic records are considered to be onsite if they are accessible from an onsite location.

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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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER B. OUTDOOR BURNING

30 TAC §111.203, §111.217

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §111.203 and new §111.217.

The amendment to §111.203 is adopted *without change* to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 404) and will not be republished. New §111.217 is adopted *with change* to the proposed text and will be republished.

The commission will submit amended §111.203 and new §111.217 to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

In response to a petition for rulemaking (Project No. 2016-024-PET-NR), the commission adopts this rulemaking to amend outdoor burning rules as they relate to prescribed burning conducted by Certified and Insured Prescribed Burn Managers (CPBMs).

On February 24, 2016, Jackson Walker LLP submitted a petition for rulemaking on behalf of the Texas Forestry Association (TFA). In their petition, TFA requested that the commission amend Chapter 111, to provide specific rules for prescribed burning conducted by CPBMs who are certified by the Prescribed Burning Board (PBB) of the Texas Department of Agriculture (TDA). At the commission's agenda on April 6, 2016, the commission approved the initiation of a rulemaking based on TFA's petition.

CPBMs are regulated by the PBB under TDA's rules in 4 TAC Part 13. The standards established by the PBB represent the minimum requirements for prescribed burning in Texas for CPBMs.

The commission adopts this rulemaking to amend §111.203 and add new §111.217 to the outdoor burning rules.

Section by Section Discussion

§111.203, Definitions

The commission adopts §111.203(1) to include a definition for "Certified and Insured Prescribed Burn Manager." This definition aligns with the TDA rule definition of CPBMs.

The commission renumbers the definitions in §111.203 to accommodate the adopted definition.

The commission adopts the amendment to the definition of "Landclearing operation" in renumbered §111.203(3) to specify that prescribed burning is not considered a landclearing operation. The commission has additional regulatory requirements for landclearing operations that do not apply to prescribed burning.

The commission adopts the amendment to the definition of "Prescribed burn" in renumbered §111.203(6) to include the use of naturalized vegetative fuels in order to align the definition with that of the Texas Natural Resources Code, which allows for the use of naturalized vegetative fuels for prescribed burning.

§111.217, Requirements for Certified and Insured Prescribed Burn Managers

The commission adopts new §111.217 to add requirements for prescribed burning when conducted under the direction of a CPBM. The commission adopts new §111.217(1) to align the requirements of commission's rules with TDA's rules in 4 TAC Chapter 227 (Requirements for Certified and Insured Prescribed Burn Managers) and Chapter 228 (Procedures for Certified and Insured Prescribed Burn Managers) as set forth by the PBB. The commission adopts new §111.217(2) - (6) to provide requirements specifically for CPBMs. Changes made from proposal to adoption include clarifying the applicability of §111.219 (General Requirements for Allowable Outdoor Burning) to CPBMs; revising wind speed to 5 - 23 miles per hour (mph), predicted; removing the flag person requirement; and revising the start time of burns to no earlier than sunrise. These requirements differ from §111.219; in that these requirements are focused on air quality impacts, and consider the extensive training and planning conducted by CPBMs.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, and determined that the adopted rulemaking does not require a regulatory impact analysis. Specifically, the adopted rulemaking does not meet the definition of a major environmental rule as defined in the statute such that a regulatory impact analysis would be required. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted rules implement requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, State implementation plans for national primary and secondary ambient air quality standards, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the National Ambient Air Quality Standards (NAAQS) within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the adopted rulemaking is to implement changes within Chapter 111, Subchapter B, Outdoor Burning rules for prescribed burning conducted by CPBMs who are certified by the PBB of the TDA. The adopted rulemaking amends §111.203 and adds new §111.217 to the outdoor burning rules in order to improve clarity and consistency within the outdoor burning rules in this subchapter as well as consistency with applicable laws found outside this subchapter.

However, while the adopted rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. The

rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633 or bill), 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or those that are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis, unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP were considered a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation. *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) *superseded by statute on another point of law,* Tax Code §112.108, Other Actions Prohibited, *as recognized in First State Bank of Dumas v. Sharp,* 863 S.W.2d 81, 83 (Tex. App. Austin 1993, no writ); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied),;* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035, Substantial Compliance Requirement; Time Limit on Procedural Challenge. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Furthermore, even if the adopted rulemaking did constitute a major environmental rule, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP and, as such, is designed to meet, not exceed, the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law and meet but do not exceed state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

Specifically, even if the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this rulemaking is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Accordingly, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, because they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and with designing and submitting a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). The specific intent of the adopted rulemaking is merely an update to Chapter 111, Subchapter B, §111.203, to add clarity to certain definitions and create consistency with applicable definitions found outside this subchapter, and the addition of new §111.217, which merely cross-references the applicable requirements for outdoor burning found in 4 TAC Chapters 227

and 228, relating to prescribed burns conducted by CPBMs, as well as the general requirements for outdoor burning in §111.219. This adoption, therefore, does not exceed an express requirement of federal law. The revisions are needed to implement state law, which the new requirements also do not exceed. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of the THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012, State Air Control Plan and §382.017, Rules. Because this adopted rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment as to whether Texas Government Code, Chapter 2007, Governmental Action Affecting Private Property Rights, is applicable and found that it does not apply. The requirements relating to outdoor burning, and specifically prescribed burns, are control measures for particulate matter emissions and are essential for attainment and maintenance of the particulate matter NAAQS. Specifically, the adopted rulemaking provides a definition for "Certified and Insured Prescribed Burn Manager" that aligns with the definition provided by TDA; clarifies that prescribed burning is not considered a landclearing operation, which has additional regulatory requirements that do not apply to prescribed burning; expands the definition of "Prescribed burn" to include naturalized vegetative fuels, which aligns with the definition under the Texas Natural Resources Code; renumbers the definitions for organizational purposes; and adds new §111.217, providing requirements for prescribed burns conducted under CPBMs, which aligns with TDA's rules for such, as set forth by the PBB, and requires CPBMs to follow the same general requirements of §111.219, which are not required by the PBB. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007, Government Action Affecting Private Property Rights does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The specific intent of the adopted rulemaking is to clarify the rule requirements for prescribed burning and align the requirements in this subchapter with those found outside this subchapter to allow for more streamlined, consistent, and clear rules to be applied to prescribed burning, which leads to the increased protection of health and safety. The adopted rulemaking adds a definition for "Certified and Insured Prescribed Burn Manager" that aligns with TDA definitions and clarifies that prescribed burning is not considered a landclearing operation, which has additional regulatory requirements that do not apply to prescribed burning. The adopted rulemaking expands the definition of "Prescribed burn" to include naturalized vegetative fuels, which aligns with the definition under the Texas Natural Resources Code, and renumbers the definitions for organizational purposes. The adopted rulemaking also adds a section that provides specific requirements for prescribed burns conducted under CPBMs, which aligns with TDA's rules for such, as set forth by the PBB, and requires CPBMs to follow the same general requirements of §111.219, which are not required by the PBB.

Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to actions and rules subject to the Coastal Management Program, and will, therefore, require that the goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with the CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Because Chapter 111 contains applicable requirements under 30 TAC Chapter 122, owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 111 requirements for each emission unit affected by the revisions to Chapter 111 at their site, upon the effective date of the adopted rulemaking.

Public Comment

The commission held a public hearing on February 28, 2017. The comment period closed on March 6, 2017. The commission received comments from Acorn Forestry, TDA, and TFA.

Response to Comments

Comment

TDA recommended that the commission not adopt the rules set out in TCEQ's Rule Project Number 2016-027-111-CE. TDA recommended that TCEQ instead at this time consult with PBB regarding any additional standards necessary for CPBMs while conducting prescribed burns. TDA stated that, after discussions, PBB can follow up with appropriate rules, if necessary. Further, TDA suggested that TCEQ and TDA address enforcement through a memorandum of understanding (MOU).

Response

The commission disagrees with TDA's recommendation that the agency not adopt the proposed rulemaking. The purpose of the rulemaking is to provide additional flexibility for CPBMs

when conducting prescribed burning. Failing to adopt the proposed rulemaking would require that CPBMs continue to comply with the general requirements for allowable outdoor burning in §111.219, which is laid out in §111.211, Exceptions for Prescribed Burn. The commission is willing to work with TDA on cross-jurisdictional issues; however, the outdoor burning rules in Chapter 111 are included in the SIP. Any modifications to the SIP must be submitted to the EPA for review and approval, including this rulemaking for Chapter 111.

Furthermore, replacing the current EPA-approved Chapter 111 outdoor burning rules with PBB's rules and an MOU between TDA and TCEQ would needlessly place a significant burden on the PBB and TDA as well as complicate potential future SIP revisions. If the EPA were to approve the revision, future modifications to the PBB's rules or the MOU would necessarily be SIP revisions, subject to the public notice and comment process required for all SIP revisions as well as EPA review and approval. As the TCEQ is much more familiar with the SIP revision process, the commission prefers to continue to rely on the outdoor burning rules in Chapter 111 for SIP purposes. The commission is adopting the rulemaking with changes made in response to comments as discussed elsewhere in the Response to Comments portion of this preamble.

There were no changes made in response to this comment.

Comment

TFA recommended including additional language for clarification that CPBMs must comply with the requirements in §111.217 and are not required to comply with the general requirements for allowable outdoor burning in §111.219.

Response

The commission agrees that the intent of the proposed rulemaking is that CPBMs are required to comply with the requirements of §111.217 in lieu of complying with the requirements of §111.219. Section 111.219 states that outdoor burning is subject to that section when specified, and §111.217 does not specify that §111.219 applies to CPBMs. In response to this comment, the commission amends the introductory paragraph of §111.217 to clarify that CPBMs must comply with the requirements of §111.217 in lieu of the requirements in §111.219.

Comment

Acorn Forestry and TFA recommended that the commission delete proposed §111.217(6) because the restrictions in §111.217(4) make §111.217(6) redundant. Commenters suggested that, even if the commission did not delete proposed §111.217(6), the commission should amend the paragraph.

Specifically, Acorn Forestry commented that surface wind speed measurements were not necessary and that it was the combination of both the wind speeds on the surface and mixing heights that gets particulate matter out and away from the area of the burn and dispersed. Acorn Forestry also stated that first thing in the morning, winds tend to be slower, temperatures tend to be down, and relative humidity tends to be elevated, all of which makes it by far the safest time to work and that, accordingly, the time-of-day requirement should be changed. Specifically, commenters requested that burning be allowed to commence at sunrise.

TFA additionally commented that, by requiring the predicted wind speed to be at least 6 mph, the rule, in effect, requires predicted wind speeds to be at least 10 mph. TFA explained that wind speed predictions are posted in 5 mph increments. As a result, in combination with TCEQ's existing requirement of 6 mph predicted wind speed to burn, CPBMs are hindered from burning at actual wind speeds (i.e. at 6 - 9 mph) that would otherwise comport with TCEQ's rules. To further support the recommended wind speed requirement change, TFA also referenced Texas Parks and Wildlife Department's recommendations that state range burning is safe with wind speeds of 5 to 15 mph and United States Department of Agriculture Forest Service recommendations using high-level wind speeds rather than ground-level for accurate prediction of smoke dispersion. TFA asked the commission to amend its rules such that allowable wind speeds are below a predicted wind speed of 6 mph, allowing CPBMs to gain a safer work area.

Response

The commission disagrees that the provisions of proposed §111.217(6) are redundant. Section 111.217(4) is a general requirement that CPBMs prohibit burning that would cause adverse effects, whereas proposed §111.217(6) includes specific requirements for burning. Additionally, §111.217(4) can only be practically enforced in situations where impacts of smoke from a burn can be readily detected, i.e., the smoke can be seen or smelled. The intent of the provisions under proposed §111.217(6) is to help prevent broader, less readily detectible impacts that may go beyond the ability of CPBM's to detect or predict, particularly the provisions in proposed §111.217(6)(B) and (C). For example, burning on stagnant air days or with a persistent temperature inversion could lead to air quality issues further from the burn site beyond just what can be seen or smelled (e.g., smoke), such as contributing to elevated concentrations of particulate matter or ozone formation.

However, the commission agrees that some of the other suggested amendments to the proposed rule language are appropriate. The commission revises §111.217(6)(A), renumbered at adoption as §111.217(5)(A), to allow burning to begin at sunrise in lieu of one hour after sunrise as proposed. The commission established the time-of-day provisions to help ensure appropriate meteorological conditions for proper dispersion, originally requiring burning to start after 9:00 a.m. and then adjusted to the current hour after sunrise to provide additional flexibility while still avoiding concerns about the occasional morning inversion period (September 3, 1996, 21 TexReg 8506). However, while temporary temperature inversions may still occur in some situations during the first hour after sunrise, potential impacts from starting a burn during this time would be minimized by adhering to the wind speed requirements discussed previously. Moreover, the emissions during this initial, additional, hour will be much less than when the prescribed burn has peaked, which would be expected to occur later in the day after any temporary inversion dissipates. Furthermore, any potential adverse impacts that might occur should be mitigated by and enforced against through §111.217(4) due to the short time interval difference. The time of day that emissions occur can be a factor in broader air quality impacts, such as ozone formation, but such factors are over much wider time intervals, e.g., delaying emission until the afternoon versus morning. Changing the allowed time in adopted §111.217(5)(A) to allow burning to start at sunrise when other meteorological factors, including wind speeds, are adequate to promote smoke dispersion should not have any adverse air quality impacts and provides additional safety due to generally more favorable conditions with an earlier start. Additionally, the commission notes that the determination regarding the time of day to begin burning is specific to prescribed burning only, due to the

enforceable provisions of this rulemaking, and that it is not applicable to air curtain incinerators.

Proposed §111.217(6)(B) does not specify a source for wind speed data. Some online data sources provide predicted wind speed data in single mile per hour increments (e.g., *www.nws.noaa.gov),* Nevertheless, the commission agrees that a modification to the lower end of the wind speed range in §111.217(6)(B) in order to conform to certain readily available sources of predicted wind speed data would provide CPBMs with additional flexibility. Therefore, the commission revises §111.217(6)(B), renumbered at adoption as §111.217(5)(B), to state that burning shall not be commenced when surface wind speeds are predicted to be less than 5 mph or greater than 23 mph. The commission does not expect the change to the lower limit of the wind speed range from 6 mph to 5 mph to impact air quality. The commission recognizes that many factors affect production and dispersion of smoke, including wind speed (at transport and surface heights) and atmospheric stability (e.g., vertical mixing and mixing height). From a smoke management perspective, higher wind speeds are more favorable for dispersion. However, the effect of other factors, such as atmospheric stability, limit generalizations that can be made regarding the role of wind speed alone, particularly in single mph increments. Rather than burdening CPBMs by requiring advanced screening techniques for each fire that they take into account additional factors beyond those listed in adopted §111.217(5), the commission finds that changing the lower limit of the wind speed range from 6 mph to 5 mph provides flexibility while also limiting the potential for air quality impacts associated with smoke from prescribed fires.

Comment

Acorn Forestry and TFA commented that TCEQ should not require flag-persons to be posted on roads under certain circumstances during prescribed burns because there are existing rules under the jurisdiction of the Texas Department of Transportation (TXDOT) that regulate the training and operations of flaggers. Acorn Forestry further commented that other types of road-workers (e.g., landscapers, mowers, utility workers, etc.) must display signs while working, but flaggers are not required. Acorn Forestry and TFA further commented that TCEQ's rules do not define a "road or highway," noting that prescribed burns are most common in rural locations with dirt or gravel roads where traffic can be non-existent or infrequent. TFA commented that cars should not be driving more than 30 mph in these areas. Accordingly, Acorn Forestry and TFA recommended changing the flag person requirement to a requirement for CPBMs to instead place signs on roads. Additionally, TFA recommended that signs only be required for roads with a speed limit over 30 mph. Acorn Forestry commented that a requirement of a burn plan, which TDA's rules require, is to minimize and mitigate impacts to roads. The commenters requested that §111.217(5) be removed or altered to require signs on roads over a certain speed limit without flag-persons.

Response

The commission acknowledges that TXDOT also has rules pertaining to flag-persons. Multiple state agencies can have rules or regulations with overlapping authority. The intent of the provision under proposed §111.217(5) is to help prevent broader, less readily detectible impacts that may go beyond the ability of CPBMs to detect or predict. TCEQ does not require training and simply requires that a flag person must be present.

However, the commission agrees that revising the proposed rule language is appropriate. The commission is not including proposed §111.217(5) in the adopted rule, given that preventing adverse effects from affecting public roads is included in §111.217(4) and 30 TAC §101.5. This does not exempt CPBMs from complying with other state and federal regulations.

Comment

TFA recommended that the commission revise the definition of "Structure containing sensitive receptors" to ensure that hunting camps and other temporary lodging structures, used on large rural tracts for limited periods, are not included. Acorn Forestry commented that the current definition creates a burden on CPBMs when they must obtain permission from landowners or leaseholders that do not permanently reside on affected properties.

Response

The petition for rulemaking requested this change but it was not included in the proposal. The commission did not change the definition language based on stakeholder comments that "hunting camp" is an overly narrow and not easily defined term, and because the commission wishes to maintain consistency with other state regulations. TDA's rules also define sensitive receptors and do not exclude hunting camps or other temporary lodging structures used on large rural tracts for limited periods. Since the proposed rule language did not include changes to the definition of sensitive receptors, the public and other interested parties would not have an opportunity to comment. Therefore, the suggested change is outside the scope of this rulemaking. In addition, TCEQ's adopted rules for CPBMs do not require permission from sensitive receptors.

There were no changes made in response to this comment.

Comment

TDA commented that the proposed rules overlap with PBB's rules and creates ambiguity regarding regulatory authority over the Texas Prescribed Burning Program. Additionally, the proposed rules raise the possibility that a CPBM could face enforcement action by both TCEQ and TDA for a violation of a PBB rule.

Response

The commission agrees that violations could be subject to enforcement actions by TCEQ and TDA. Multiple state agencies can have rules or regulations with overlapping authority. It is the responsibility of regulated entities to determine what rules and regulations apply to them prior to commencing regulated activities.

There were no changes made in response to this comment.

Comment

Acorn Forestry requested an exemption from obtaining an authorization from sensitive receptors.

Response

The commission acknowledges the commenter's request. However, §111.217 does not include a requirement to obtain authorization from sensitive receptors. The new section requires notification to the appropriate commission regional office prior to the proposed burn, when possible. Notification to the Texas Forest Service is also required prior to prescribed or controlled burning for forest management purposes. The commission notes that CPBMs are required to obtain permission from sensitive recep-

tors by applicable laws found outside this subchapter and when complying with TDA's rules at 4 TAC §228.2(a)(1).

There were no changes made in response to this comment.

Statutory Authority

The amendment and new section are adopted under the authority of Texas Water Code (TWC) §5.102, General Powers, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC; Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.018, Outdoor Burning of Waste and Combustible Material, which authorizes the commission to control and prohibit the outdoor burning of waste and combustible material; and THSC, §382.085, Unauthorized Emissions Prohibited. The amendment and new section are also adopted under THSC, §382.051, Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382, Clean Air Act, and under the Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq,* Congressional findings and declaration of purpose, which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment and new section implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.017, 382.018, 382.051, and 382.085; and FCAA, 42 USC, §§7401 *et seq.*

§111.217. Requirements for Certified and Insured Prescribed Burn Managers.

Prescribed burning shall be authorized when conducted under the direction of a Certified and Insured Prescribed Burn Manager, as defined in §111.203 of this title (relating to Definitions), for forest, range and wildland/wildlife management and wildfire hazard mitigation purposes, with the exception of coastal salt-marsh management burning. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. Such burning shall be subject to the following requirements, and not the requirements in §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning).

(1) 4 TAC Chapter 227 (relating to Requirements for Certified and Insured Prescribed Burn Managers) and Chapter 228 (relating to Procedures for Certified and Insured Prescribed Burn Managers).

(2) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(3) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

(4) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

(5) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall commence no earlier than sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when surface wind speed is predicted to be less than five miles per hour (mph) (four knots) or greater than 23 mph (20 knots) during the burn period.

(C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(6) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

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 July 14, 2017.

TRD-201702643
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 3, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 239-6812

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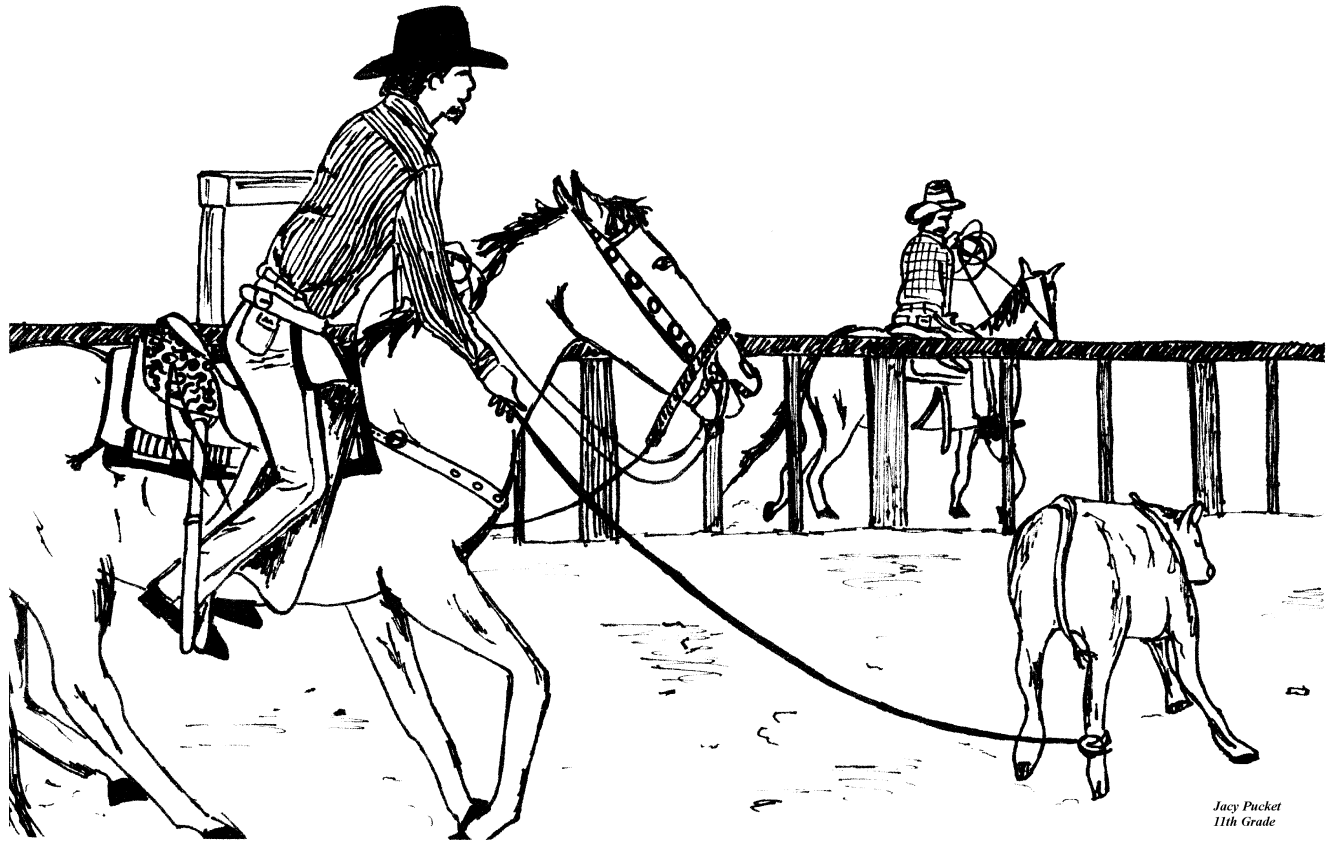

Jacy Pucket
11th Grade

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 91 Subchapter A (relating to General Rules), Subchapter B (relating to Organization Procedures), Subchapter J (relating to Changes in Corporate Status), and Subchapter L (relating to Submission of Comments by Interested Parties) of the Texas Administrative Code, Tile 7, Part 6, consisting of §§91.101 - 91.125, 91.200 - 91.210, 91.1003 - 91.1008, 91.3001, and 91.3002. The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Department's general rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* as required on April 21, 2017 (42 TexReg 2269). The Department received no comments on the notice of intention to review.

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

As a result of the internal review by the Department, the Commission has determined that certain revisions are appropriate and necessary. The Commission is concurrently proposing amendments to Chapter 91, Subchapters A, B, and J as published elsewhere in this issue of the *Texas Register.* Subject to the concurrently proposed amendments to Chapter 91, Subchapters A, B, J, and L, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapters A, B, J, and L in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapters A, B, J, and L.

TRD-201702692
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 14, 2017

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §365.14(c)

License Expiration Date	Time Period During Which You Must Take CPE
September 30	July 1 to September 30 of the year in which your license expires
October 31	July 1 to October 31 of the year in which your license expires
November 30	July 1 to November 30 of the year in which your license expires
January 31	July 1 of the previous year to January 31 of the year in which your license expires
February 28	July 1 of the previous year to February 28 of the year in which your license expires
March 31	July 1 of the previous year to March 31 of the year in which your license expires
April 30	July 1 of the previous year to April 30 of the year in which your license expires
May 31	July 1 of the previous year to May 31 of the year in which your license expires
June 30	July 1 of the previous year to June 30 of the year in which your license expires
July 31	July 1 of the previous year to July 31 of the year in which your license expires
August 31	July 1 of the previous year to June 30 of the year in which your license expires

Figure: 22 TAC §367.10(k)

CLASS A VIOLATIONS			
Number	Description	References (All references are to the Plumbing License Law and the Plumbing Board's Rules unless otherwise Source Noted)	Penalty
1.	Contracting or offering to perform plumbing without the proper license	§1301.351(a); Rule 365.1; Rule 367.3(a)(1)(B)	$5,000
2.	Contracting for or offering to install medical gas or medical vacuum piping without the proper endorsement or license	§1301.351(a); Rule 367.3(b)	$5,000
3.	Claiming through advertising or by producing another's registration number or plumbing license number, or by other means claiming that a person is a licensed plumber or registrant when in fact that person is not a licensed plumber or registrant	Rule 367.7(b)(4)	$5,000
4.	Claiming that a company has secured the services of a Responsible Master Plumber when in fact the company has not	Rule 367.7(b)(4)	$5,000
5.	Engaging in false, misleading, or deceptive advertising; failing to clearly display the licensee's license number or registrant's registration number in an advertisement	Rule 367.2(c)(1)	$5,000
6.	Misrepresenting services provided or to be provided	§1301.452(a)(3)	$5,000
7.	Failing to perform services contracted for or agreed to	Rule 367.6	$5,000
8.	Allowing illegal use of a Master Plumber's License	Rule 367.3(a)(2)	$5,000
9.	Failing to obtain insurance or provide the Board with a certificate of insurance	§1301.3576(1); Rule 367.3(a)	$5,000
10.	Violating a state law, plumbing code, or municipal ordinance within any geographical location; willfully, negligently, or arbitrarily violating a municipal rule or ordinance that regulates sanitation, drainage, or plumbing	§1301.255(c); §1301.452(a)(2); Rule 367.2(e)	$5,000
11.	Performing plumbing inspections without the proper license	§1301.351(b), §1301.551(d)	$3,000
12.	Misrepresenting costs and completion time of services provided	§ 301.452(a)(3) and Rule 367.2(c)(3)	$3,000
13.	Evading responsibility to a client	Rule 367.2(a)(3)	$3,000
14.	Evading responsibility to an employer	Rule 367.2(a)(3)	$1,000

15.	Failing to train or manage a person engaged in plumbing; or failing to review or inspect the person's work	§1301.351(c); Rule 361.1(20)	$2,000
16.	Obtaining a license, endorsement, or registration through error or fraud or by providing false information to the Board	§1301.452(a)(1); Rule 363.10	$2,000
17.	Engaging in plumbing without the proper license	§1301.351(a); Rule 365.1	$1,000
18.	Engaging in or performing medical gas work without the proper endorsement	§1301.356(a); Rule 367.3(b)	$1,000
19.	Advertising or otherwise offering to perform or provide plumbing services without securing the services of a Responsible Master Plumber.	§1301.351(a-2)	$4,000
20.	Engaging in the installation, design, or inspection of multipurpose fire protection sprinkler system without meeting the qualifications	§1301.3565; 363.11(d)	$2,000
CLASS B VIOLATIONS			
1.	Failing to provide the Board with certificate of insurance (if required insurance is effective)	§1301.3576(6); Rule 367.3(a)	$1,000
2.	Failing to display Master Plumber license number and company name on service vehicle	Rule 367.4(b)	$1,000
3.	Failing to provide the Board's name, Board's telephone number, and Board's mailing address on documents used to conduct the business of plumbing; Failing to provide Master Plumber name and license number on documents used to conduct the business of plumbing	§1301.302; Rule 367.3(a)(11)	$1,000
4.	Failing to provide licensee's license number or registrant's registration number in advertisement; engaging in false, misleading, or deceptive advertising	Rule 367.2(c)(1)	$1,000
5.	Failure to obtain plumbing permit according to the requirements of a political subdivision	§1301.452(a)(2); Rule 367.2(e)	$1,000
6.	Failure to register as a Plumber's Apprentice	§1301.354(a)	$400

Lizeth Rosas 8th Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Closing Price for Gas and Oil - June 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 June 2017 is $37.15 per barrel for the three-month period beginning on March 1, 2017, and ending May 31, 2017. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 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 June 2017 is $2.39 per mcf for the three-month period beginning on March 1, 2017, and ending May 31, 2017. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 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 June 2017 is $45.20 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 June 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 June 2017 is $2.99 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 June 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-201702644
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: July 14, 2017

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/24/17 - 07/30/17 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/24/17 - 07/30/17 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/17 - 08/31/17 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/17 - 08/31/17 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201702711
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 18, 2017

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Texas Education Agency

Request for Applications Concerning the 2017-2018 Perkins Reserve Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-17-103 is authorized by Title I, Part A, Carl D. Perkins Career and Technical Education Act of 2006, Public Law 109-270, Section 112(a)(1).

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-17-103 from local educational agencies (LEAs) that have been awarded a Perkins Formula Grant for 2017-2018 and that are classified as "rural" or have either high numbers of career and technical education (CTE) students or high percentages of CTE students. For this grant, TEA will observe the definition of "rural" as assigned by the TEA and as outlined in the program guidelines. LEAs with high numbers of CTE students have 200 or more CTE concentrators (code 2) in Grades 9-12. LEAs with high percentages of CTE students have 25 percent or more of the total student population in Grades 9-12 as CTE concentrators (code 2).

Description. The purpose of this grant program is to provide assistance to LEAs in (a) the preparation of students who enroll in CTE courses for high-skill, high-wage, or high-demand occupations in current or emerging fields; (b) strengthening linkages between secondary and postsecondary CTE programs of study as well as establishing or strengthening partnerships with business and industry; (c) establishing or strengthening partnerships with business and industry to include work-based learning opportunities; (d) fostering innovation of CTE programs, practices, and strategies, which may include practices and strategies that prepare individuals for nontraditional fields; or (e) promoting the development, implementation, and adoption of programs of study or career pathways aligned with Texas-identified in-demand occupations or industries.

Applicants will be required to select a focus area. The focus areas are: Pathway Hubs, Rural Schools (Focus Area 1); Pathway Hubs, Career Center Partnerships (Focus Area 2); CTE Career Clusters (Focus Area 3); and Testing Site/Licensed Instructor (Focus Area 4). Focus Area 4 may be combined with Focus Area 1, 2, or 3. More information about the Focus Areas can be found in the Program Guidelines posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Dates of Project. The 2017-2018 Perkins Reserve Grant program will be implemented primarily during the 2017-2018 school year. Continuation funding may be available for grantees awarded under Focus Area 1, 2, or 3 for the 2018-2019 and 2019-2020 school years. Applicants should plan for a starting date of no earlier than November 13, 2017, and an ending date of no later than August 31, 2018, for the first year of funding.

Project Amount. Approximately $5.4 million is available for funding the 2017-2018 Perkins Reserve Grant program. It is anticipated that approximately 13 grants will be awarded to LEAs selecting Focus Area 1 ranging in amounts up to $75,000 in Year 1. Approximately 30 grants will be awarded to LEAs selecting Focus Area 2 ranging in amounts up to $75,000 in Year 1. Approximately 27 grants will be awarded to LEAs selecting Focus Area 3 ranging in amounts up to $75,000 in Year 1. Approximately 20 grants will be awarded to LEAs selecting Focus Area 4 in amounts up to $10,000. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Tuesday, September 5, 2017, from 10:00 a.m. to 11:00 a.m. Registration for the webinar will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA. Questions relevant to the RFA may be emailed to Diane Salazar at diane.salazar@tea.texas.gov on or before Monday, August 28, 2017. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. To make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to diane.salazar@tea.texas.gov, the TEA contact person identified in the program guidelines of the RFA, no later than Monday, August 14, 2017. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, August 28, 2017. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, September 26, 2017, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201702733
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 19, 2017

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Texas Commission on Environmental Quality

Agreed Orders

The (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 28, 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 August 28, 2017. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 pro-

vides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0624-PWS-E; IDENTIFIER: RN101502730; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps that have a total capacity of at least 2.0 gallons per minute (gpm) per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage tank capacity of 100 gallons per connection (gpc) or a pressure tank capacity of 20 gpc; and 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gpm per connection to the distribution system in the event of the loss of normal power supply; PENALTY: $999; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: BA PROPERTIES MANAGEMENT, INCORPORATED dba Sunmart 318; DOCKET NUMBER: 2017-0375-PST-E; IDENTIFIER: RN101964542; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $3,036; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Bogata; DOCKET NUMBER: 2017-0502-PWS-E; IDENTIFIER: RN101180263; LOCATION: Bogata, Red River County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 executive director (ED) for the January 1, 2013 - December 31, 2013, January 1, 2014 - December 31, 2014, and January 1, 2015 - December 31, 2015, monitoring periods; and 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required twenty sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods; PENALTY: $840; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Clyde; DOCKET NUMBER: 2017-0555-PWS-E; IDENTIFIER: RN101410751; LOCATION: Clyde, Callahan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: $441; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Cushing; DOCKET NUMBER: 2017-0556-PWS-E; IDENTIFIER: RN101247138; LOCATION: Cushing, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $175; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Gorman; DOCKET NUMBER: 2017-0485-PWS-E; IDENTIFIER: RN101198794; LOCATION: Gorman, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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, 2013 - December 31, 2015, monitoring period; and 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, 2016 - December 31, 2016, monitoring period; PENALTY: $360; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Junction; DOCKET NUMBER: 2017-0519-MWD-E; IDENTIFIER: RN101920288; LOCATION: Junction, Kimble County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010199001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0010199001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monthly discharge monitoring reports at the intervals specified in the permit; TWC, §26.0301(a), 30 TAC §30.350(m) and §305.125(1), and TPDES Permit Number WQ0010199001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater system operations companies holding a valid license or registration; 30 TAC §§305.125(1), (11)(A), and 319.1, 319.4, and, 319.5(b), and TPDES Permit Number WQ0010199001, Monitoring and Reporting Requirements Number 3, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: $16,713; ENFORCEMENT COORDINATOR: Ariel Ramirez, (512) 239-4935; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(8) COMPANY: City of La Joya; DOCKET NUMBER: 2017-0600-PWS-E; IDENTIFIER: RN101276863; LOCATION: La Joya, Hidalgo 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 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods, 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 for the January 1, 2016 - June 30, 2016, monitoring period; 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 ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015, monitoring period, 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 for the January 1, 2013 - December 31, 2015, monitoring period; and 30 TAC §290.122(b)(3)(A), (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 comply with the maximum contaminant level for total trihalomethanes for Disinfection Byproducts Stage 2 at sites 1 and 2 during the fourth quarter of 2014 and the failure to conduct

routine coliform monitoring during the month of September 2014; PENALTY: $1,822; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: City of Lorenzo; DOCKET NUMBER: 2017-0543-PWS-E; IDENTIFIER: RN101392066; LOCATION: Lorenzo, Crosby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; 30 TAC §290.46(f)(2), (3)(B)(iv) and (v), by failing to maintain water works operation and maintenance records and make them available for review to the executive director (ED) during the investigation; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(m)(1)(A), by failing to inspect each of the facility's ground and elevated storage tanks annually by water system personnel or a contracted inspection service; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $600; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: City of Vega; DOCKET NUMBER: 2016-2133-PWS-E; IDENTIFIER: RN101203628; LOCATION: Vega, Oldham County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source *Escherichia coli (E.coli)* sample from each active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample during the months of September 2012, August 2015, and September 2015, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect a raw groundwater source *E.coli* sample from each active source within 24 hours of being notified of a distribution total coliform-positive result during the months of August 2015 and September 2015; 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 conduct increased coliform monitoring for the months of September 2015 and October 2015, and regarding the failure to conduct lead and copper monitoring for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: $732; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: City of Wolfe City; DOCKET NUMBER: 2017-0692-PWS-E; IDENTIFIER: RN101387579; LOCATION: Wolfe City, Hunt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallon per minute per connection; PENALTY: $52; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: COASTAL TRANSPORT COMPANY, INCORPORATED; DOCKET NUMBER: 2017-0548-PST-E; IDENTIFIER: RN100712629; LOCATIONS: San Antonio and Fort Worth, Bexar and Tarrant Counties; 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: $3,105; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: FRANKLIN EXPRESSWAY, INCORPORATED and G AND G LIONS, INCORPORATED dba Lions Den Exxon; DOCKET NUMBER: 2017-0545-PST-E; IDENTIFIER: RN104284831; LOCATION: Franklin, Robertson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Houston Refining LP; DOCKET NUMBER: 2017-0459-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1372, Special Terms and Conditions Number 26, and Flexible Permit Numbers 2167 and PSDTX985, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Larry R. Burns; DOCKET NUMBER: 2017-0430-WOC-E; IDENTIFIER: RN108944836; LOCATION: Thornton, Limestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.0301(c) and §37.003, and 30 TAC §30.5(a) and §30.331(b), by failing to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater; PENALTY: $675; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Llano County Municipal Utility District 1; DOCKET NUMBER: 2017-0495-PWS-E; IDENTIFIER: RN101425544; LOCATION: Horseshoe Bay, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; and 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy requirements of the Consumer Confidence Report distributed to the customers of the facility for calendar year 2014; PENALTY: $215; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(17) COMPANY: Lubbock County Water Control and Improvement District Number 1; DOCKET NUMBER: 2017-0651-PWS-E; IDENTIFIER: RN101411908; LOCATION: Buffalo Springs, Lubbock 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) for the January 1, 2012 - December 31, 2014, monitoring period, 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 for the January 1, 2012 - December 31, 2014, monitoring period; 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 ED for the January 1, 2015 - December 31, 2015, monitoring period, 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 for the January 1, 2015 - December 31, 2015, monitoring period; and 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 ED for the January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods, 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 for the January 1, 2016 - June 30, 2016, monitoring period; PENALTY: $810; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: MATTHEW ROAD WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0633-PWS-E; IDENTIFIER: RN101455053; LOCATION: Arlington, Dallas 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) for the January 1, 2012 - December 31, 2014, monitoring period, 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 for the January 1, 2012 - December 31, 2014, monitoring period; 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 ED for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods, 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 for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; 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 Disinfectant Level Quarterly Operating Report for the second quarter of 2015; PENALTY: $550; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Menard County; DOCKET NUMBER: 2017-0470-MLM-E; IDENTIFIER: RN105124937; LOCATION: Menard, Menard County; TYPE OF FACILITY: airport with a small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a)(4), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; and 30 TAC §324.1 and 40 CFR 279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; PENALTY: $3,038; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: MS KEMAH INVESTMENTS LLC dba Tiger Way; DOCKET NUMBER: 2017-0343-PST-E; IDENTIFIER: RN106225717; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(e)(2), by failing to fill out an underground storage tank (UST) registration form completely and accurately; and 30 TAC §334.54(b)(2) and (c)(2) and §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons and failing to monitor a temporarily out-of-service UST system for releases; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: PURVI INVESTMENT, LLC dba PJ Mart; DOCKET NUMBER: 2017-0544-PST-E; IDENTIFIER: RN102428398; LOCATION: Luling, Caldwell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.7(a)(1), by failing to properly register all USTs with the agency; PENALTY: $2,497; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(22) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2017-0307-PWS-E; IDENTIFIER: RN101274165; LOCATION: Pineland, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.115(e), and 290.122(c)(2)(A) and (f), by failing to provide the results of quarterly Stage 2 Disinfection Byproducts sampling to the executive director (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; and 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 the failure to comply with the maximum contaminant level for total trihalomethanes based on the locational running annual average during the second quarter of 2016; PENALTY: $619; ENFORCEMENT COORDINATOR: Paige Bond, (512) 239-2678; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: TSMT Properties LLC; DOCKET NUMBER: 2017-0650-PWS-E; IDENTIFIER: RN101202943; LOCATION: Pearland, Brazoria 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 five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2015 - December 31, 2015, January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods, and 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 for the Janauary 1, 2015 - December 31, 2015 and January 1, 2016 - June 30, 2016, monitoring period; 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 and report the results of nitrate and volatile organic chemical contaminants sampling to the ED for the January 1, 2015 - December 31, 2015, monitoring period; PENALTY: $1,400; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Zion Rest Missionary Baptist Church; DOCKET NUMBER: 2017-0468-EAQ-E; IDENTIFIER: RN106188444; LOCATION: Austin, Travis County; TYPE OF FACILITY: church; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201702709
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 18, 2017

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Enforcement Orders

An agreed order was adopted regarding Signor Farm and Ranch, L.P. and Stratton Oilfield Systems Texas LLC, Docket No. 2016-0461-WQ-E on July 18, 2017, assessing $2,500 in administrative penalties with $500 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Benton Rainey dba Delta Family Mart, Docket No. 2016-0964-PST-E on July 18, 2017, assessing $6,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, 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 CLARA HILLS CIVIC ASSOCIATION, Docket No. 2016-1474-PWS-E on July 18, 2017, assessing $770 in administrative penalties with $154 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 William Euceda dba K&W Quick Stop, Docket No. 2016-1530-PST-E on July 18, 2017, assessing $4,629 in administrative penalties with $925 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 J & J CStore 2 LLC dba EZ STOP #5, Docket No. 2016-1559-PST-E on July 18, 2017, assessing $6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, 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 AREEBA & SAAMIA INC dba Smart Mart 1, Docket No. 2016-1584-PST-E on July 18, 2017, assessing $4,629 in administrative penalties with $925 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 NOBLE BUSINESS INC. d/b/a Justin Mini Mart, Docket No. 2016-1650-PST-E on July 18, 2017, assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, 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 City of Blanco, Docket No. 2016-1760-PWS-E on July 18, 2017, assessing $175 in administrative penalties with $35 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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. 2016-2005-PWS-E on July 18, 2017, assessing $1,524 in administrative penalties with $304 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 MILLER GROVE WATER SUPPLY CORPORATION, Docket No. 2016-2048-PWS-E on July 18, 2017, assessing $180 in administrative penalties with $36 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 David Richter and Francisca Richter dba Hillside Water Works, Docket No. 2016-2059-MLM-E on July 18, 2017, assessing $572 in administrative penalties with $114 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 ARM Trucking Limited Company, Docket No. 2017-0041-AIR-E on July 18, 2017, assessing $7,500 in administrative penalties with $1,500 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 MV Transportation, Inc, Docket No. 2017-0072-PST-E on July 18, 2017, assessing $3,143 in administrative penalties with $628 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 City of Riverside, Docket No. 2017-0090-MWD-E on July 18, 2017, assessing $2,926 in administrative penalties with $585 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Breckenridge, Docket No. 2017-0098-PWS-E on July 18, 2017, assessing $306 in administrative penalties with $61 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 Meta Dolgener dba Bernhard Trailer Park, Docket No. 2017-0100-PWS-E on July 18, 2017, assessing $1,256 in administrative penalties with $251 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 City of Comanche, Docket No. 2017-0150-MWD-E on July 18, 2017, assessing $3,000 in administrative penalties with $600 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 T & W WATER SERVICE COMPANY, Docket No. 2017-0194-PWS-E on July 18, 2017, assessing $153 in administrative penalties with $30 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Elkhart, Docket No. 2017-0224-PWS-E on July 18, 2017, assessing $180 in administrative penalties with $36 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Marlin, Docket No. 2017-0405-PWS-E on July 18, 2017, assessing $2,128 in administrative penalties with $425 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201702723
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 19, 2017

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Notice of Hearing

BIG SKY TRAILS, LTD

SOAH Docket No. 582-17-5012

TCEQ Docket No. 2017-0491-MWD

Permit No. WQ0015479001

APPLICATION.

Big Sky Trails, Ltd, 4347 West Northwest Highway, Suite 130-248, Dallas, Texas 75220, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015479001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 680,000 gallons per day. TCEQ received this application on May 20, 2016.

The facility will be located approximately 1 mile northwest of the intersection of U.S. Highway 380 and Jackson Road, and approximately 8 miles west of the City of Krum, in Denton County, Texas 76259. The treated effluent will be discharged to an unnamed tributary; thence to Denton Creek; thence to Grapevine Lake in Segment No. 0826 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 0826 are high aquatic life use, public water supply, and primary contact recreation. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Denton Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Krum Public Library, 803 East McCart Street, Krum, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: *<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.248333&lng=-97.372222&zoom=13&type=r>*. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - September 5, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on June 13, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 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."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at *http://www.tceq.texas.gov/.*

Further information may also be obtained from Big Sky Trails, Ltd. at the address stated above or by calling Mr. Troy Hotchkiss, Kimley-Horn and Associates, at (972) 776-1739.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

TRD-201702732
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 19, 2017

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 28, 2017.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711 3087 and must be **received by 5:00 p.m. on August 28, 2017.** Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Barnhart Water Supply Corporation; DOCKET NUMBER: 2016-2087-PWS-E; TCEQ ID NUMBER: RN101265288; LOCATION: on Highway 67, 18 miles east of Big Lake near Barnhart, Irion County; TYPE OF FACILITY: public water system; RULES VIOLATED: 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; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to conduct routine coliform monitoring and submit Disinfectant Level Quarterly Operating Reports; 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 (taps) 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: $315; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: City of Frost; DOCKET NUMBER: 2016-1984-MWD-E; TCEQ ID NUMBER: RN103138228; LOCATION: 500A West State Highway 22, approximately 0.4 mile northwest of the intersection of State Highway 22 and Farm-to-Market Road 667, Frost, Navarro County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010444001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010444001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $28,500; Supplemental Environmental Project offset amount of $28,500 applied to *Wastewater Treatment Plant Upgrades;* STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: D-BAR-B WATER-WASTEWATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1545-MWD-E; TCEQ ID NUMBER: RN101441293; LOCATION: 2870 Dowdy Ferry Road, Dallas, Dallas County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(a)(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0014628001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,737; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Duran Gravel Company, Inc.; DOCKET NUMBER: 2016-1521-WQ-E; TCEQ ID NUMBER: RN101153849; LOCATION: 535 Lovers Lane, Lockhart, Caldwell County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit TXR050000; PENALTY: $27,567; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: QXY LLC and Sam Zamer dba Kirby Shell; DOCKET NUMBER: 2016-0027-PST-E; TCEQ ID NUMBER: RN102144763; LOCATION: 2540 West Holcombe Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated to the UST system by failing to conduct the annual line leak detector and piping tightness test; 30 TAC §334.54(a)(1), by failing to temporarily remove from service a UST system for which the normal operation and use of the UST system is deliberately, but temporarily, discontinued for any reason; and TWC, §26.121(a), by discharging waste into or adjacent to waters in the state, without authorization; PENALTY: $21,880;

STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Sai BBD, Inc dba Johns Quik Stop; DOCKET NUMBER: 2016-1518-PST-E; TCEQ ID NUMBER: RN102226750; LOCATION: 4244 Wilbarger Street, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.242(d)(9), by failing to post operating instructions conspicuously on the front of each gasoline-dispensing pump equipped with a Stage II vapor recovery system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2), by failing to equip the UST system with a spill containment device that will prevent the release of regulated substances to the environment; and THSC, §382.085(b) and 30 TAC §115.242(d)(3)(C)(iii), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; PENALTY: $6,629; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201702706
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 18, 2017

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 28, 2017.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 28, 2017.** Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Jose Angel Milera, Jr. and 4 J's Trucking, LLC; DOCKET NUMBER: 2017-0043-MLM-E; TCEQ ID NUMBER: RN109217174; LOCATION: on the right side of United States Highway 83 North, 0.7 miles northwest of the intersection of United States Highway 83 North and Interstate Highway 35 North, Laredo, Webb County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; 40 Code of Federal Regulations (CFR) §279.22(b) and 30 TAC §324.6, by failing to maintain containers used to store used oil in good condition and with no visible leaks; 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and 40 CFR §279.22(c)(1) and 30 TAC §324.6, by failing to label or clearly mark used oil storage containers with the words "Used Oil"; PENALTY: $3,563; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Manuel Barrera Jr.; DOCKET NUMBER: 2016-1016-MLM-E; TCEQ ID NUMBER: RN108786393; LOCATION: near Laredo, Webb County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by failing to comply with general prohibition requirements concerning outdoor burning; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the disposal of MSW; PENALTY: $13,916; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: NEW KADMUS TEXAS, INC. dba 154 Exxon Super Market; DOCKET NUMBER: 2016-1426-PST-E; TCEQ ID NUMBER: RN101729812; LOCATION: 16995 State Highway 154, Harleton, Harrison County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,816; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Rainbow Landscape Materials, LLC; DOCKET NUMBER: 2016-1493-WQ-E; TCEQ ID NUMBER: RN105695563; LOCATION: 3916 East Highway 67, Rainbow, Somervell County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unautho-

rized discharge of waste into or adjacent to any water in the state; PENALTY: $16,875; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201702707
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 18, 2017

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Notice of Water Quality Application

The following notices were issued on July 07, 2017 through July 10, 2017.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION.

STOLTHAVEN HOUSTON, INC., 15602 Jacintoport Boulevard, Houston, Texas 77015, which operates Stolthaven Houston, has applied for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003129000 to authorize optional composite sampling at Outfall 001. The existing permit authorizes contact and non-contact stormwater, steam trap release, hydrostatic test water, and firefighting equipment test water on an intermittent and flow variable basis via Outfall 001; boiler blowdown, treated domestic wastewater, contact stormwater, and centralized waste treatment wastewater (including washwater) at a daily average flow not to exceed 201,600 gallons per day via Outfall 003; non-contact stormwater, steam trap release, hydrostatic test water, and firefighting equipment test water on an intermittent and flow-variable basis via Outfalls 004 and 006; and boiler blowdown, treated domestic wastewater, contact stormwater, and centralized waste treatment wastewater (includes wash water) at a daily average flow not to exceed 201,600 gallons per day via Outfall 005. The facility is located at 15602 Jacintoport Boulevard, on the north side of the Houston Ship Channel, the south side of Jacintoport Boulevard, and approximately one mile east of Beltway 8 in the City of Houston, Harris County, Texas 77015.

TEXAS A&M UNIVERSITY, which operates the Texas A&M University's Central Utilities Plant, has applied for a minor amendment TPDES Permit No. WQ0004002000 to authorize the removal of wastewater from the University's Cyclotron and to change the monitoring point for Outfall 001. The draft permit authorizes the discharge of cooling tower blowdown, low volume wastes, and stormwater runoff at a daily average flow not to exceed 930,000 gallons per day via Outfall 001. The facility is located at 1548 TAMU, immediately west of the intersection of Ireland Street and Ross Street, and the cyclotron is located on Spence Street, at the intersection of Spence Street and University Drive, on the Texas A&M University main campus, College Station, in Brazos County, Texas 77843.

CITY OF EASTLAND has applied for a minor amendment to the TPDES Permit No. WQ0010637001 to authorize the construction of a new wastewater treatment facility and the addition of an interim phase at a daily average flow not to exceed 600,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is at the east end of Smith Street, approximately one mile southeast of the intersection of State Highway 6 and U.S. Highway 80, and 1.4 miles northeast of the intersection of State Highway 6 and Interstate Highway 20, in the City of Eastland, Eastland County, Texas 76448.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al (800) 687-4040.

TRD-201702719
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 19, 2017

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Monthly Report due April 5, 2017, for Committees

Keith A. Houser, Citizens For Property Rights, 1219 Whispering Ln., Southlake, Texas 76092-4614

Bonita C. Ocampo, Tarrant County Tejano Democrats, 3803 S. Jones St., Fort Worth, Texas 76110-5512

Deadline: Personal Financial Statement due May 1, 2017

Braxton C. Thompson, 4304 Village Green, Irving, Texas 75034

Deadline: Lobby Activities Report due April 10, 2017

Steven C. Ray, P.O. Box 1377, Austin, Texas 78767

Karen Kenney Reagan, 1122 Colorado, Ste. 102, Austin, Texas

TRD-201702630
Seana Willing
Executive Director
Texas Ethics Commission
Filed: July 13, 2017

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Texas Facilities Commission

Request for Proposals #303-8-20610

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Audit Division (CPA), announces the issuance of Request for Proposals (RFP) #303-8-20610. TFC seeks a five (5) or ten (10) year lease of approximately 4,696 square feet of office space in Houston or Spring, Texas.

The deadline for questions is August 10, 2017 and the deadline for proposals is August 22, 2017 at 3:00 p.m. The award date is September 28, 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=142488.

TRD-201702721
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 19, 2017

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Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

During the first half of June, 2017, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	CTVSH P.L.L.C.	L06862	Austin	00	06/12/17
The Woodlands	Methodist Health Center dba Houston Methodist The Woodlands Hosp.	L06861	The Woodlands	00	06/08/17
Throughout TX	BRL NDT Consultants Inc.	L06860	San Antonio	00	06/02/17

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Arlington	Texas Health Physicians Group dba Arlington Cancer Center	L06434	Arlington	05	06/09/17
Austin	Austin Radiological Association	L00545	Austin	202	06/12/17
Austin	Thermo Finnigan L.L.C.	L01186	Austin	53	06/06/17
Austin	ARA St. Davids Imaging L.P.	L05862	Austin	78	06/12/17
Bedford	Dallas Cardiology Associates P.A.	L05448	Bedford	15	06/13/17
Bishop	Ticona Polymers Inc.	L02441	Bishop	60	06/02/17
Brownsville	The Heart and Vascular Clinic P.A.	L06226	Brownsville	01	06/12/17
Bryan	Central Texas Heart Center P.L.L.C.	L06769	Bryan	01	06/05/17
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	129	06/12/17
Dallas	Baylor University Medical Center	L01290	Dallas	144	06/07/17
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	210	06/05/17
Dallas	Texas Health Physicians Group dba Texas Health Presbyterian Heart and Vascular Group	L06578	Dallas	04	06/05/17
Dallas	UT Southwestern Medical Center	L06663	Dallas	14	06/07/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	96	06/15/17
El Paso	East El Paso Physicians	L05676	El Paso	33	06/05/17
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence East Campus	L06152	El Paso	25	06/15/17
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	171	06/13/17
Houston	TH Healthcare Ltd. dba Park Plaza Hospital	L02071	Houston	66	06/14/17
Houston	Terracon Consultants Inc.	L05268	Houston	53	06/09/17
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	59	06/05/17
Houston	Cardinal Health	L05536	Houston	56	06/12/17
Houston	Onesubsea Processing Inc.	L05867	Houston	13	06/06/17
La Porte	Industrial Nuclear Company Inc.	L04508	La Porte	30	06/07/17
Lubbock	Covenant Medical Center	L00483	Lubbock	157	06/02/17
Lubbock	University Medical Center	L04719	Lubbock	157	06/14/17
Lubbock	Lubbock Heart Hospital L.L.C.	L05742	Lubbock	14	06/07/17
Paris	Essent PRMC L.P. dba Paris Regional Medical Center	L03199	Paris	63	06/12/17
Pasadena	Chevron Phillips Chemical Company L.P.	L00230	Pasadena	92	06/09/17
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	243	06/05/17
San Antonio	Heart Consultants of San Antonio P.L.L.C.	L06678	San Antonio	03	06/13/17
San Antonio	BHS Physicians Network Inc. dba Heart & Vascular Institute of Texas	L06750	San Antonio	04	06/08/17
Sherman	Texas Oncology P.A.	L05502	Sherman	20	06/05/17
Stafford	Aloki Enterprise Inc.	L06257	Stafford	40	06/06/17
Sunnyvale	Texas Regional Medical Center L.L.C. dba Baylor Scott & White Medical Center Sunnyvale	L06692	Sunnyvale	02	06/07/17
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	32	06/08/17
Throughout TX	Valero Refining – Texas L.L.P. dba Valero Bill Greehey Refinery	L03360	Corpus Christi	34	06/13/17
Throughout TX	Bonded Inspections Inc.	L00693	Dallas	96	06/12/17
Throughout TX	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	132	06/15/17
Throughout TX	Sterigenics US L.L.C.	L03851	Fort Worth	48	06/08/17
Throughout TX	FTS International L.L.C.	L06706	Fort Worth	02	06/15/17
Throughout TX	Gammatron Inc.	L02148	Friendswood	25	06/02/17
Throughout TX	Nuclear Sources & Services Inc. dba NSSI/Sources & Services Inc. NSSI	L02991	Houston	44	06/08/17
Throughout TX	Nuclear Sources & Services Inc. dba NSSI/Sources & Services Inc. NSSI	L02991	Houston	45	06/09/17
Throughout TX	American Diagnostic Tech L.L.C.	L05514	Houston	123	06/14/17
Throughout TX	Amerapex Corporation	L06417	Houston	14	06/14/17
Throughout TX	IRISNDT Inc.	L06435	Houston	18	06/08/17
Throughout TX	Tolunay Engineering Group Inc. dba TEG	L06840	Houston	01	06/14/17
Throughout TX	Goolsby Testing Laboratories Inc.	L03115	Humble	103	06/12/17
Throughout TX	CMT Engineering Inc. dba Pavetex	L06407	Lubbock	06	06/02/17
Throughout TX	RTX Wireline L.L.C.	L06707	Midland	02	06/15/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	Sonic Surveys Ltd.	L02622	Mont Belvieu	30	06/13/17
Throughout TX	Tracerco	L03096	Pasadena	97	06/07/17
Throughout TX	Quantum Technical Services L.L.C.	L06406	Pasadena	15	06/15/17
Throughout TX	Insight NDE Inc.	L06817	Port Lavaca	03	06/14/17
Throughout TX	Professional Service Industries Inc.	L04946	San Antonio	15	06/08/17
Throughout TX	Arias & Associates Inc. dba Arias Geoprofessionals	L04964	San Antonio	48	06/07/17
Throughout TX	Rock Engineering and Testing Laboratory Inc.	L05168	San Antonio	18	06/07/17
Throughout TX	Project Management Associates P.L.L.C.	L06825	Southlake	01	06/09/17
Throughout TX	BJ Services L.L.C.	L06859	Tomball	01	06/05/17
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	205	06/02/17
Tyler	Delek Refining Ltd.	L02289	Tyler	28	06/05/17
Victoria	Citizens Medical Center	L00283	Victoria	93	06/12/17
Victoria	E I Dupont De Nemours & Company	L05800	Victoria	07	06/06/17

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Denton	Denton Surgicare Partners Ltd.	L05819	Denton	04	06/14/17
Humble	E John R Samuel M.D., P.A.	L05232	Humble	05	06/07/17
Throughout TX	Petroleum Perforators Inc.	L01314	Alice	15	06/12/17

TRD-201702725
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 19, 2017

♦ ♦ ♦

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

During the second half of June, 2017, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Burleson	North Texas Heart and Vascular P.L.L.C.	L06866	Burleson	00	06/28/17
Houston	Veterinary Specialists of Texas P.C. dba Gulf Coast Veterinary Specialists	L06863	Houston	00	06/28/17
Throughout TX	ARC Inspection Services L.L.C.	L06864	Krum	00	06/28/17
Throughout TX	Roke Technologies USA Inc.	L06865	Odessa	00	06/29/17

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Abilene	Cardinal Health dba National Central Pharmacy	L04781	Abilene	39	06/21/17
Arlington	The University of Texas at Arlington	L00248	Arlington	57	06/21/17
Arlington	USMD Hospital at Arlington	L05727	Arlington	26	06/28/17
Austin	Austin Radiological Association	L00545	Austin	203	06/26/17
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	145	06/29/17
Austin	ARA St. David's Imaging L.P.	L05862	Austin	79	06/28/17
Beaumont	BASF Corporation	L02016	Beaumont	33	06/30/17
Beaumont	Wayne S. Margolis M.D., P.A.	L06049	Beaumont	08	06/26/17
Brownsville	JRG Medical Equipment L.P. dba Medical Associates of Brownsville	L05831	Brownsville	09	06/21/17
College Station	Scott & White Hospital–College Station dba Baylor Scott & White Medical Center-College Station	L06557	College Station	09	06/23/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Conroe	Chevron Phillips Chemical Company L.P. dba Drilling Specialties Company, A Division of Chevron Phillips Chemical Co.	L04825	Conroe	19	06/27/17
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	117	06/23/17
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	211	06/26/17
Dallas	Team Consultants Inc.	L04012	Dallas	15	06/27/17
Denton	Denton Cancer Center L.L.P.	L05945	Denton	10	06/30/17
Harlingen	VHS Harlingen Hospital Company L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	14	06/29/17
Houston	Houston Refining L.P.	L00187	Houston	75	06/22/17
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	172	06/29/17
Houston	Memorial Hermann Medical Group	L06430	Houston	24	06/30/17
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L06439	Houston	12	06/21/17
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	79	06/26/17
Longview	Westlake Longview Corporation	L06294	Longview	11	06/30/17
Lubbock	University Medical Center	L04719	Lubbock	158	06/23/17
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	18	06/30/17
McAllen	Columbia Rio Grande Healthcare L.P. dba Rio Grande Regional Hospital	L03288	McAllen	57	06/29/17
New Braunfels	Resolute Hospital Company L.L.C.	L06632	New Braunfels	03	06/29/17
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	101	06/21/17
Odessa	Texas Oncology P.A. dba Texas Oncology	L05140	Odessa	18	06/16/17
Plano	Areva Med L.L.C.	L06781	Plano	05	06/28/17
Richardson	Methodist Hospitals of Dallas dba Methodist Richardson Medical Center	L06474	Richardson	05	06/23/17
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	244	06/19/17
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	361	06/20/17
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	362	06/27/17
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	363	06/30/17
San Antonio	Heart and Vascular Clinic of San Antonio P.L.L.C.	L06485	San Antonio	02	06/26/17
San Antonio	Nix Hospitals System L.L.C. dba Nix Health Care System	L06512	San Antonio	02	06/29/17
San Antonio	Heart Consultants of San Antonio P.L.L.C.	L06678	San Antonio	04	06/30/17
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	33	06/21/17
Texarkana	Red River Pharmacy Services	L05077	Texarkana	26	06/26/17
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	28	06/21/17
Throughout TX	Texas Department of Transportation	L00197	Austin	184	06/28/17
Throughout TX	The Dow Chemical Company	L06792	Beaumont	02	06/29/17
Throughout TX	Pegasus Inspection & Testing Inc.	L06673	Corpus Christi	05	06/30/17
Throughout TX	Fugro Consultants Inc.	L03461	Dallas	31	06/27/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	T Smith Inspection and Testing L.L.C.	L05697	Fort Worth	21	06/30/17
Throughout TX	Crest Pumping Technologies L.L.C.	L06838	Fort Worth	04	06/16/17
Throughout TX	Baker Hughes Oilfield Operations L.L.C.	L00446	Houston	189	06/21/17
Throughout TX	HVJ Associates Inc.	L03813	Houston	59	06/28/17
Throughout TX	Baker Hughes Oilfield Operations L.L.C.	L04452	Houston	55	06/22/17
Throughout TX	Mandes Inspection & Testing Inc. dba Houston Inspection Services	L05220	Houston	77	06/22/17
Throughout TX	Baker Hughes Oilfield Operations L.L.C.	L06453	Houston	25	06/22/17
Throughout TX	Keane Frac L.P.	L06829	Houston	03	06/21/17
Throughout TX	Kleinfelder Central Inc.	L01351	Irving	91	06/20/17
Throughout TX	Tracerco	L03096	Pasadena	98	06/29/17
Throughout TX	Techcorr USA Management L.L.C.	L05972	Pasadena	124	06/23/17
Throughout TX	Scott & White Memorial Hospital dba Scott & White Medical Center – Temple	L00331	Temple	106	06/21/17
Tyler	Nutech Inc.	L04274	Tyler	81	06/30/17

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Amarillo	Panhandle Nuclear RX Ltd.	L04683	Amarillo	29	06/30/17
Columbus	Columbus Community Hospital	L03508	Columbus	22	06/26/17

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	Central Texas Veterinary Specialty Hospital	L06022	Austin	02	06/29/17
Corpus Christi	Mcturbine Inc.	L04341	Corpus Christi	15	06/22/17

TRD-201702726
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 19, 2017

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Texas Health and Human Services Commission

Public Notice: New Nonemergency Medical Transportation (NEMT) Provider to Begin Providing Services in Regions 1 and 10

Effective September 1, 2017, LogistiCare Solutions, LLC (LogistiCare), will begin providing NEMT services in Managed Transportation Organization (MTO) Regions 1 and 10. The counties affected by the change are:

Region 1

Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler, Yoakum

Region 10

Aransas, Bee, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio, Starr, Webb, Willacy, Zapata

There will be no change in the services provided to eligible clients or to the manner in which services are scheduled and arranged. Clients will continue to receive safe, quality transportation services. Clients should continue to call (877) 633-8747 to schedule transportation services. Additionally, health care providers, advocates, and social workers can continue to call (877) 633-8747 to assist clients with scheduling transportation services.

Individual Transportation Participants (ITPs) properly enrolled in the mileage reimbursement program with the current provider, LeFleur Transportation of Texas, Inc., do not need to enroll again. However, ITPs will be required to keep documentation updated with the new provider, LogistiCare.

The Medical Transportation Program will host the following forums to educate clients, health care providers, and other stakeholders about the transition. Forum locations, dates and times are listed below:

August 7, 2017 - Laredo, Texas

500 E. Mann Road - Conference Room

Laredo, Texas 78041

9:00 a.m. - 11:00 a.m.

1:00 p.m. - 3:00 p.m.

August 14, 2017 - Brownsville, Texas

290 Mexico Blvd. - Conference Room

Brownsville, Texas 78520

9:00 a.m. - 11:00 a.m.

1:00 p.m. - 3:00 p.m.

August 15, 2017 - McAllen, Texas

4501 W. U.S. Hwy. 83, Training Room 2

McAllen, Texas 78501

9:00 a.m. - 11:00 a.m.

August 15, 2017 - Harlingen, Texas

601 W. Sesame Dr. - Rockport Room

Harlingen, Texas 78550

1:00 p.m. - 3:00 p.m.

August 18, 2017 - Corpus Christi, Texas

4201 Greenwood Drive Conference Rooms B1 & B2

Corpus Christi, Texas 78416

9:00 a.m. - 11:00 a.m.

1:00 p.m. - 3:00 p.m.

August 22, 2017 - Lubbock, Texas

1622 10th St. - Conference Room 312

Lubbock, Texas 79401

9:00 a.m. - 11:00 a.m.

1:00 p.m. - 3:00 p.m.

For more information regarding this announcement call the Medical Transportation Program at (855) 435-7182.

TRD-201702640
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 13, 2017

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas by COMPREHENSIVE MOBILE INSURANCE COMPANY, INC., a foreign life, health and/or accident company. The home office is in Phoenix, Arizona.

Application to do business in the state of Texas by MAG MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Atlanta, Georgia.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201702724
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: July 19, 2017

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Notice of Hearing on Proposed Plan of Suspension for the Texas Health Reinsurance System and Proposed Amendments to the Texas Health Reinsurance System Plan of Operation

The Department of Insurance will consider a proposed plan of suspension for the Texas Health Reinsurance System and proposed amendments to the system's plan of operation under Insurance Code §1501.302 and §1501.306.

The system, created by the Legislature in 1993, engages in the reinsurance of small employer group health benefit plans issued by its members. Insurance Code §1501.306 requires the System board of directors to adopt a plan of operation.

The commissioner of insurance approved the system's current plan of operation on July 15, 2014, under Commissioner's Order No. 3412. On May 23, 2017, the governor signed SB 1171 (85th Legislature, Regular Session, 2017), which amends Insurance Code §1501.302 and was effective immediately. SB 1171, among other things, calls for the approval of a plan of suspension of the system. Therefore, the department will consider a plan of suspension and amendments to the system's plan of operation consistent with its suspension.

On request, a copy of the plan of operation, the proposed plan of suspension, and the proposed amendments to the plan of operation is available by mail, email, or fax from Robert Rucker, TDI staff attorney. Mr. Rucker may be contacted by mail at the Texas Department of Insurance, Mail Code 110-1A, P. O. Box 149104, Austin, Texas 78714-9104; by telephone at (512) 676-6954; or by email at Robert.Rucker@tdi.texas.gov.

The department will consider written comments from the public regarding the proposed plan of suspension and proposed amendments to the plan of operation that are submitted no later than 5:00 p.m. on Friday, August 18, 2017. Please send your comments to the chief clerk by email at chiefclerk@tdi.texas.gov; or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments to Robert Rucker by email at Robert.Rucker@tdi.texas.gov; or by mail at Robert Rucker, Staff Attorney, Office of Policy Development Counsel, Texas Department of Insurance, Mail Code 110-1B, P. O. Box 149104, Austin, Texas 78714-9104.

The department will consider the proposed plan of suspension and the proposed amendments to the plan of operation in a public hearing under Docket Number 2801, at 10:30 a.m. Central Time, Friday, August 18, 2017, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Comments presented at the hearing will also be considered.

TRD-201702700
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: July 17, 2017

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Texas Department of Licensing and Regulation

Notice of Vacancies on Massage Therapy Advisory Board

The Texas Department of Licensing and Regulation (Department) announces nine (9) vacancies on the Massage Therapy Advisory Board (Board) established by Texas Occupations Code, Chapter 455. The purpose of the Board is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration of this chapter. **This announcement is for the positions listed below.**

The Board is composed of the following nine members appointed by the presiding officer of the Commission, with the Commission's approval:

(1) two members who are licensed massage therapists;

(2) two members who represent licensed massage schools;

(3) two members who represent licensed massage establishments;

(4) one member who is a peace officer with expertise in the enforcement of Chapter 20A, Penal Code, and Subchapter A, Chapter 43, Penal Code; and

(5) two members of the public.

Members of the Board are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year.

Interested persons should submit an application on the Department website at: *https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx*. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail *advisory.boards@tdlr.texas.gov.*

TRD-201702729
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 19, 2017

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Notice of Vacancies on the Code Enforcement Officers Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces nine (9) vacancies on the Code Enforcement Officers Advisory Committee (Committee) established by 16 Texas Administrative Code §62.65. The purpose of the Committee is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration of this chapter. **This announcement is for the positions listed below.**

The Committee is composed of nine members appointed by the presiding officer of the Commission with the approval of the Commission as follows:

(1) five registered code enforcement officers;

(2) one structural engineer or licensed architect;

(3) two consumers, one of which must be a certified building official; and

(4) one person involved in the education and training of code enforcement officers.

Members of the Committee shall serve staggered six-year terms so that the terms of three members will expire on February 1 of each odd-numbered year.

Interested persons should complete an application on the Department website at: *https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx*. Applicants can also request a paper application from the Department by telephone at (800) 803-9202, or e-mail at *advisory.boards@tdlr.texas.gov.*

TRD-201702728
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 19, 2017

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Notice of Vacancies on the Registered Sanitarian Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces nine vacancies on the Registered Sanitarian Advisory Committee (Committee) established by 16 Texas Administrative Code §119.10. The purpose of the Committee is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration of the Act and this chapter. **This announcement is for the positions listed below.**

The Committee is composed of the following nine members appointed by the presiding officer of the Commission, with the approval of the Commission. The composition of the committee shall include:

(1) five registered sanitarians;

(2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a sanitarian in Texas;

(3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the Department of State Health Services; and

(4) one person involved in education in the field of public, consumer, or environmental health sciences.

Members of the Committee shall serve staggered six-year terms so that the terms of three members will expire on February 1 of each odd-numbered year.

Interested persons should complete an application on the Department website at: *https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx*. Applicants can also request a paper application from the Department by telephone at (800) 803-9202, or email at *advisory.boards@tdlr.texas.gov.*

TRD-201702730
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 19, 2017

♦ ♦ ♦

Notice of Vacancies on the Towing, Storage, and Booting Advisory Board

The Texas Department of Licensing and Regulation (Department) announces six vacancies on the Towing, Storage, and Booting Advisory Board (Board) established by Texas Occupations Code, Chapter 2308 and Chapter 2303. The pertinent rules may be found in 16 Texas Administrative Code §85.650 and §86.650. The purpose of the Board is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the adminis-

tration and enforcement of Chapter 2308 and Chapter 2303, including examination content, licensing standards, and continuing education requirements.

This announcement is for:

(1) one representative of a towing company operating in a county with a population of less than one million;

(2) one representative of a vehicle storage facility located in a county with a population of less than one million;

(3) one parking facility representative;

(4) one peace officer from a county with a population of less than one million;

(5) one peace officer from a county with a population of one million or more; and

(6) one person who operates both a towing company and a vehicle storage facility.

The Board is composed of the following nine members appointed by the presiding officer of the Commission, with the Commission's approval:

(1) one representative of a towing company operating in a county with a population of less than one million;

(2) one representative of a towing company operating in a county with a population of one million or more;

(3) one representative of a vehicle storage facility located in a county with a population of less than one million;

(4) one representative of a vehicle storage facility located in a county with a population of one million or more;

(5) one parking facility representative;

(6) one peace officer from a county with a population of less than one million;

(7) one peace officer from a county with a population of one million or more;

(8) one representative of a member insurer, as defined by §462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility.

Members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

Interested persons should submit an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail advisory.boards@tdlr.texas.gov.

TRD-201702731
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: July 19, 2017

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1880 "The University of Texas"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1880 is "THE UNIVERSITY OF TEXAS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1880 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1880.

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, GOALPOST SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $3,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1880 - 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
GOALPOST SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$3,000	THTH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1880), 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: 1880-0000001-001.

H. Pack - A Pack of "THE UNIVERSITY OF TEXAS" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150

will be on the last page with backs exposed. Ticket 001 will be folded over so the front of the Ticket 001 and 010 will be exposed.

I. Non-Winning 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 - A Texas Lottery "THE UNIVERSITY OF TEXAS" Scratch Ticket Game No. 1880.

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 "THE UNIVERSITY OF TEXAS" 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 "GOALPOST" Play Symbol, the player wins DOUBLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 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.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 1 and $1).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never match a winning Prize Symbol.

F. No matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

G. The "GOALPOST" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE UNIVERSITY OF TEXAS" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space desig-

nated 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, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE UNIVERSITY OF TEXAS" Scratch Ticket Game prize of $3,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE UNIVERSITY OF TEXAS" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "THE UNIVERSITY OF TEXAS" 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 "THE UNIVERSITY OF TEXAS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "THE UNIVERSITY OF TEXAS" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,160,000 Scratch Tickets in the Scratch Ticket Game No. 1880. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1880 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	816,000	10.00
$2	598,400	13.64
$5	217,600	37.50
$10	81,600	100.00
$20	18,768	434.78
$50	2,040	4,000.00
$100	544	15,000.00
$500	102	80,000.00
$3,000	20	408,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. 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. 1880 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 Game 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. 1880, 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-201702704
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 18, 2017

♦ ♦ ♦

Scratch Ticket Game Number 1881 "Texas A&M University"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1881 is "TEXAS A&M UNIVERSITY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1881 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1881.

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, GOALPOST SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $3,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1881 - 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
GOALPOST SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$3,000	THTH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1881), 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: 1881-0000001-001.

H. Pack - A Pack of "TEXAS A&M UNIVERSITY" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150

will be on the last page with backs exposed. Ticket 001 will be folded over so the front of the Ticket 001 and 010 will be exposed.

I. Non-Winning 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 - A Texas Lottery "TEXAS A&M UNIVERSITY" Scratch Ticket Game No. 1881.

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 "TEXAS A&M UNIVERSITY" 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 "GOALPOST" Play Symbol, the player wins DOUBLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 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.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 1 and $1).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never match a winning Prize Symbol.

F. No matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

G. The "GOALPOST" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS A&M UNIVERSITY" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space desig-

nated 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, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS A&M UNIVERSITY" Scratch Ticket Game prize of $3,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS A&M UNIVERSITY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TEXAS A&M UNIVERSITY" 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 "TEXAS A&M UNIVERSITY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "TEXAS A&M UNIVERSITY" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,160,000 Scratch Tickets in the Scratch Ticket Game No. 1881. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1881 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	816,000	10.00
$2	598,400	13.64
$5	217,600	37.50
$10	81,600	100.00
$20	18,768	434.78
$50	2,040	4,000.00
$100	544	15,000.00
$500	102	80,000.00
$3,000	20	408,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. 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. 1881 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 Game 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. 1881, 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-201702705
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 18, 2017

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Grant of Easement - Randall County

Radio Tower at Palo Duro Canyon State Park

In a meeting on August 23, 2017, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of an easement at Palo Duro Canyon State Park in Randall County. The easement will allow the Randall County Sheriff's Department to erect a tower to add additional capacity and coverage to their current radio system. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 (email trey.vick@tpwd.texas.gov); or via the department's web site at www.tpwd.texas.gov.

Acquisition of Land - Bastrop County

Approximately 1 Acre at Bastrop State Park

In a meeting on August 23, 2017, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately one (1) acre of land for addition to Bastrop State Park in Bastrop County. The addition will resolve a long standing boundary dispute along Park Road 1C. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 (email trey.vick@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

TRD-201702639
Robert D. Sweeney, Jr.
Acting General Counsel
Texas Parks and Wildlife Department
Filed: July 13, 2017

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 14, 2017 for a ser-

vice provider certificate of operating authority, under the Public Utility Regulatory Act. Applicant intends to provide data only - resale only services in the service areas of AT&T Texas, Frontier Communications, and Spectrum.

Docket Title and Number: Application of A101 Technology, LLC dba AMP Telecom for a Service Provider Certificate of Operating Authority, Docket Number 47408.

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 no later than August 4, 2017. 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 47408.

TRD-201702720
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2017

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on July 12, 2017, for designation as an eligible telecommunications carrier (ETC) in the State of Texas pursuant to 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Tele Circuit Network Corporation for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline, Docket Number 47395.

The Application: Tele Circuit Network Corporation filed an application with the Public Utility Commission of Texas for designation as an eligible telecommunications carrier (ETC), under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418. The Commission designates qualified carriers as ETCs under 47 U.S.C. §214(e)(2).

Tele Circuit seeks ETC designation solely to provide Lifeline service to qualifying Texas households on a wireline basis, and will not seek high cost support from the federal Universal Service Fund. Tele Circuit seeks designation in the non-rural service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas and Frontier f/k/a GTE Southwest Incorporated d/b/a Verizon Southwest, and will provide service using a combination of its own facilities and resale.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by August 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 47395.

TRD-201702718
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2017

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 11, 2017, to amend a certificate of convenience and necessity for a proposed transmission line in Pecos County, Texas.

Docket Style and Number: Application of AEP Texas, Inc. to Amend a Certificate of Convenience and Necessity for the Solstice to Roserock POI 138-kV Transmission Line in Pecos County, Docket Number 47187.

The Application: The application is designated as the Solstice to Roserock Point of Interconnection 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line from the AEP Texas Solstice Substation to the Roserock POI in Pecos County.

The total estimated cost for the project including transmission and substation facilities is between $6.191 million and $6.967 million. The Commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is August 25, 2017. 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 47187.

TRD-201702631
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2017

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Notice of Application to Amend a Sewer 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 sewer certificate of convenience and necessity (CCN) in Medina County.

Docket Style and Number: Application of Forest Glen Utility Company to Amend a Sewer Certificate of Convenience and Necessity in Medina County, Docket Number 47389.

The Application: Forest Glen Utility Company filed an application to amend sewer CCN No. 21070 in Medina County. The total area being requested includes approximately 84.62 acres of land with zero 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 47389.

TRD-201702632
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2017

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Notice of Application to Amend a Water and a Sewer 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 and a sewer certificate of convenience and necessity in Kendall County.

Docket Style and Number: Application of Kendall West Utility, LLC to Amend a Water and a Sewer Certificate of Convenience and Necessity in Kendall County, Docket Number 47405.

The Application: Kendall West Utility, LLC filed an application to amend a water and a sewer certificate of convenience and necessity in Kendall County. The company seeks to add approximately 95 acres of service area to both certificates, with zero 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 47405.

TRD-201702699
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2017

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Notice of Application to Obtain 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 obtain a water certificate of convenience and necessity (CCN) in Llano and Burnet Counties.

Docket Style and Number: Application of Horseshoe Bay Water Utility for a Water Certificate of Convenience and Necessity in Llano and Burnet Counties, Docket Number 47398.

The Application: Horseshoe Bay Water Utility seeks a new water CCN in Llano and Burnet Counties.

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 47398.

TRD-201702685
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2017

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Texas Department of Transportation

Request for Information - Toll Operations Division

The Texas Department of Transportation (TxDOT) is seeking information related to transaction processing and customer service interface software that supports electronic toll collection, image or video tolling, as well as violations and collections processing. TxDOT intends to have the rights to use, display, copy and modify software using TxDOT resources or designated agents.

For this Request for Information (RFI), vendors must be able to provide transaction processing software solutions which meet the objectives of this RFI and include, but are not limited to, a back office system with the following components: customer relationship management, image processing system, general ledger and financial reconciliation, business intelligence reporting interface, data warehouse and data archival software, system and network monitoring software, and ability to interface with customer website and interactive voice response phone system. This RFI is issued solely to obtain information to assist the department in its planning process and to identify third parties that may be interested in responding to any future solicitation documents.

This RFI does not constitute a Request for Qualifications, a Request for Proposals, a Request for Offers or other solicitation document, nor does it represent an intention to conduct a solicitation in the future. This RFI does not commit the department to contract for any supply or service, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. TxDOT will not pay for any information or administrative cost incurred in response to this RFI.

RFI Issuance Date: July 31, 2017

RFI Response Deadline: September 15, 2017 at 3:00 p.m. CST

RFI Website and Addenda: Additional information regarding the RFI, including submission requirements, may be found on the RFI website at *http://www.txdot.gov/inside-txdot/division/toll-operations/back-office-software-rfi.html*

TxDOT will post any addenda to the RFI on the RFI website. It is the respondent's responsibility to monitor the RFI website on a regular basis for updates, questions and responses, addenda, and additional RFI documents and information. TxDOT reserves the right to modify the schedule milestones at any time and for any reason. At its option, TxDOT may also elect to follow-up directly with respondents with more detailed questions or to clarify submissions.

Questions: Questions regarding this RFI should be submitted in writing to the Point of Contact at the email address listed below. TxDOT will post responses to questions on the RFI website without identifying the party(ies) submitting the questions. Respondents are encouraged to submit questions prior to August 25, 2017.

Contracting Office Address:

Texas Department of Transportation - Toll Operations Division

12719 Burnet Road

Austin, Texas 78727

Point of Contact:

Logan Brown

Texas Department of Transportation - Toll Operations Division

(Ph): (512) 874-9254

(E-mail): *logan.brown@TxDOT.gov*

TRD-201702710
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 18, 2017

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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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