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*Rosemerree Morones
5th Grade*



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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.

EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.983

Pursuant to Parks and Wildlife Code, §79.002 and 31 TAC §57.801, the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, new §57.983, concerning Special Provisions -- Red Snapper. The emergency action closes state waters to the recreational take of red snapper from Monday through Thursday of each week from June 16, 2017, until September 4, 2017, with exceptions for July 3-4, and Labor Day (September 4).

Under Parks and Wildlife Code, §79.002, the department may follow procedures outlined in Parks and Wildlife Code, §12.027, Chapter 61, or Chapter 77 in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.). Section 79.002 further provides that the Texas Parks and Wildlife Commission (Commission) may delegate to the department's executive director (director) the duties, responsibilities, and authority provided by Parks and Wildlife Code, Chapter 79, for taking immediate action as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the U.S. Exclusive Economic Zone (EEZ, also called "federal waters," those waters extending from state waters to 200 nautical miles offshore). The Commission delegated authority to the director, including but not limited to emergency rulemaking, pursuant to Parks and Wildlife Code, §79.002, by promulgating 31 TAC §57.801. Parks and Wildlife Code, §12.027, provides for the adoption of emergency rules by the director as provided by Government Code, Chapter 2001.

The National Marine Fisheries Service (NMFS) is the federal agency responsible for the stewardship of marine resources and their habitat within the EEZ. NMFS develops and implements harvest and management strategies for marine resources in the EEZ, including red snapper. The season for the recreational take of red snapper in federal waters is established annually, based on projections of the expected total red snapper catch between commercial and recreational components. On May 2,

2017, NMFS established a three-day season (June 1-3) for private recreational take of red snapper in the EEZ in 2017.

After receiving feedback from the public, state fishery managers in the five states bordering the Gulf of Mexico, and private recreational anglers, on June 14, 2017, NMFS by temporary rule (FR Doc. 2017-12735) authorized additional recreational harvest of red snapper in the EEZ during three-day weekends (Friday - Sunday) from June 16, 2017, until September 4, 2017, and including July 3-4, and September 4. This increase in the number of private recreational red snapper fishing days in federal waters is conditioned on each state bordering the Gulf of Mexico closing its respective state waters for four days during the week (Monday through Thursday) to the recreational harvest of red snapper from June 19 through September 4, except July 3-4 and September 4, 2017. The department considers that this federal action presents a significant opportunity for recreational anglers in Texas, since red snapper is a popular recreational fishing species and more recreational anglers are able to go fishing on weekends. In addition, increasing private recreational fishing days in federal waters while decreasing private recreational fishing days in state waters is supported by the department's scientific data regarding the abundance of red snapper in Texas state waters and the adjacent federal waters.

For these reasons, the director finds that adoption of this rule on an emergency basis on less than 30 days' notice as provided by Parks and Wildlife Code, §79.002 and 31 TAC §57.801 is necessary to modify state coastal fisheries regulations in order to provide for consistency with and to conform to federal regulations in the EEZ and is in the best interest of the State of Texas. As required by 31 TAC §57.801, the Chairman of the Parks and Wildlife Commission has been notified prior to this action.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §79.002, which authorizes the department to follow procedures outlined in Parks and Wildlife Code, §12.027, Chapter 61, or Chapter 77 in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.), and under 31 TAC §57.801, which delegates to the executive director the duties, responsibilities, and authority to take action as necessary, including but not limited to emergency rulemaking, to modify state coastal fisheries regulations to conform with federal regulations in the Exclusive Economic Zone, when such action is deemed to be in the best interest of the State of Texas. This rule will continue in effect through September 4, 2017.

§57.983. Special Provisions - Red Snapper.

(a) The take of red snapper in state waters is prohibited from 12:01 a.m. Monday to 11:59 p.m. Thursday of each week from June 16, 2017, to September 4, 2017, except for:

- (1) July 3-4, 2017; and

(2) September 4, 2017.

(b) To the extent that any provision of §57.981 of this chapter (relating to Bag, Possession, and Length Limits) conflicts with the provisions of this section, this section controls.

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

Filed with the Office of the Secretary of State on June 15, 2017.

TRD-201702339

Robert D. Sweeney, Jr.

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: June 15, 2017

Expiration date: October 12, 2017

For further information, please call: (512) 389-4775



PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §§7.101 - 7.105

The Finance Commission of Texas (commission) proposes new 7 TAC, Part 1, Chapter 7, §§7.101 - 7.105, concerning the Texas Financial Education Endowment Fund.

In general, the purpose of the proposed new rules is to provide rules for the administration of the Texas Financial Education Endowment (TFEE) fund created by Texas Finance Code, §393.628. The proposed rules place into regulation existing commission policy, including the TFEE Grant Administration and Advisory Policy Manual, and commission approval of award amounts and grantees for each grant cycle. Additionally, certain proposed rules provide clarification and guidance regarding gifts, donations, and fund management.

The TFEE was enacted by the 82nd Texas Legislature in 2011 to support statewide financial capability and consumer credit building activities and programs. The Office of Consumer Credit Commissioner (OCCC) and grant coordinator, assisted by the Grant Advisory Committee (GAC), have developed policies and procedures approved by the commission to administer the TFEE fund. These policies have been continually updated and refined to provide more efficiency in the TFEE grant program and in fund management. This action proposes to codify the core policies into regulation, while maintaining the commission's flexibility to approve particular award amounts, grantees, and policy improvements for each grant cycle.

The individual purposes of each proposed new rule are outlined in the following paragraphs.

Section 7.101 specifies the applicability and purpose of Chapter 7 to govern the administration of the TFEE fund, and also outlines the components of the fund. The TFEE fund consists of assessments paid by credit access business applicants and licensees, as well as gifts and donations contributed for financial education or consumer credit educational purposes.

Section 7.102 explains the responsibilities of the parties that administer and manage the TFEE fund, including the commission, the OCCC and its commissioner, the GAC, and the grant coordinator.

Section 7.103 outlines the TFEE grant program, with provisions regarding grant cycle timing, eligible grant applicants, the grant application, commission approval of award amounts

and grantees, the grant agreement, and grantee compliance. Additional subsections describe reporting and monitoring requirements, as well as reimbursement procedure. Proposed new §7.103 maintains the TFEE Grant Administration and Advisory Policy Manual, while providing further clarity for applicants and grantees.

Section 7.104 details the gifts and donations that may be made to the TFEE fund, as currently authorized by statute. TFEE gifts and donations must be either for a purpose provided by Texas Finance Code, §393.628(c) ("TFEE purpose"), or for a consumer credit education purpose under Texas Finance Code, §14.105(b). Gifts and donations may come from state agencies or other parties as approved by the commission.

Section 7.105 provides guiding principles for the management of the TFEE fund. Proposed new §7.105 references the statutory location and manner of investment for the TFEE fund.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

For each year of the first five years the new rule chapter is in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed new rules will be that the commission's rules will provide clarity and consistency for TFEE grant applicants and grantees. Additionally, the proposed new rules will enhance the OCCC's and commission's administration of the TFEE fund.

The proposed new rules merely place into regulation existing policy and practice regarding the commission's administration of the TFEE fund. The proposal does not impose new requirements on grantees, donors, or other parties. Any costs that may be incurred would be imposed by the statute and are not a result of the proposed rules. Thus, aside from any costs required by the existing statutory provisions, the agency does not anticipate any additional costs to persons who are required to comply with the proposed rules. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the new rules as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rules are proposed under Texas Finance Code, §393.628(f), which authorizes the commission to adopt rules to administer the Texas Financial Education Endowment.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 393.

§7.101. Applicability and Purpose.

(a) Applicability. This chapter governs the administration of the Texas Financial Education Endowment (TFEE) fund as provided by Texas Finance Code, §393.628.

(b) Purpose. The purpose of this chapter is to provide guidelines regarding the administration of the TFEE fund, which serves to support statewide financial education and consumer credit building activities and programs in Texas.

(c) TFEE fund. The TFEE fund consists of assessments paid by credit access business applicants and license holders, as well as gifts and donations contributed to the fund to fulfill TFEE or consumer credit educational purposes as provided in §7.104 of this title (relating to TFEE Gifts and Donations).

§7.102. TFEE Responsibilities.

(a) Finance commission and Office of Consumer Credit Commissioner (OCCC). The finance commission administers all aspects of TFEE, including the grant program, gifts, donations, funding and policy decisions. The OCCC is responsible for collection of assessment fees, disbursement and tracking of TFEE funds, and maintaining financial records of revenue, expenditures, and reconciliation of funds. The Consumer Credit Commissioner (commissioner) or the commissioner's designee serves as the investment officer appointed by the finance commission to execute grant agreements, accept gifts and donations, and invest TFEE funds.

(b) Grant Advisory Committee (GAC) and grant coordinator. The GAC serves in an advisory role and makes program recommendations to the grant coordinator and finance commission audit committee regarding TFEE administration. The grant coordinator serves under the direction of the commissioner, provides information regarding grant activity to the GAC and finance commission, and serves as the liaison between grantees and the GAC.

§7.103. TFEE Grant Program.

(a) Grant cycle. The TFEE fund may have one competitive grant cycle every two years.

(1) Funding determination. The grant funding determination is made by December 31 of each odd-numbered year.

(2) Programming cycle. A new TFEE grant programming cycle may open on January 1 of every even-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the even-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the even-numbered year and ends on December 31 of the following odd-numbered year for the applicable cycle.

(b) Eligible grant applicants. Nonprofit organizations, schools, and for-profit entities are eligible to apply for TFEE grant funding. TFEE grant funding is not available to financial service providers and entities regulated by the finance commission.

(c) Grant application. To be considered for the TFEE grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be

accepted. Meeting the eligibility criteria and submission of a grant application does not guarantee award of a grant in any amount.

(d) Finance commission approval. The finance commission will approve the items listed in this subsection during a meeting open to the public.

(1) Award amounts. Before the start of the competitive grant process for each grant cycle, the finance commission will determine the total TFEE fund amount to be awarded for the applicable grant cycle.

(2) Grantees. The audit committee, upon receipt of advice from the GAC and grant coordinator, will present recommendations to the finance commission of parties selected to receive TFEE awards for the applicable grant cycle. The finance commission has complete discretion to approve or deny, all or in part, the recommendations presented by the audit committee. Only grantees approved by the finance commission will be awarded TFEE funds upon fulfillment of grant requirements.

(e) Grant agreement. To participate in the TFEE grant program, a grantee approved by the finance commission must execute the grant agreement for the applicable grant cycle.

(f) Grantee compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over awarded TFEE funds. A grantee must use awarded TFEE funds in compliance with the following in effect for the applicable grant cycle:

- (1) all applicable state laws and regulations;
- (2) all applicable federal laws and regulations;
- (3) the TFEE Grant Administration and Advisory Policy

Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the commissioner or commissioner's designee and the grantee;

(6) all reporting and monitoring requirements, as outlined in the grant agreement and subsection (g) of this section; and

(7) any other guidance documents posted on the TFEE website for the applicable grant cycle.

(g) Reporting and monitoring.

(1) General reporting requirements. To receive reimbursement of TFEE grant expenses, a grantee must:

- (A) submit grant reports in a timely manner;
- (B) maintain satisfactory compliance with the grant agreement and proposed grant activities;
- (C) report performance measures; and
- (D) track and report participant demographic information.

(2) Semi-annual reports. A grantee must submit semi-annual reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The grant coordinator or GAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The grant coordinator or GAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process.

(B) Site visits and inspection reviews. The grant coordinator or GAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(h) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (f) of this section. Grant funds will be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after the termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on TFEE grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The OCCC will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

§7.104. TFEE Gifts and Donations.

(a) Authorized gifts and donations.

(1) TFEE purpose. Under Texas Finance Code, §393.628(d), the finance commission may solicit gifts, grants, and donations that fulfill the purpose of TFEE to support statewide financial education and consumer credit building activities and programs in this state, including the specific purposes provided by Texas Finance Code, §393.628(c).

(2) Consumer credit educational purpose. Under Texas Finance Code, §14.105(a), the commissioner may accept gifts, grants, and donations on behalf of the state for a purpose related to a consumer credit educational opportunity, unless prohibited by Texas Finance Code, §14.105(b) or other law. A consumer credit educational opportunity is also considered to be a consumer credit building activity under TFEE.

(3) From state agencies. Under Texas Finance Code, §393.628(e), the finance commission may partner with other state agencies to administer the TFEE fund, including the acceptance of gifts and donations from other state agencies, for the purposes outlined in paragraphs (1) and (2) of this subsection.

(4) From other parties. Gifts and donations from parties other than state agencies must meet the same criteria required for grantees eligible under §7.103(b) of this title (relating to TFEE Grant Program).

(b) Finance commission approval. The finance commission will approve any gift or donation to the TFEE fund.

§7.105. TFEE Fund Management.

In accordance with Texas Finance Code, §393.628(b), TFEE funds will be remitted to the comptroller for deposit in the Texas Treasury Safekeeping Trust Company. TFEE funds may be invested and reinvested

in the same manner as funds of the Employees Retirement System of Texas under Texas Government Code, Chapter 815, Subchapter D.

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 June 16, 2017.

TRD-201702357

Leslie L. Pettijohn

Consumer Credit Commissioner

Finance Commission of Texas

Earliest possible date of adoption: July 30, 2017

For further information, please call: (512) 936-7621



CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (commission) proposes amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

The purpose of the proposed amendments is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the Texas Department of Banking (DOB), the Texas Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The proposed updates are necessary to reflect new default procedures enacted by the State Office of Administrative Hearings (SOAH), which became effective on January 1, 2017.

As a note of background, SOAH recently amended its procedural rules, found in Title 1, Chapter 155 of the Texas Administrative Code. The amendments were made in response to recommendations from the Sunset Advisory Commission. The Sunset Advisory Commission recommended that SOAH be specifically authorized to remand default cases back to the referring agencies for informal disposition. In 2015, the Texas Legislature adopted this recommendation by enacting HB 2154, codified at Texas Government Code, §2001.058(d-1).

The proposed amendments to the default rules provide the finance agencies with specific procedures for resolving default cases that are remanded back to the agencies by SOAH. The agencies already have a default rule that applies to in-house contested case hearings.

The finance agencies circulated an early draft of proposed changes to interested stakeholders. The agencies received two informal written precomments. Certain recommendations by the precommenters have been incorporated into this proposal. The agencies appreciate the thoughtful input provided by stakeholders.

The individual purposes of the amendments are provided in the following paragraphs.

The purpose of the proposed amendment to §9.1 is to clarify that an agency must follow the requirements of proposed new subsection (b) of §9.12 for disposing of a default in a contested case hearing conducted by SOAH.

Regarding §9.1, the rule currently states that the SOAH rules of procedure govern contested case hearings conducted by SOAH. To create analogous procedures for resolving default cases remanded back to the agencies, the proposed amendment to §9.1 states that proposed new §9.12(b) also governs contested case hearings conducted by SOAH.

The purpose of the amendments to §9.12 is to clarify the procedures for disposing of a contested case by default, as authorized by Texas Government Code, §2001.056 and §2001.058(d-1).

Regarding §9.12, the proposed amendments maintain the current rule language in relettered subsection (a). An additional phrase is added to the beginning of subsection (a), specifying that the procedures in this subsection apply to hearings conducted by an administrative law judge employed or contracted by an agency.

The proposed amendments also add a new subsection (b) to §9.12. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH. The proposed amendments: (1) specify how an agency may notify a party of a contested case hearing, (2) require the agency to prove that it provided proper notice to the defaulting party, and (3) provide procedures for agencies to follow when resolving default cases. The amendments do not affect a party's right to a hearing or impose additional requirements on the party.

Subsection (b) states that an agency may request that an administrative law judge make a finding of default in a hearing conducted by SOAH. Subsection (b)(1) describes the mailing address and method of service that the agency must use to serve the notice of hearing. Subsection (b)(2) requires the agency to present adequate proof that it properly served the opposing party with the notice of hearing. Subsection (b)(3) describes the effect of default, which includes deeming admitted the allegations in the notice of hearing and granting the relief sought in the notice. Subsection (b)(4) states that the agency may request that a defaulted case be dismissed and remand to the agency for informal disposition. Subsection (b)(5) describes the content of the final order that the agency may issue, after a default case is dismissed and remanded to the agency.

One precommenter recommended adding language stating that a party may have a finding of default set aside by a showing of good cause or in the interests of justice by filing the appropriate motions, as set forth in 1 TAC §155.501, which is the default rule used by SOAH. In response to this precomment, proposed §9.12(b)(5) specifies that the defaulting party must first receive notice of its right to file a motion to set aside a default.

A second precommenter recommended clarifying proposed §9.12(b)(3) to specify that the relief sought in the notice may be granted only against a party that is given proper notice of the hearing. The agencies agree with this precomment, and proposed §9.12(b)(3) includes the suggested additional language.

The second precommenter also recommended adding a proposed §9.12(b)(6), stating that "[a]n order issued by an agency after default has no precedential or evidentiary value in a subsequent action alleging the same, or similar, violations." The precommenter explains that "[t]his rule, as proposed, may authorize the creation of an order that could have equal footing with an order that was created in a contested and completed administrative procedure." The agencies disagree with this statement. The current rule authorizes the agencies to dispose of a contested case by default. The proposed amendments to the rule do not change the evidentiary or precedential value of a default order.

First, default orders have evidentiary value. Under Rule 401 of the Texas Rules of Evidence, evidence is relevant if tends to make a fact more or less probable and is of consequence in determining the action. Prior violations are relevant to determining the appropriate sanction for subsequent violations. For example, under Texas Finance Code, §14.253(c)(3), "[i]n determining the amount of an administrative penalty, the [consumer credit] commissioner shall consider . . . the history of violations." This statute does not prohibit or condition the use of default orders to establish the history of violations.

Second, default orders have precedential value. Under the doctrine of *res judicata*, a final administrative order bars subsequent adjudication of the same subject matter by the same party. *Al-Jazrawi v. Texas Bd. of Land Surveying*, 719 S.W.2d 670, 671 (Tex. App.--Austin 1986, writ ref'd n.r.e.). This doctrine applies to default judgments. See, e.g., *Greater Houston Transp. Co. v. Wilson*, 725 S.W.2d 427, 430 (Tex. App.--Houston [14th Dist.] 1987, writ ref'd n.r.e.).

Third, similarly situated parties are treated fairly and consistently when all final orders are given effect.

Finally, recognizing the precedential value of default orders eliminates the need to use substantial agency resources to relitigate prior violations. This is consistent with the purpose of the default rule, which is to best utilize agency resources by efficiently disposing of defaulted cases.

Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas, 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 administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro- businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. GENERAL

7 TAC §9.1

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agen-

cies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorizes the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the Department of Savings and Mortgage Lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393. Texas Occupations Code, §1956.0611 authorizes the commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions.

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code and §9.12(b) of this title (relating to Default).

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in Government Code, §2001.003, and the definitions in subsection (c) of this section govern the interpretation of this chapter. If any section of this chapter 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 chapter.

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

(1) Administrative law judge--The hearings officer employed by or contracted by an agency to conduct administrative hearings for the finance commission, the department of banking, the department of savings and mortgage lending, and the office of consumer credit commissioner.

(2) Agency--The finance commission, the department of banking, the department of savings and mortgage lending, or the office of consumer credit commissioner.

(3) Agency head(s)--Finance commission members, the banking commissioner, the savings and mortgage lending com-

missioner, or the consumer credit commissioner, or a designee if authorized by law.

(4) Applicant--A party seeking a license, registration, charter, or permit, or to amend its authority under an existing license, registration, charter or permit, or other action from an agency.

(5) Protestant--A party opposing an application for a license, registration, charter, permit, or other action filed with an agency who has paid any filing fees required by an applicable law.

(6) Respondent--A permittee, licensee, registrant, charter holder, or other party against whom a disciplinary proceeding is directed by an 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.

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TRD-201702355

Leslie L. Pettijohn

Consumer Credit Commissioner

Finance Commission of Texas

Earliest possible date of adoption: July 30, 2017

For further information, please call: (512) 936-7621

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**SUBCHAPTER B. CONTESTED CASE
HEARINGS**

7 TAC §9.12

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorizes the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the Department of Savings and Mortgage Lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the

commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393. Texas Occupations Code, §1956.0611 authorizes the commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§9.12. *Default.*

(a) In-house hearings. In a hearing conducted by an administrative law judge employed or contracted by an agency, if [H_f] after served with notice in compliance with §9.11 of this title (relating to Notice and Initiation of Proceedings), a party fails to attend a hearing, the administrative law judge may proceed in that party's absence and, where appropriate, may issue a proposal for decision against that party. The proposal for decision shall be served upon the defaulting party and the party will be afforded the opportunity to contest the law as stated in the proposal for decision, but shall be deemed to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense. In the alternative, an agency may informally dispose of the matter as permitted by §2001.056 of the Texas Government Code, without the necessity of a hearing.

(b) SOAH hearings. In a hearing conducted by the State Office of Administrative Hearings (SOAH), the agency may request that the administrative law judge make a finding of default under 1 TAC §155.501 (relating to Default Proceedings).

(1) Service of notice of hearing. A notice of hearing may be served to the party's last known address. Applicants and holders of licenses, registrations, charters, and permits shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address provided to the agency.

(2) Adequate proof of notice of hearing. At the time of the request, the agency must present adequate proof to the administrative law judge that the agency properly served the party with the notice of hearing, as required by 1 TAC §155.501(b).

(3) Effect of default. If the administrative law judge receives the required showing of proof to support a default, the allegations contained in the notice of hearing may be deemed admitted, and the relief sought in the notice may be granted with respect to any party given proper notice of the hearing.

(4) Disposing of default case. The agency may request that the administrative law judge dismiss the case from the SOAH docket and remand it to the agency for informal disposition as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(5) Final order after default. If the administrative law judge issues a conditional order of dismissal and remand that provides the defaulting party with adequate notice and opportunity to set aside the default under 1 TAC §155.501(e) and the conditional order of dismissal and remand has become final, the agency may issue a final order that:

(A) finds that the agency served the party with a notice of hearing stating that if the party failed to attend the hearing, then the allegations contained in the notice of hearing could be deemed admitted, and the relief sought might be granted;

(B) describes how the notice of hearing was served on the party;

(C) finds that the party failed to attend the hearing;

(D) finds that the allegations described in the notice are deemed admitted;

(E) concludes that the party has defaulted as a matter of law; and

(F) grants the relief described in the notice of hearing.

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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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to §§84.203 - 84.205, 84.302, 84.308, 84.309, 84.707 - 84.709, 84.804, and 84.808 in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales.

In general, the purpose of the rule changes in 7 TAC, Chapter 84 is to implement four bills that the Texas Legislature passed in the 2017 legislative session: HB 2339, HB 2949, SB 1052, and SB 1199. The proposed rule changes relate to the following issues: trade-in credit agreements, documentary fees, debt cancellation agreements, deferments, and depreciation benefit service contracts.

HB 2339 adds new §348.125 to the Texas Finance Code, authorizing a retail seller to provide a trade-in credit agreement in connection with a motor vehicle retail installment transaction. The bill defines a trade-in credit agreement as "a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller." The bill includes disclosure requirements, refunding requirements, a limitation on the amount charged, and a requirement that the seller be insured under a contractual liability reimbursement policy approved by the Texas Department of Insurance.

HB 2949 amends Texas Finance Code, §348.006, to specify that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission.

SB 1052 moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Texas Finance Code. The bill allows these agree-

ments to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The bill also allows the office of Consumer Credit Commissioner (OCCC) to agree to extend the 45-day approval period for debt cancellation agreements by an additional 45 days, and specifies refunding and recordkeeping requirements when a debt cancellation agreement terminates due to early payoff of a retail installment contract.

SB 1052 also amends Texas Finance Code, §348.114, which relates to deferment charges. The bill limits the deferment charge provision to contracts using the add-on method or scheduled installment earnings method. The bill also adds new §348.114(c), which provides that in a contract using the true daily earnings method, the holder may defer one or more installments, and time price differential continues to accrue on the unpaid balance at the rate agreed to in the contract. At the time of the deferment, the holder must provide a written notice stating that finance charge will continue to accrue.

SB 1199 amends Texas Occupations Code, §1304.003, to authorize a depreciation benefit optional member program. The bill defines a depreciation benefit optional member program as "a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss." These depreciation benefit service contracts would be subject to the same requirements that currently apply to service contracts under Chapter 1304 of the Occupations Code, including the requirement that the provider be registered with the Texas Department of Licensing and Regulation, the requirement to maintain a reimbursement insurance policy and a funded reserve account, disclosure requirements, and refunding requirements.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held an online stakeholder meeting where attendees asked questions through a webinar. The agency did not receive any informal written precomments other than the questions received through the webinar.

The individual purposes of the amendments are provided in the following paragraphs.

A proposed amendment to §84.203(a) specifies that the rule on deferment charges does not apply to an amendment described by Texas Finance Code, §348.114(c), to defer all or part of one or more payments for a retail installment transaction that employs the true daily earnings method. In addition, throughout §84.203, the proposal deletes references to the maximum deferment charge for transactions using the true daily earnings method. These amendments to §84.203 are intended to implement SB 1052's amendments to Texas Finance Code, §348.114, which provide that the continuing accrual of time price differential in a transaction using the true daily earnings method is not a deferment charge.

During the stakeholder meeting, one attendee asked what is required for a deferment in a transaction using the true daily earnings method, other than the notice described in Texas Finance Code, §348.114(c), as added by SB 1052. This issue is outside the intended scope of the amendments to §84.203, which specify that §84.203 does not apply to this type of deferment. As amended by the proposal, §84.203 would apply only to transactions using the add-on method or the scheduled installment earn-

ings method. The agency will consider providing further guidance on this issue in the near future, in updates to the agency's advisory guidance for deferments in motor vehicle retail installment transactions.

A proposed amendment to §84.204 adds a new subsection (j), providing that a retail seller may not include a benefit under a trade-in credit agreement in the "Dealership Allowance for Trade-In" section of the disclosure of equity standard form. This amendment is intended to avoid confusion in the calculation of the trade-in allowance, which is limited to the value of the trade-in vehicle. Under Texas Tax Code, §152.002(b)(5), "the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, including any cash payment to the buyer under Section 348.404 or 353.402, Finance Code" is excluded from the total consideration for sales tax purposes. The Texas Comptroller of Public Accounts uses the term "trade-in allowance" to refer to the value of the vehicle for purposes of this exclusion from sales tax. Texas Comptroller of Public Accounts, Motor Vehicle Tax Guidebook at x, II-2 (2011). The benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself. For this reason, the benefit under a trade-in credit agreement should not be included in the trade-in allowance shown on the disclosure of equity.

A proposed amendment to §84.205(b)(1) specifies that a documentary fee of \$150 or less is presumed reasonable under Texas Finance Code, §348.006(f). In addition, throughout §84.205, the proposal deletes references to the current requirement to provide a notification for a documentary fee that is greater than \$50 but less than or equal to \$150. These amendments are intended to implement HB 2949, which specifies that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission. \$150 is the same amount that the agency presumes reasonable under current §84.205(b)(2). The commission adopted \$150 as a reasonable documentary fee amount in 2016. This amount was based on the agency's ongoing review of documentary fee cost analyses, as well as document-related costs for Texas motor vehicle dealerships. The rule's current requirement to provide both a notification and a cost analysis for a documentary fee over \$150 would remain in place.

Until HB 2949 goes into effect on September 1, 2017, sellers are required to continue complying with current law, and may not charge a documentary fee over \$50 without first notifying the agency.

Proposed amendments to §84.302, §84.308, and §84.309 contain updated citations to the new Chapter 354 of the Texas Finance Code, as added by SB 1052. In addition, an amendment to §84.309(d) acknowledges that the agency may agree to extend the normal 45-day approval period for debt cancellation agreements for an additional 45 days. This amendment is intended to implement SB 1052, which permits the agency to agree to these deadline extensions in new Texas Finance Code, §354.005(b).

In §84.707, the proposal amends the recordkeeping requirements for retail sellers that assign retail installment contracts. The amended recordkeeping requirements relate to trade-in credit agreements and depreciation benefit service contracts.

In §84.707(d)(2), proposed new subparagraphs (N) and (O) identify records that a seller must maintain for trade-in credit

agreements, including a copy of the agreement, refunding records, and documentation used to process a claim. These amendments are intended to ensure that the agency can verify the seller's compliance with Texas Finance Code, §348.125, as added by HB 2339. These recordkeeping requirements are generally similar to requirements for other ancillary products. If any claims are administered by a party other than the seller, the seller should be able to obtain these records from the administrator.

In §84.707(d)(2), proposed new subparagraph (P) requires the seller to maintain records relating to depreciation benefit service contracts, including evidence of the amount of any credit, and any documentation obtained by the seller to process a benefit. This amendment is intended to ensure that the agency can verify that any benefit under a depreciation benefit service contract is accurately reflected on the retail installment contract.

During the stakeholder meeting, attendees asked several questions about the recordkeeping requirements for depreciation benefit service contracts. One attendee asked how long records must be maintained. The depreciation benefit service contract records would be subject to the general requirement in Texas Finance Code, §348.517(b), and current §84.707(d)(6) and §84.708(e)(9) to maintain records for the later of four years from the date of the retail installment contract, or two years from the date of the final entry. Another attendee asked whether records are required to be maintained in electronic or paper form. The depreciation benefit service contract records would be subject to the general provisions in current §84.707(c) and §84.708(c), which allow a licensee to maintain records using a legible paper or manual recordkeeping system, an electronic recordkeeping system, an optically imaged recordkeeping system, or a combination of these. Another attendee asked which party is the "seller" for purposes of the recordkeeping rules. Throughout §84.707 and §84.708, the term "seller" refers to the seller of the motor vehicle, which is not necessarily the provider of the service contract. Service contract providers are subject to separate recordkeeping requirements under Texas Occupations Code, §1304.155.

In §84.707(d), proposed new paragraph (6) requires the seller to maintain a copy of any contractual liability reinsurance policy required for trade-in credit agreements under new Texas Finance Code, §348.125(c), as added by HB 2339. This new paragraph also requires the seller to maintain a register or be able to generate a report reflecting agreements that were satisfied or denied. These amendments are intended to ensure that the agency can verify the seller's compliance with Texas Finance Code, §348.125, as added by HB 2339.

In §84.708, the proposal amends the recordkeeping requirements for retail sellers that collect installments on retail installment contracts. The amended recordkeeping requirements relate to deferments, trade-in credit agreements, and depreciation benefit service contracts. In §84.708(e)(2), new subparagraph (R) requires sellers to maintain written deferment agreements and deferment notices. These amendments are intended to ensure that the licensee can verify the seller's compliance with Texas Finance Code, §348.114, as amended by SB 1052. Other amendments throughout §84.708 conform to the previously discussed amendments to §84.707 relating to trade-in credit agreements and depreciation benefit service contracts.

In §84.709, the proposal amends the recordkeeping requirements for holders taking assignment of retail installment

contracts. The amended recordkeeping requirements relate to deferments and debt cancellation agreements. In §84.709(e)(2), proposed new subparagraph (J) conforms to the previously discussed amendment to §84.708(e)(2) relating to deferments. In addition, a proposed amendment to §84.709(e)(3)(A)(v) specifies that a holder must maintain refunding records if it receives or issues a refund for certain ancillary products, including debt cancellation agreements.

In §84.804, the proposal amends a list of authorized itemized charges to include a charge for a trade-in credit agreement and a charge for a depreciation benefit service contract.

In §84.808(8), proposed new paragraphs (F) and (G) specify that a benefit provided under a trade-in credit agreement or depreciation benefit service contract must be included in the downpayment and included in the line of the retail installment contract labeled "other (describe)." As discussed previously, the benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself, and should not be included in the trade-in allowance. Disclosing the trade-in credit agreement benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount and is not misled into believing that the benefit is part of the trade-in allowance. Similarly, disclosing a depreciation benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount.

During the stakeholder meeting, one attendee asked how the initial charge for the trade-in credit agreement should be disclosed, and asked whether proposed §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement. To clarify, there are two retail installment transactions relevant to the trade-in credit agreement: the first transaction in which the buyer purchases the agreement, and the second transaction in which the buyer trades in the vehicle and receives a benefit under the agreement. In the first transaction, the initial charge for the trade-in credit agreement should be listed in the retail installment contract's itemization of amount financed, in the itemized charges not included in the cash price. This requirement is specified by Texas Finance Code, §348.005(4), as amended by HB 2339, and proposed §84.804(4)(R). For example, the seller may list the initial charge on line 4.O., "Other charges," of the model itemization of amount financed at §84.808(8)(A). In the second transaction, the benefit under the agreement should be disclosed in the retail installment contract's itemization of amount financed, on the "other" line of the downpayment section. Proposed §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be more easily enforced, will be consistent with legislation recently passed by the legislature, and will provide guidance and clarity to motor vehicle sales finance licensees.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any

costs resulting from the proposal would involve complying with the proposed changes contained in §§84.707, 84.708, and 84.709 concerning recordkeeping.

In reference to §§84.707, 84.708, and 84.709 concerning recordkeeping, the agency anticipates that licensees may encounter the following costs to comply with the proposal: 1) labor costs, 2) costs to generate new records not currently kept, and 3) programming costs for licensees that utilize electronic recordkeeping systems. These costs are impossible to predict, as much will depend on the particular licensee's current software system and the amount of programming changes required to comply with the proposal.

Regarding the costs of recordkeeping, it is important to note that trade-in credit agreements and depreciation benefit service contracts are optional products. Licensees have the option of not offering these products, in which case there will be no costs incurred for those licensees. The agency anticipates that the fees charged in connection with these agreements will cover costs of complying with the recordkeeping requirements, resulting in a neutral cost to licensees required to comply with the proposal. In addition, the current rules at §§84.707(d)(2), 84.708(e)(2), 84.709(e)(2) already require licensees to keep transaction documents showing compliance with Chapter 348, and the current rules at §84.707(d)(2)(A)(v) and §84.708(e)(2)(A)(vi) already require sellers to keep copies of any agreements or disclosures signed by the retail buyer applicable to the transaction. In other words, even in the absence of the proposed recordkeeping amendments, licensees would still generally be required to keep copies of written deferment agreements, deferment-related notices, and trade-in credit agreements.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees and registrants. However, due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comment from licensees and registrants on any costs involved to comply with the proposal, as well as any alternatives to lessen those costs while achieving the purpose of the proposal. Aside from the previously outlined costs to comply with recordkeeping requirements and debt cancellation agreement submission fees, there will be no other effects on individuals required to comply with the rule changes as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §§84.203 - 84.205

All of the amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

§84.203. *Deferment Charge.*

(a) Definition. A "deferment charge" means a charge to defer the payment date of a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed add-on method for regular payment contracts using the sum of the periodic balances or ~~the~~ the scheduled installment earnings method ~~or the true daily earnings method~~. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. This section does not apply to an amendment described by Texas Finance Code, §348.114(c), to defer all or part of one or more payments for a retail installment transaction that employs the true daily earnings method. The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

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

(d) Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) - (2) (No change.)

~~{(3) True daily earnings method.}~~

~~{(A) Base deferment charge. For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and collect a base deferment charge computed by:}~~

~~{(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:}~~

~~{(i) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or}~~

~~{(ii) a lower rate agreed to by the parties, which may be the contract rate; and}~~

~~{(iii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.}~~

~~{(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:}~~

~~{(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and}~~

~~{(ii) any additional necessary official fees.}~~

~~{(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is \$1.00.}~~

~~{(D) Accrual of time price differential. For a contract using the true daily earnings method, all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.}~~

(e) (No change.)

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. ~~[For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday—Pay Only \$25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds \$25.]~~ If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

§84.204. Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle.

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

(j) Benefit under trade-in credit agreement. A retail seller may not include a benefit under a trade-in credit agreement in the "Dealer-ship Allowance for Trade-In" section of the disclosure of equity standard form.

§84.205. Documentary Fee.

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$150 [\$50], the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$150 [\$50] or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$150 [\$50] or less. A documentary fee of \$150 or less is presumed reasonable under Texas Finance Code, §348.006(f).

~~{(2) Over \$50, up to \$150. Before charging a documentary fee greater than \$50, but less than or equal to \$150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of \$150 or less to be reasonable.}~~

~~(2) [(3)] Over \$150. Before charging a documentary fee greater than \$150, a seller must provide a notification and a cost analysis to the OCCC.~~

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$150 [\$50], a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

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

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$150 [\$50], then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$150 [\$50]. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$150 [\$50] until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$150 [\$50] without first providing a complete notification to the OCCC; or

(B) (No change.)

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

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

(D) cease charging a documentary fee greater than \$150 [\$50] for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$150 [\$50] (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) - (5) (No change.)

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received, minus \$150, minus other restitution paid under subsection (c)(6) - (7) of this section. In addition, the OCCC may order a seller to

cease charging a documentary fee greater than §150 [\$50] for a specified period of time if the seller violates this subsection.

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

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SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §§84.302, 84.308, 84.309

All of the amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

§84.302. Authorized Credit Insurance and Debt Cancellation Agreements.

(a) - (g) (No change.)

(h) Debt cancellation agreements. Debt cancellation agreements are not credit insurance. For retail installment sales transactions involving ordinary vehicles, debt cancellation agreements that cancel all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of death, disability, or unemployment of the retail buyer are not authorized to be sold or written with a Chapter 348 motor vehicle retail installment sales contract. A debt cancellation agreement may be offered in connection with a Chapter 348 motor vehicle retail installment sales transaction and included as a term of, or modification to, the retail installment sales contract if the debt cancellation agreement is written in compliance with:

(1) Texas Finance Code, §348.124 and §84.308 of this title;

or

(2) Texas Finance Code, Chapter 354 [~~Chapter 348, Subchapter G~~].

§84.308. Debt Cancellation Agreements Not Requiring Insurance.

(a) Purpose and scope. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines

the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract. This section applies only to debt cancellation agreements that do not require insurance coverage. This section does not apply to a debt cancellation agreement under Texas Finance Code, Chapter 354 [~~Subchapter G of Chapter 348~~].

(b) - (k) (No change.)

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement described by Texas Finance Code, Chapter 354, that includes insurance coverage as part of the retail buyer's responsibility to the holder [~~as provided by Texas Finance Code, §348.604(a)~~]. Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §354.005(a) [~~§348.604(a)~~]. The denial of a debt cancellation agreement may be appealed to the Finance Commission of Texas, as provided by Texas Finance Code, §354.005(d) [~~§348.604(e)~~]. This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement to the commission.

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

(d) OCCC's notice of approval or denial. No later than the 45th day after the OCCC receives a debt cancellation agreement submission, the OCCC will send a notice of approval or a notice of denial to the person who submitted the agreement, as provided by Texas Finance Code, §354.005(b) [~~§348.604(b)~~]. On the written request of the person who submitted the agreement, the OCCC may agree in writing to extend the approval period for an additional 45 days. The date of approval or denial is the date on which the OCCC sends the notice of approval or denial. The OCCC may deny approval of a debt cancellation agreement if the agreement excludes language required by Texas Finance Code, §354.003 [~~§348.602~~] and §354.004 [~~§348.603~~], or if it contains any inconsistent or misleading provisions.

(e) (No change.)

(f) Contested case. If a person appeals the denial of a debt cancellation agreement under subsection (e), then the appeal will be a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). The burden of proof is on the appellant to show that the agreement should have been approved under Texas Finance Code, §354.005 [~~§348.604~~].

(g) - (i) (No change.)

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SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.707 - 84.709

All of the amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

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

(d) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (M) (No change.)

(N) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(O) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(P) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(3) - (5) (No change.)

(6) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(7) [~~6~~] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. For licensees who assign retail installment sales contracts, the final entry may be the date of the assignment if the licensee makes no other entries on the account after the assignment. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

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

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law.

The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (Q) (No change.)

(R) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(S) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(T) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(U) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(3) - (8) (No change.)

(9) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(10) [(9)] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) (No change.)

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

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

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (I) (No change.)

(J) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) - (iv) (No change.)

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) - (IV) (No change.)

(vi) (No change.)

(B) - (C) (No change.)

(4) - (9) (No change.)

(f) (No change.)

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SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.804, §84.808

All of the amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

A retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. The contract must include the following disclosures and provisions, as applicable:

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

(4) The amounts of any itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include the following charges as applicable and any other charges that are authorized to be included in the itemized charges under Texas Finance Code, Chapter 348:

(A) - (P) (No change.)

(Q) Automobile club membership; [-]

(R) Trade-in credit agreement;

(S) Depreciation benefit optional member program.

(5) - (8) (No change.)

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (7) (No change.)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) - (E) (No change.)

(F) Benefit under trade-in credit agreement. A benefit provided under a trade-in credit agreement must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "trade-in credit agreement benefit."

(G) Benefit under depreciation benefit optional member program. A benefit provided under a depreciation benefit optional member program must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "depreciation benefit."

(9) - (45) (No change.)

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

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CHAPTER 86. RETAIL CREDITORS SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.202

The Finance Commission of Texas (commission) proposes new §86.202 in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the new rule in 7 TAC, Chapter 86 is to implement a bill that the Texas Legislature passed in the 2017 legislative session: SB 1052. The proposed new rule relates to debt cancellation agreements for Chapter 345, Retail Installment Transactions.

SB 1052 moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Texas Finance Code. The bill allows these agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The bill also allows the OCCC to agree to extend the 45-day approval period for debt cancellation agreements by an additional 45 days, and specifies refunding and recordkeeping requirements when a debt cancellation agreement terminates due to early payoff of a retail installment contract.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held an online stakeholder meeting where attendees asked questions through a webinar. The agency did not receive any informal written precomments other than the questions received through the webinar.

The purpose of the new rule is provided in the following paragraphs.

Proposed new §86.202 provides that a debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309. This new rule is intended to implement SB 1052, which allows debt cancellation agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The agency will begin accepting submissions of debt cancellation agreements for these Chapter 345 covered vehicles starting July 1, 2017.

During the stakeholder meeting, one attendee asked when registrants may start offering debt cancellation agreements for Chapter 345 covered vehicles. These agreements are not authorized until SB 1052 goes into effect on September 1, 2017. In addition, any Chapter 345 debt cancellation agreement must be approved by the agency before a seller uses it.

Leslie L. Pettijohn, Consumer Credit 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 administering the rule.

Commissioner Pettijohn also has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be that the commission's rules will be more easily understood by registrants required to comply with the rules, will be more easily enforced, will be consistent with legislation recently passed by the legislature, and will provide guidance and clarity to retail creditors.

Additional economic costs may be incurred by a person required to comply with this proposal. The purpose of proposed new §86.202 is partly to specify that form submitters for debt cancellation agreements covering Chapter 345 vehicles must comply with current §84.309 and pay a \$250 submission fee. The \$250 amount, which the commission adopted in 2016, is based on the average time spent by OCCC employees to process the submission,

review the agreement, and draft follow-up correspondence. The OCCC believes that this fee is necessary and prudent to recover the cost of the agency's resources to review these agreements within the 45-day statutory deadline.

It is important to note that debt cancellation agreements are an optional product. Registrants have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those registrants. For Chapter 345 registrants who opt to provide debt cancellation agreements in connection with their retail installment contracts, there would be an initial economic cost consisting of the \$250 submission fee in §84.309(c), as provided by proposed §86.202. The agency anticipates that the fees charged in connection with debt cancellation agreements will cover costs of complying with the recordkeeping requirements, resulting in a neutral cost to registrants required to comply with the proposal.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most registrants. However, due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comment from registrants on any costs involved to comply with the proposal, as well as any alternatives to lessen those costs while achieving the purpose of the proposal. Aside from the previously outlined costs to comply with debt cancellation agreement submission fees, there will be no other effects on individuals required to comply with the new rule as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the new rule, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

Under proposed new §86.202, a person submitting a debt cancellation agreement for a Chapter 345 covered vehicle will be required to pay a filing fee under current §84.309(c). This new rule is authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the proposed new rule are contained in Texas Finance Code, Chapters 345, 348, and 354.

§86.202. Debt Cancellation Agreements.

A debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle,

all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309 of this title (relating to Debt Cancellation Agreements Requiring Insurance).

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 June 16, 2017.

TRD-201702362

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: July 30, 2017

For further information, please call: (512) 936-7621



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATION

19 TAC §151.1001

The Texas Education Agency proposes new §151.1001, concerning passing standards for educator certification examinations. The proposed new section would implement the requirements of the Texas Education Code (TEC), §21.048(a), for the commissioner to determine the satisfactory level of performance required for each certification examination.

House Bill (HB) 2205, 84th Texas Legislature, 2015, amended the TEC, §21.048(a), to require the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination. Before amendment by HB 2205, the passing standards were set by the State Board for Educator Certification (SBEC).

Proposed new 19 TAC §151.1001 would adopt the passing standards for all certification examinations as approved by the commissioner. Some of the passing standards previously set by the SBEC would be maintained, but others would be increased as follows.

Beginning September 1, 2017, passing standards would increase by 0.5 conditional standard error of measurement (CSEM) for the following Texas Examinations of Educator Standards (TExES), which were previously approved by the SBEC 2.0 CSEM below the recommendation of the standard-setting committee convened prior to the approval of the current standards:

801 Core Subjects EC-6 English Language Arts and Reading and the Science of Teaching Reading

802 Core Subjects EC-6 Mathematics

803 Core Subjects EC-6 Social Studies

804 Core Subjects EC-6 Science

805 Core Subjects EC-6 Fine Arts, Health, and Physical Education

806 Core Subjects 4-8 English Language Arts and Reading

807 Core Subjects 4-8 Mathematics

808 Core Subjects 4-8 Social Studies

809 Core Subjects 4-8 Science

Beginning September 1, 2017, passing standards would increase by 0.5 CSEM for the following TExES, which were previously approved by the SBEC 1.0 CSEM below the recommendation of the standard-setting committee convened prior to the approval of the current standards:

115 Mathematics 4-8 TExES

116 Science 4-8 TExES

118 Social Studies 4-8 TExES

Beginning September 1, 2017, passing standards would increase by 1.0 CSEM for the following TExES, which were previously approved by the SBEC 1.0 CSEM below the recommendation of the standard-setting committee convened prior to the approval of the current standards:

114 Mathematics/Science 4-8 TExES

160 Pedagogy and Professional Responsibilities EC-12 TExES

161 Special Education EC-12 TExES

184 American Sign Language TExES

The following tests expire before the September 1, 2017, projected effective date of the proposed new section, so they are not included in the corresponding figures:

139 Technology Applications 8-12 TExES

141 Computer Science 8-12 TExES

142 Technology Applications EC-12 TExES

179 Dance 8-12 TExES

Proposed new 19 TAC §151.1001 would organize the passing standards into three subsections. Subsection (b) would include passing standards for classroom teacher examinations, subsection (c) would include passing standards for student services examinations, and subsection (d) would include passing standards for administrator examinations.

The average passing standard reflected in the proposed new section is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

The proposed new section would have no procedural and reporting implications. The proposed new section would have no locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government, including local school districts and open-enrollment charter schools, as a result of enforcing or administering the new section. There is no effect on local economy for the first five years that the proposed new sec-

tion is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be providing clarity to educators and others regarding the required passing standards for Texas certification examinations. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins June 30, 2017, and ends July 31, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 30, 2017.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §21.048(a).

§151.1001. Passing Standards.

(a) As required by the Texas Education Code, §21.048(a), the commissioner of education shall determine the satisfactory level of performance for each educator certification examination and require a satisfactory level of performance on each core subject covered by an examination. The figures in this section identify the passing standards established by the commissioner for educator certification examinations.

(b) The figures in this subsection identify the passing standards established by the commissioner for classroom teacher examinations.

(1) The figure in this paragraph identifies the passing standards for early childhood through Grade 6 examinations.
Figure: 19 TAC §151.1001(b)(1)

(2) The figure in this paragraph identifies the passing standards for Grades 4-8 examinations.
Figure: 19 TAC §151.1001(b)(2)

(3) The figure in this paragraph identifies the passing standards for secondary mathematics and science examinations.
Figure: 19 TAC §151.1001(b)(3)

(4) The figure in this paragraph identifies the passing standards for secondary English language arts and social studies examinations.
Figure: 19 TAC §151.1001(b)(4)

(5) The figure in this paragraph identifies the passing standards for speech and journalism examinations.

Figure: 19 TAC §151.1001(b)(5)

(6) The figure in this paragraph identifies the passing standards for fine arts examinations.

Figure: 19 TAC §151.1001(b)(6)

(7) The figure in this paragraph identifies the passing standards for health and physical education examinations.

Figure: 19 TAC §151.1001(b)(7)

(8) The figure in this paragraph identifies the passing standards for computer science and technology applications examinations.

Figure: 19 TAC §151.1001(b)(8)

(9) The figure in this paragraph identifies the passing standards for career and technical education examinations.

Figure: 19 TAC §151.1001(b)(9)

(10) The figure in this paragraph identifies the passing standards for bilingual examinations.

Figure: 19 TAC §151.1001(b)(10)

(11) The figure in this paragraph identifies the passing standards for languages other than English (LOTE) examinations.

Figure: 19 TAC §151.1001(b)(11)

(12) The figure in this paragraph identifies the passing standards for special education examinations.

Figure: 19 TAC §151.1001(b)(12)

(13) The figure in this paragraph identifies the passing standards for supplemental examinations.

Figure: 19 TAC §151.1001(b)(13)

(14) The figure in this paragraph identifies the passing standards for pedagogy and professional responsibilities examinations.

Figure: 19 TAC §151.1001(b)(14)

(c) The figure in this subsection identifies the passing standards established by the commissioner for student services examinations.

Figure: 19 TAC §151.1001(c)

(d) The figure in this subsection identifies the passing standards established by the commissioner for administrator examinations.

Figure: 19 TAC §151.1001(d)

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 June 19, 2017.

TRD-201702366

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 30, 2017

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



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER B. GENERAL CERTIFICATION REQUIREMENTS

19 TAC §230.11

The State Board for Educator Certification (SBEC) proposes an amendment to §230.11, concerning general certification requirements. The proposed amendment would specify the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) and the minimum scaled scores required for each section of the test to demonstrate English language proficiency for a candidate whose degree was earned outside the United States. The proposed amendment would also remove the provision that would allow an applicant who earned an undergraduate or graduate degree at an institution of higher education (IHE) outside of the United States, including territories of the United States, to provide evidence that the primary language of instruction at the IHE was English.

Under SBEC rule 19 TAC §230.11(b)(5), any applicant for a Texas educator certificate must "be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching." For a candidate who earned his or her degree(s) outside of the United States at an institution of higher education where the primary language of instruction is not English, the candidate must achieve a satisfactory score on an English language proficiency examination approved by the SBEC to satisfy this requirement.

Previously, the requirement under 19 TAC §230.413 focused on an applicant's ability to "speak and understand the English language sufficiently to use it easily and readily in conversation and teaching." Therefore, testing focused only on assessing an individual's oral English proficiency. In May 2001, the SBEC approved a passing standard of 50 on the Test of Spoken English (TSE) to meet this requirement. When TOEFL iBT replaced the prior English proficiency test in 2006, the SBEC approved a passing standard of 26 on the speaking section only, which paralleled the requirements of the prior test. Even though candidates are held accountable for only the speaking section of the examination, they are assessed on all four sections of the TOEFL: speaking, listening, reading, and writing.

The TOEFL iBT measures the ability of non-native English speakers to use and understand the English language as it is spoken, heard, read, and written in the university classroom. Each section of the test has specific tasks as follows:

Speaking: Express an opinion on a familiar topic; speak based on reading and listening tasks.

Listening: Listen to lectures, classroom discussions and conversations, then answer questions.

Reading: Read three or four passages from academic texts and answer questions.

Writing: Write essay responses based on reading and listening tasks; support an opinion in writing.

During the test, individuals are asked to perform tasks that combine more than one skill, such as read, listen, and then speak in response to a question; listen and then speak in response to a question; and read, listen, and then write in response to a question.

At the December 2016 SBEC meeting, the SBEC discussed the English language proficiency requirements in rule and the use of the TOEFL iBT to measure that proficiency. SBEC directed

Texas Education Agency (TEA) staff to provide additional information on the TOEFL iBT, to gather stakeholder feedback, and to bring back recommendations to the SBEC. In particular, the SBEC directed staff to gather input from stakeholders on using all four sections of the TOEFL iBT in determining English language proficiency; cut score recommendations on each section and/or an overall score; and which candidates should be required to take the examination.

A stakeholder committee was convened via webinar on February 23, 2017, which consisted of participants nominated by SBEC members. The committee's feedback was shared with the SBEC at the March 3, 2017 SBEC meeting. While the committee was not unanimous in recommending that only a total score or that minimum section scores on all parts of the TOEFL iBT be used, the committee agreed that using only the speaking section did not provide an accurate picture of a candidate's English language proficiency and did not align with 19 TAC §230.11(b)(5), which specifies that an applicant for a Texas educator certificate must be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching. The committee was unanimous in recommending that the next step would be to conduct a standard-setting study to determine the appropriate minimum scaled scores on the TOEFL iBT that a candidate must attain to demonstrate English language proficiency.

A standard-setting committee on the TOEFL iBT met on May 12-13, 2017. The committee consisted of some of the members of the February 23 stakeholder committee, along with additional experts in the field. The recommendation of the standard-setting committee was presented to the SBEC for consideration at its June 9, 2017 meeting.

Subchapter B, General Certification Requirements

The purpose of 19 TAC Chapter 230, Subchapter B, General Certification Requirements, is to outline general certification requirements applicable to all individuals regardless of route taken to obtain Texas certification.

Language in 19 TAC §230.11(b)(5) would be amended to clarify that minimum scaled scores on the TOEFL iBT would be used to satisfy English language proficiency requirements for a candidate who earned his or her degree outside the United States. These specific scaled score requirements would replace the current use of a score of at least 26 on only the speaking section of the TOEFL iBT. The proposed scaled scores would reflect the minimally acceptable English language proficiency skills in speaking, listening, reading, and writing for an educator certificate applicant whose degree was earned outside the United States.

An applicant would be required to earn the minimum score in all four sections (speaking, listening, reading, and writing) because all these English language proficiency skills are needed for an educator to use English readily and easily in communication and teaching. An applicant would be allowed to retake the TOEFL iBT to cumulatively achieve the required minimum scores on all sections of the test (i.e., test results from prior administrations that meet one or more of the requirements would count and not have to be retaken).

The proposed amendment to 19 TAC §230.11(b)(5)(C), relettered as §230.11(b)(5)(B), would reflect the minimum TOEFL iBT scaled scores of 24 for speaking, 22 for listening, 22 for reading, and 21 for writing.

The proposed scaled scores would provide clarity to candidates and educator preparation programs on the required scores and would ensure that candidates demonstrate the English language proficiency skills needed to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching as specified in rule.

The proposed amendment to 19 TAC §230.11(b)(5)(B) would remove the provision that would allow an applicant who earned an undergraduate or graduate degree at an IHE outside of the United States, including territories of the United States, to provide evidence that the primary language of instruction at the IHE was English. The proposed amendment would require that an applicant for a Texas educator certificate either complete an undergraduate or graduate degree at an accredited IHE in the United States or pass the TOEFL iBT. The proposed amendment is intended to ensure that all Texas educators are proficient in English.

The proposed amendment would have no additional procedural and reporting implications. The proposed amendment would have no additional locally maintained paperwork requirements.

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

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be ensuring that educator certificate applicants demonstrate the level of English language proficiency needed to instruct and support all learners and to communicate effectively with parents, colleagues, and other stakeholders upon certification. There is an anticipated economic cost to persons who are required to comply with the proposed amendment. An individual who has earned an undergraduate or graduate degree at an IHE outside of the United States will be required to take the TOEFL iBT at an estimated cost of \$195 to demonstrate English language proficiency. The TEA estimates a total of 250 individuals would take the TOEFL iBT each year, resulting in an anticipated total cost of \$48,750 per year for the first five years that the proposed amendment will be in effect.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins June 30, 2017, and ends July 31, 2017. The SBEC will take registered oral and written comments on the proposed amendment to 19 TAC §230.11 at the August 4, 2017 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership

and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 30, 2017.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and §21.041(b)(5), which requires the SBEC to propose rules that specify the requirements for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to TEC, §21.052.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031, and 21.041(b)(1), (4), and (5).

§230.11. General Requirements.

(a) The only credits and degrees acceptable for certification of educators are those earned from and conferred by accredited institutions of higher education. All credit hour requirements for certification are semester credit hours or their equivalent.

(b) An applicant for a Texas educator certificate must:

(1) be at least 18 years of age;

(2) submit to the criminal history review required by the Texas Education Code (TEC) §22.0831, not be disqualified by the TEC, §21.058, §21.060, or other Texas statute, and not be subject to administrative denial pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) or a pending proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(3) not be disqualified by federal law;

(4) be willing to support and defend the constitutions of the United States and Texas;

(5) be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching. English language proficiency shall be evidenced by one of the following:

(A) completion of an undergraduate or graduate degree at an accredited institution of higher education in the United States; or

~~(B) if an undergraduate or graduate degree was earned at an institution of higher education outside of the United States, including territories of the United States, evidence must be provided under procedures approved by the Texas Education Agency (TEA) staff that the primary language of instruction was English; or~~

(B) ~~[(C)]~~ verification of minimum scaled [satisfactory] scores on the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) of 24 for speaking, 22 for listening, 22 for reading,

and 21 for writing [an English language proficiency examination(s) approved by the State Board for Educator Certification (SBEC)];

(6) successfully complete appropriate examinations prescribed in §230.21 of this title (relating to Educator Assessment) for the educator certificate sought; and

(7) satisfy one or more of the following requirements:

(A) complete the requirements for certification specified in this chapter, Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), Chapter 239 of this title (relating to Student Services Certificates), Chapter 241 of this title (relating to Principal Certificate), or Chapter 242 of this title (relating to Superintendent Certificate), and be recommended for certification by an approved educator preparation program;

(B) qualify under Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States);

(C) qualify under §230.105 of this title (relating to Issuance of Additional Certificates Based on Examination);

(D) qualify for a career and technical education certificate based on skill and experience specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)); or

(E) qualify under Chapter 245 of this title (relating to Certification of Educators from Other Countries).

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 June 19, 2017.

TRD-201702365

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Education Certification

Earliest possible date of adoption: July 30, 2017

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.308

The Comptroller of Public Accounts proposes amendments to §3.308, concerning computers--hardware, software, services, and sales. This section is being amended to implement Senate Bill (SB) 755, 84th Legislature, 2015, which amended Tax Code, §151.006. The bill created a resale exemption for computer programs sold by Internet hosting providers under certain circumstances. This section is also being amended to formalize prior comptroller guidance, to address uncertainties in the application of the law, and to conform more closely to the applicable statutory language.

The title of §3.308 is amended to replace the term "software" with the term "computer program," which is defined by statute and which is proposed to be defined in this section.

New subsection (a) is added to define terms. Subsequent subsections are relettered accordingly.

Paragraph (1) is added to define the term "computer program." The content of this definition is taken from Tax Code, §151.0031. Similar language in subsection (b)(1) of the current section is proposed to be deleted. The statement in current subsection (b)(1) that a computer program includes any modification, installation, or maintenance charges made in connection with the sale of the program is moved to relettered subsection (c)(1)(B).

Paragraph (2) is added to define the term "computer program maintenance." This term is used in current §3.308, but a definition is added to provide guidance. The proposed definition formalizes the comptroller's interpretation of the term, which was subsequently approved and adopted in the holding of *Verizon Business Network Services v. Combs*, 2013 Tex. App. LEXIS 4338 (Tex. App. -- Amarillo 2013, pet. dismissed). In essence, maintenance is limited to those activities that keep a computer program in original working order, such as providing error correction and technical support. The definition explains that adding new functionality to an existing computer program creates a new computer program and is not computer program maintenance. The statement in current subsection (b)(1), explaining that the combining of several existing program modules into a new program will be considered the sale of a completed program, is retained in this paragraph. In addition, a clarifying statement is added to memorialize longstanding comptroller policy that technical support may include remote assistance (e.g., telephone, on-line). See, for example, Comptroller's Decision No. 32,349 (1995).

Paragraph (3) is added to define the term "contract programming." The content of this definition is taken from subsection (b)(4) of the current section, which is deleted, and from Tax Code, §151.0101(a)(5)(D), which provides that services to repair, maintain, create, or restore a computer program, including its development and modification, are not taxable unless the computer program was sold by the person performing the repair, maintenance, creation, or restoration service. This definition also memorializes previous comptroller guidance that contract programming only occurs when the person performing the programming services did not sell, and does not own, any intellectual rights to the computer program being created, repaired, maintained, or restored. See, for example, STAR Accession No. 200812241L (December 16, 2008) (explaining that "[c]ontract programming occurs when a computer program is created for a specific client and all and exclusive rights to the program are transferred, by contract, to the client."). Subparagraph (B) distinguishes between the retention of rights to the program itself and those a contract programmer may retain that are merely incidental to the programming service, such as rights to materials, tools, methods, and processes used in the performance of the service. The retention of such incidental rights does not change contract programming to either the sale of a computer program or the maintenance thereof.

Paragraph (4) defines the term "Internet hosting" as provided in Tax Code, §151.108(a).

Current subsection (a)(6) is deleted and its content is moved to new subsection (e)(1) to consolidate resale issues into one subsection.

Relettered subsection (b)(2) is amended to replace a colon with a comma and to be amended to correct a cross-reference to §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

Relettered subsection (c) is amended to incorporate additional comptroller guidance. As explained previously, existing subsection (b)(1) is deleted.

New subsection (c)(1) contains information provided in current subsection (b)(2) addressing computer programs. Subsection (c)(1)(A) states that a computer program is tangible personal property, and that the sale, lease, or license of a computer program is subject to sales and use tax, without regard to whether the computer program, or a license to use the program, is transferred in an electronic form or on physical media. See Tax Code, §151.0031. Subsection (c)(1)(B) explains that charges for items other than the computer program itself, including charges for installation, are also included in the sales price of the computer program. This is consistent with Tax Code, §151.007. Subsection (c)(1)(C) is added to clarify that the purchase price of a computer program sold or used in Texas may not be allocated between Texas and another state according to a use, or benefit derived, in the other state. See, for example, Comptroller's Decision No. 44,280 (2005) (explaining that sales and use taxes are transaction taxes and there is no legal basis to apportion taxes based on subsequent use of an item). Subsection (c)(1)(D) is added to clarify that the use in Texas of a computer program licensed from an out-of-state vendor and residing only on an out-of-state server is taxable. This memorializes guidance in Comptroller's Decision 44,040 (2005) (explaining that "use [of a computer program] in Texas may occur even though no physical media has entered into the state"). Licenses that are not used in this state are not subject to Texas tax.

Relettered subsection (c)(2) addresses computer program maintenance. This subsection retains the substance of existing subsection (b)(3), but clarifies that computer program maintenance provided by any seller of the computer program is taxable.

New subsection (c)(3) generally restates language in current subsection (b) providing that separately stated charges for instruction on the use of a computer program by the person who sold the computer program are not taxable. The language is amended to make the subsection easier to read.

New subsection (c)(4) revises and restates language in existing subsection (b)(4) providing that charges for contract programming are charges for the sale of a service and are not taxable.

Relettered subsection (d) is revised to correct typographical errors and to improve readability.

New subsection (e) is added to implement SB 755. Paragraph (1) preserves the content of current subsection (a)(6) and the term "computer program" is added to indicate that both computer programs and hardware are subject to resale provisions as tangible personal property. Paragraph (2)(A) establishes a new qualification for resale purchases of computer programs by Internet hosting providers. Clauses (i)-(iv) identify the requirements to qualify for the resale exemption.

Paragraph (2)(B) provides that routine maintenance, recommended or required by the unrelated vendor and performed on the computer program by the Internet hosting provider, will not invalidate the qualification for resale.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no

significant revenue impact on the state or units of local government.

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

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

The amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as Tax Code, §151.0101(b), which provides the comptroller with exclusive jurisdiction to interpret Tax Code, §151.0101(a).

The amendment implements Tax Code, §§151.0031 ("Computer Program"); 151.005; ("Sale" or "Purchase"); 151.006 ("Sale for Resale"); 151.007 ("Sales Price" or "Receipts"); 151.009 ("Tangible Personal Property"); 151.010 (Taxable Item); and 151.0101 ("Taxable Services").

§3.308. *Computers--Hardware, Computer Programs [Software], Services, and Sales.*

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

(1) Computer program--A series of instructions that are coded for acceptance or use by a computer system and that are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media.

(2) Computer program maintenance--Providing error correction, technical fixes or technical support to sustain or support a computer program's efficient and continuous operations, or to keep the computer program in good working order by preventing the decline, failure, lapse, or deterioration of the computer program. The term is limited to changes to a computer program that keep the existing program functioning at its original capacity before the change. Adding new functionality to an existing computer program, such as by altering the original capacity of the program, adding new features, or combining several existing programs into a single computer program, results in the creation of a new computer program and is not computer program maintenance. The term includes technical support provided on-line or over the telephone.

(3) Contract programming--Services to create or develop a new computer program, or to repair, maintain, modify, or restore an existing computer program, when the person performing the services did not sell, and retains no rights in, the computer program being created, developed, repaired, maintained, modified, or restored.

(A) Examples of contract programming include:

(i) writing a new computer program to perform a particular function for the customer where all rights in the program are transferred to the customer;

(ii) customizing a computer program owned by the customer or licensed to the customer by a third party; or

(iii) modifying or performing computer program maintenance on a computer program that the programmer wrote for the customer under a prior contract programming agreement.

(B) Contract programming only occurs when the person performing the programming services transfers all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, to the computer program being created, developed, modified, maintained, repaired, or restored to the purchaser of the contract programming services. Notwithstanding other provisions of this paragraph, a person performing contract programming services may retain rights to property including materials, tools, methods, and processes used in the performance of the service. A person performing contract programming services may also retain rights to an incidental program or incidental component of a program included under an agreement to provide contract programming services. Examples of incidental programs and incidental components of a program are installers, drivers, macros, and subroutines.

(4) Internet hosting--Providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider. The term does not include telecommunications services.

(b) [(a)] Hardware.

(1) The sale, lease, or rental of computer hardware, including central processing units and all peripheral equipment, parts, and supplies, is subject to the sales and use tax.

(2) A taxable rental or lease can occur without the right to move the hardware if the lessee has total operational control of the hardware. For example, a lessee may contract to use a computer on the owner's premises for an exact period of time weekly. The lessee provides the operator and all materials. During the time of use by the lessee, no one else may use the hardware. This transaction constitutes a transfer of the total operational control of the hardware, which is a lease or rental of tangible personal property. However, if the owner provides and directs the operator, operational control has not been transferred to the lessee. The transaction will not be considered the rental or lease of the hardware. Note: if the only supervision provided by the owner is for maintenance or training on proper use, this is not providing an operator. See §3.294 of this title (relating to Rental and Lease of Tangible Personal Property [Rentals and Leases of Taxable Items]).

(3) Sales tax is due on charges for labor or services rendered in installing or applying computer hardware.

(4) Sales tax is due on charges for labor or services rendered in remodeling, repairing, maintaining, or restoring computer hardware. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Installation charges for remote terminals are taxable whether or not separately stated. Charges for telephone lines are taxable.

[(6) A resale certificate may be issued by a purchaser only if the hardware is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware while holding it

for resale, the purchaser is liable for sales tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).]

(c) [(b)] Computer programs and related services. [Software-]

(1) Computer programs. ["Computer program" means a series of instructions sold as a completed program which are coded for acceptance or use by a computer system and which are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media. This definition includes computer game cartridges which allow certain games to be played on a television set through interaction with a computer or on home computers. The combining of several existing program modules into a new program will be considered the sale of a completed program. A completed program includes any modification, installation, or maintenance charges made in connection with the sale of the program.]

(A) The sale, lease, or license of a computer program is a sale of tangible personal property. Sales or use tax is due when the computer program, or a license to use the computer program, is transferred for consideration in Texas, or stored, used, or consumed in Texas, in electronic form or on physical media.

(B) Sales price. The sales price of a computer program includes all charges made in connection with the sale of the program, which may include charges for installation, modification, or maintenance, whether or not separately stated.

(C) The sales price of a computer program, or a single license for a computer program, that is sold or used in Texas may not be allocated to other states based on the purchaser making copies of the program for use in another state; installing the program on hardware located in another state; or accessing the program in another state.

(D) When a purchaser acquires multiple licenses for the use of a computer program, and does not install the computer program on hardware located in this state or take possession of the computer program in this state, use tax is due only on the individual licenses that are subsequently used in Texas.

(2) Computer program maintenance. [Sales tax is due on the sale, lease or license of a computer program. Charges for the installation of the program are taxable whether or not separately stated.]

[(3)] Charges for computer program maintenance by a [the] person who sold the computer program are taxable. [Maintenance means providing error correction, improvements, or technical support. Separately stated charges for instruction on the software's use will not be taxable.]

(3) Instruction. Separately stated charges for instruction on the use of the computer program by a person who sold the computer program are not taxable.

(4) Contract programming services. Contract programming may result in the creation of tangible personal property, but it does not constitute the sale thereof. Charges for contract programming are charges for a service and are not taxable. [Charges to create a program or modify an existing program not sold by the person doing the modification are not taxable.]

(d) [(e)] Sales. The following are examples of transactions which involve the sale of taxable items and are taxable.

(1) A separate charge for additional copies of the result of services is taxable.

(2) The charge for processing, printing, or producing tangible personal property by a computer is taxable unless the process-

ing, printing, or producing is performed as an incidental part of a non-taxable service. Examples of taxable processing, printing, or producing include standardized amortization or depreciation tables, newsletters, and advertising.

(e) Sales for resale.

(1) A resale certificate may be issued by a purchaser only if hardware or a computer program is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware or computer program while holding it for resale, the purchaser is liable for sales tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Internet hosting providers.

(A) A sale for resale includes the sale of a computer program to an Internet hosting provider in a transaction that meets all criteria in this subparagraph, regardless of whether care, custody, and control of the computer program is transferred to the user of the Internet hosting service.

(i) The Internet hosting provider acquires the program from an unrelated vendor for the purpose of selling the right to use the program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the program;

(ii) the Internet hosting provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(iii) the Internet hosting provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iv) the unrelated user purchases the right to use the computer program from the Internet hosting provider through the acquisition of a license; and

(v) the Internet hosting provider does not retain the right to use the computer program under that license.

(B) The performance by the Internet service provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of subparagraph (A) of this paragraph.

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 June 19, 2017.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.3

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes new §306.3, concerning Qualified Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA).

The new §306.3 will not affect Active Military Service Members' benefits. The new §306.3 updates System policy to conform with provisions in USERRA. The proposed rule requires local boards, as that term is defined in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.012, to verify military service by submitting a letter and the member's commencement date of active military service to the System. The proposed rule sets the maximum years of qualified service credit that a member in active military service may receive, specifies the time frame requirements by which the member must return to the same department to receive such service credit, describes the date upon which a member will be considered to have returned to the department from military service, and sets forth the contributions that local boards are required to make upon a member's return to the department from military service as contemplated by USERRA.

Kevin Deiters, Executive Director, has determined that for each year of the first five-year period that the rule is in effect the public benefit is that the System will conform to the provisions outlined in USERRA, along with statute listed in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §863.002 and §865.006, which allow the System to grant credit for qualified military duty in accordance with federal law and to adopt rules necessary for the administration of the fund.

The adoption of the new rule will not affect small businesses or individuals. Administration of new §306.3 does not have foreseeable implications relating to the cost or revenues of the state and does not have such implication on local governments above what is currently required under USERRA.

Comments on the new rule must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577, submitted electronically to outreach@tesrs.texas.gov, or faxed to (512) 936-3480 no later than July 31, 2017.

The new section is proposed under the statutory authority of Title 8, Subsection H, Texas Emergency Services Retirement System, §863.003.

No other statutes, articles, or codes are affected by this proposal. New §306.3 has been reviewed by legal counsel and is within the System's authority to adopt.

§306.3. Qualified Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act.

(a) A member may obtain qualified service credit for active military duty if the military duty constitutes qualified military service in uniformed services, as provided under the Uniformed Services Employment and Re-Employment Rights Act, 38 United States Code §4301 et seq. (USERRA), and the member is otherwise eligible to obtain such service credit under USERRA.

(b) Under this section and in accordance with USERRA, a member whose active military duty is entitled to coverage under USERRA may be awarded qualified service credit for up to five (5) years of active military duty, subject to any additional period of time as provided in USERRA.

(c) A member who is no longer available to perform as a volunteer or auxiliary employee with a participating department due to active military duty, whether such duty is performed on a voluntary or involuntary basis, will be designated as on military leave by the pension system if the participating department substantiates such active military duty by submitting a letter to the pension system verifying the member's active military status, including the commencement date of active military service, and by providing any relevant documentation that may be requested by the pension system.

(d) Upon return as a volunteer or auxiliary employee to the participating department for which the member was performing services prior to active military duty, the member is eligible to be awarded qualified service credit for the period while on active military duty under this section, not to exceed five (5) years, and in accordance with USERRA if the member:

(1) is discharged or released from active military duty under honorable conditions or as otherwise provided by USERRA; and

(2) returns as a volunteer or as an auxiliary employee to the participating department for which the member was performing services prior to active military duty within ninety (90) days of discharge or release from active military duty or longer period of time as may be required by USERRA, provided that the participating department substantiates such return from active military duty by submitting a letter to the pension system verifying the member's return from military service, including the last date of active military service and date of return to the participating department, and by providing any relevant documentation that may be requested by the pension system. The pension system shall consider the provisions of USERRA or regulations adopted pursuant to USERRA in determining eligibility for qualified service credit of members who return as a volunteer or as an auxiliary employee for a participating department later than 90 days due to illness or injury incurred in, or aggravated during, uniformed service.

(e) In accordance with USERRA, if a member returns as a volunteer or as an auxiliary employee for the participating department for which the member was performing services prior to active military duty within the period of time required by USERRA, the participating department shall make the contributions (including the Part One and Part Two contributions) that would have been made if the member had been a volunteer or auxiliary employee with the participating department during the period of active military duty. Such contributions are due no later than ninety (90) days after the member's date of return as a volunteer or auxiliary employee with the participating department.

(f) Notwithstanding subsection (e) of this section, if a participating department has not previously made the required contributions for periods of active military duty that are reflected as military leave in the records of the pension system and occurred prior to the effective date of this section, the participating department will have ninety (90) days following the receipt of notice from the pension system to make the contributions required under subsection (d) of this section. The notice from the pension system will include identification of the eligible members, the periods of service for which the member is eligible to receive qualified service credit, not to exceed five (5) years, and the amount that the participating department is required to contribute. The period of time to make the contributions under this subsection may be extended at the discretion of the executive director.

(g) For purposes of this section, the member's date of return as a volunteer or auxiliary employee with the participating department for which the member was performing services prior to active military duty is the date the member (1) attends at least one hour of annual training, (2) participates in one of the participating department's emergencies, (3) performs one hour as an auxiliary employee in accordance with §861.001(2), Government Code, or (4) provides support services for one of the participating department's emergencies if the governing body of the participating department includes all persons who provide support services for the department as members of the pension system in accordance with §862.0025, Government Code.

(h) Notwithstanding any provisions of this section to the contrary, contributions, benefits, and qualified service credit with respect to active military duty shall be provided in accordance with the Internal Revenue Code §414(u) and as required by USERRA.

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 June 14, 2017.

TRD-201702328

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3474



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.6

The State Board of Trustees for Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §310.6 concerning the clarification of language regarding contributions of participating departments, including "Part One" and "Part Two" contributions.

The proposed amendment clarifies language regarding contributions to the System, including the establishment or modification of the "Part Two" contribution. A new subsection created by the proposed amendments clarifies how the contributions apply to members under the Family Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.) and during periods of temporary disability. The proposed amendments also add a new subsection which addresses how contributions affect members under the newly proposed §306.3 and the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C §4301 et seq.) (USERRA).

Kevin Deiters, Executive Director, has determined that the public benefit in the first five years this amended rule takes effect is the clarification of the purpose and scope of the "Part Two" contribution by Participating Departments and the Governing Entities in the System. Administration of the proposed amendment does not have foreseeable implications relating to cost or revenues of the state or local governments as the proposed amendment merely clarifies the existing contribution charges to the participating departments.

The adoption of the proposed amendments will not affect small businesses or individuals.

Comments on the proposed amendments must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577, submitted electronically to outreach@tesrs.texas.gov, or faxed to (512) 936-3480 no later than July 31, 2017.

The amended section is proposed under the statutory authority of Title 8, Subsection H, Texas Emergency Services Retirement System, §865.014, which allows the System to adopt rules relating to contributions of local boards.

No other statutes, articles, or codes are affected by this proposal.

§310.6. Local Contributions.

(a) Except as otherwise provided by this section, each participating department shall make a contribution for each month ~~[or a portion of a month a member performs emergency services for]~~ in which a volunteer or auxiliary employee of the participating department is a member of the pension system. The monthly contribution is composed of two parts, as outlined in subsections (b) and (c) of this section ~~[follows. Part One is the legacy portion of the contribution that directly impacts future retiree annuities; that includes a minimum contribution amount set by the state board. A participating department may elect to make contributions at a greater rate by notifying the Executive Director in writing of the rate. Part Two is the portion of the local contribution that does not impact annuities. Part Two may be adjusted near the end of every even numbered calendar year by the state board based on the most recent actuarial valuation to be effective for the next two state fiscal years, beginning September 1. The Part Two portion of the contribution may be adjusted up or down. The purpose of Part Two is to assist the system in achieving an adequate contribution rate for system obligations. In no case shall the Part Two portion of the contribution, exceed 15 percent of the Part One portion of the contribution]~~. Contributions are payable for each month ~~[or portion of a month]~~ of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title. ~~Contributions required under this section are not considered compensation to the members for whom they are made.~~

(b) ~~The Part One contribution is the portion of the participating department's contribution that is used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The Part One contribution will be no less than the minimum contribution amount provided in subsection (d) of this section. [The minimum contribution rate for each participating department is \$36 per member. After August 31, 2015, the minimum contribution rate for each participating department is \$36 per member plus any Part Two rate that might be charged by the system, as outlined in subsection (a) of this section.]~~

(c) ~~The Part Two contribution is the portion of the participating department's contribution that is applied to reduce the unfunded actuarial accrued liability of the pension system as contemplated under §861.001(1) and §864.002(a)(1), Government Code. The Part Two contribution is not used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The state board may establish or modify the Part Two contribution based on the pension system's most recent actuarial valuation approved by the state board, but in no case shall the Part Two contribution exceed 15 percent of the participating department's Part One contribution. Any Part Two contribution established or modified by the state board will be effective beginning on September 1 following the state board's approval of such Part Two contribution. A participating department shall make the Part Two contribution for each month as provided in subsection (a) of this section.~~

~~[Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.]~~

~~(d) The minimum contribution rate for each participating department is \$36 per member. After August 31, 2015, the minimum contribution rate for each participating department is \$36 per member plus any Part Two contribution that might be charged by the pension system, as provided in subsection (c) of this section. A participating department may elect to make Part One contributions at a rate greater than the minimum contribution amount by notifying the Executive Director in writing of the rate. [Contributions required under this section are not considered compensation to the members for whom they are made.]~~

~~(e) Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.) Contributions are not payable during a period of temporary disability.~~

~~(f) Contributions are not immediately payable during a period of military leave while on active military duty if (1) the military duty constitutes qualified military service in uniformed services, as provided under the Uniformed Services Employment and Re-Employment Rights Act, 38 United States Code §4301 et seq. (USERRA) and (2) the member is designated as on military leave by the pension system upon receiving documentation from the participating department that substantiates such active military duty under procedures developed by the pension system pursuant to Rule §306.3(c). Contributions for the period of active military duty shall be paid by the participating department upon the member's return to the participating department in accordance with Rule §306.3(e) and as required by USERRA.~~

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 June 14, 2017.

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Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3474



34 TAC §310.8

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §310.8, concerning a change from quarterly billings to semi-annual billings.

The proposed amendments to §310.8 simplify the billing process by modifying the billing cycle to a semi-annual process from the current quarterly process and change the deadlines of required material to reflect this change. The proposed amendments to §310.8 state that the Local Board of each Participating Department must certify System roster reports provided semi-annually, and that it is the duty of the Local Board to enroll all eligible members of the Participating Department into the System.

Kevin Deiters, Executive Director, has determined that for the first five years after these proposed amendments take effect the public benefit will be to reduce administrative time and paper-

work, and therefore the costs of the billing process for the Participating Departments and the System. This will decrease the cost of the billing process for local governments. Administration of the proposed amendments does not have foreseeable implications relating to the cost or revenues of the state.

The adoption of the amended rules will not affect small businesses or individuals.

Comments on the proposed amendments must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577, submitted electronically to outreach@tesrs.texas.gov, or faxed to (512) 936-3480 no later than July 31, 2017.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§863.004, 864.0135, 865.014, and 865.016, which allow the System to collect contributions from Participating Departments for the administration of the fund.

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

§310.8. Billing.

(a) The Executive Director shall bill governing bodies of participating departments semi-annually ~~and governing bodies of municipalities for which the Executive Director is administering pensions under the Texas Local Fire Fighters Retirement Act quarterly~~ on the last business day of ~~November,~~ February, ~~May,~~ and August.

(b) Each billing shall include, as appropriate, charges for:

(1) monthly contributions for participating members and any corresponding Part Two contributions, if applicable;

(2) optional annuity increases or supplemental payments;

(3) annuity payments funded by the governing entity or by department contributions;

(4) ~~[(2)]~~ prior service contributions;

(5) ~~[3]~~ late-payment interest charges; and

(6) ~~[(4)]~~ unpaid administrative penalties.

(c) At least 30 days before the last business day of February and of August ~~each quarter~~, the Executive Director shall send to the chair of the local board of each participating department a semi-annual pension roster report (Roster) that includes the name of each person who performs emergency services for the department and is identified as a member of the pension system, and the name of each person who is receiving pension payments under a funding arrangement with the plan.

(d) The ~~chair of the~~ local board ~~or the administrative head of the department~~ shall verify the accuracy of the Roster report, and shall enroll each person who performs service as a volunteer or auxiliary employee as a member of the system as required by Government Code Section 862.002. ~~[make needed changes in the roster, and return the report to the Executive Director not later than the fifth day before the last day of the quarter.]~~

(e) Upon request by the local board chair, the Executive Director will provide the local board chair with an updated roster for certification.

(f) The local board shall meet and certify, by signature of the chairman, the accuracy of the Roster report and return the signed report to the Executive Director no later than the fifth day before the last day of the billing period.

~~(g) [(e)] Based on the certified roster, on the last day of the month of the billing period, an invoice shall be generated by the system and provided to the governing entity. Payments are [under a billing issued under this section become] due within 30 days of the invoice date. Late payments accrue interest at the current actuarially assumed rate of investment return on fund assets.~~

~~(h) [(f)] In this section:~~

~~(1) The term "ACH" (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.~~

~~(2) The term "ACH Credit" means an ACH transaction initiated by the governing body of a participating department for the electronic transfer of funds from the account of the governing body to the account of the pension system.~~

~~(3) The term "ACH Debit" means an ACH transaction initiated by the pension system for the electronic transfer of funds from the account of the governing body of a participating department to the account of the pension system.~~

~~(4) The term "electronic funds transfer [transfer of funds]" means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account.~~

~~(5) The term "pre-authorized direct debit" means the method available to the governing body of a participating department for electronically paying required contributions by granting a continuing authorization to the pension system to initiate an ACH Debit [each quarter] for the electronic transfer of funds from the designated bank account of the governing body to the account of the pension system in an amount equal to the contributions required to be paid [based on the quarterly report as filed].~~

~~(6) The term "wire transfer" generally means a single transaction, initiated by the governing body of a participating department, in which funds are electronically transferred to the account of the pension system using the Federal Reserve Banking System rather than the ACH.~~

~~(i) [(g)] Amounts required to be contributed to the pension system in accordance with Chapter 865 of the Texas Government Code may be made by preauthorized direct debits (ACH Debits), electronic funds transfer, or by wire transfer. ~~[ACH Credits and wire transfers may not be used to transfer funds to the pension system except as authorized under subsection (j) of this section.]~~~~

~~(j) [(h)] The governing body of a participating department may elect to use the preauthorized direct debit method of payment by filing a signed authorization agreement with the pension system in which the governing body has designated a single bank account from which all transfers will be made.~~

~~(k) [(i)] The authorization agreement entered into for this purpose constitutes continuing authority for the pension system to initiate a direct debit of the governing body's designated bank account [each quarter and is effective with respect to each quarterly report of the governing body, whether filed by mail or by electronic transmission].~~

~~(l) [(j)] An authorization agreement remains in effect until the pension system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The pension system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the governing body. Thereafter, the governing body must remit all contributions by check, electronic funds~~

transfer, wire transfer, or other monetary means approved by the Executive Director. The alternative method of payment may include a fee to recover the cost of administering this subsection.

(m) On the 30th day after the invoice date, the pension system will initiate an ACH Debit in the amount of the invoice. The actual transfer of funds from the ACH designated account will not occur before the due date of the invoice.

[(k) Following receipt of a roster report filed under an unrevoked authorization agreement, the pension system will initiate an ACH Debit in the amount required to be contributed for that period based on the report; however the actual transfer of funds from the governing body's designated account will not occur before the due date of the report invoice.]

(n) [(4)] [The receipt of a quarterly roster report filed under an unrevoked authorization agreement is considered to be receipt by the pension system of the amount required to be contributed for the period based on that report if there are sufficient funds available for transfer from the governing body's designated account on the later of the due date of the report or the date the report is received.] An ACH Debit that is reversed by a governing body or that fails because sufficient funds are not available for transfer constitutes nonpayment of the required contributions [with respect to that report] and, thereafter, the required contributions will not be considered to have been received until the day the funds are actually transferred to the account of the pension system. Such unpaid funds may be subject to interest charges. [A governing body failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with §310.9 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.

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

TRD-201702323

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: July 30, 2017

For further information, please call: (512) 936-3474



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES 37 TAC §15.49

The Texas Department of Public Safety (the department) proposes amendments to §15.49, concerning Proof of Domicile. These amendments clarify residency requirements for persons under the care and conservatorship of the Department of Family and Protective Services (DFPS).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be better understanding of the residency requirements for license issuance.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005, are affected by this proposal.

§15.49. Proof of Domicile.

(a) To establish domicile in Texas for a non-commercial driver license or identification certificate, an applicant must reside in Texas for at least thirty (30) days prior to application. Applicants who surrender a valid, unexpired out-of-state driver license are not required to reside in Texas for at least thirty (30) days prior to application.

(b) In order to prove domicile, all original applicants for a driver license or identification certificate must present two acceptable documents verifying the applicant's residential address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate driver license or identification certificate to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and residential address, from the acceptable proof of domicile

list in subsection (e) of this section. At least one of the documents presented must demonstrate that the applicant has resided in Texas for at least thirty (30) days prior to application, unless the applicant is surrendering a valid, unexpired out-of-state driver license.

(e) Acceptable proof of domicile documents are:

(1) A current deed, mortgage, monthly mortgage statement, mortgage payment booklet, or a residential rental/lease agreement.

(2) A valid, unexpired Texas voter registration card.

(3) A valid, unexpired Texas motor vehicle registration or title.

(4) A valid, unexpired Texas boat registration or title

(5) A valid, unexpired Texas concealed handgun license.

(6) An electric, water, natural gas, satellite television, cable television, or non-cellular telephone statement dated within ninety (90) days of the date of application.

(7) A Selective Service card.

(8) A medical or health card.

(9) A current homeowners or renters insurance policy or homeowners or renters insurance statement.

(10) A current automobile insurance policy or an automobile insurance statement.

(11) A Texas high school, college, or university report card or transcript for the current school year.

(12) A W-2 or 1099 tax form from the current tax year.

(13) Mail from financial institutions; including checking, savings, investment account, and credit card statements dated within ninety (90) days of the date of application.

(14) Mail from a federal, state, county, or city government agency dated within ninety (90) days of the date of application.

(15) A current automobile payment booklet.

(16) A pre-printed paycheck or payment stub dated within ninety (90) days of the date of application.

(17) Current documents issued by the U.S. military indicating residence address.

(18) A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(19) Current Form DS2019, I-20, or a document issued by the United States Citizenship and Immigration Services.

(f) Both documents may not be from the same source. For example, an individual may not use vehicle registration and vehicle title for the same or different vehicles from the same registration office or a water and gas bill from the same utility. Mail addressed with a forwarding label or address label affixed to the envelope or contents are not acceptable.

(g) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit submitted by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relation-

ship to the person who completed the Texas residency affidavit and present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable documents demonstrating family relationship may include, but are not limited to:

(i) a marriage license;

(ii) military dependent identification card;

(iii) birth certificate; and

(iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present a valid Texas driver license or identification card, and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (e) of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail for the individual.

(h) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, judicial address confidentiality under Texas Transportation Code, §521.121, or currently incarcerated in a Texas Department of Criminal Justice facility.

(i) Minors under the conservatorship of the Department of Family and Protective Services (DFPS) and individuals under the age of 21 in DFPS paid foster care are not required to comply with subsection (b) of this section and may present an approved DFPS residency form signed by a DFPS caseworker or caregiver as proof of the applicant's residential address in Texas.

(j) [†] All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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

Filed with the Office of the Secretary of State on June 15, 2017.

TRD-201702346

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 30, 2017

For further information, please call: (512) 424-5848



SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.167, §15.168

The Texas Department of Public Safety (the department) proposes new §15.167 and §15.168, concerning Driver Responsibility Program. These rules are necessary to inform the public of changes to the Driver Responsibility Program (DRP) and the requirements for persons eligible to obtain this surcharge reduc-

tion authorized by Texas Transportation Code, §708.103(c) and §708.104(b-1).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be fewer license suspensions due to no financial responsibility surcharges.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §708.103(c) and §708.104(b-1).

Texas Government Code, §411.004(3) and Texas Transportation Code, §708.103(c) and §708.104(b-1), are affected by this proposal.

§15.167. Surcharge Reduction - Driving Without Financial Responsibility.

(a) To obtain a surcharge reduction under this section, an individual must submit a request for the reduction to the department and provide acceptable proof of financial responsibility that was acquired no later than 60 days after the date of the offense.

(b) Acceptable proof of financial responsibility includes:

(1) An insurance card with a beginning and ending effective date covering a six month time period and a receipt from the insurance company indicating prepayment for six months of motor vehicle liability insurance; or

(2) A letter from the insurance company on its letterhead stating that a motor vehicle liability insurance policy is in effect. The letter must include the beginning and ending dates of the policy and a statement indicating the policy has been prepaid for six months.

(c) The request for the reduction must be submitted to the department by mail, fax, or email. All submissions must include the name, date of birth, and driver license number of the requestor.

(1) Mail to: Texas Department of Public Safety, Enforcement and Compliance Service, P.O. Box 4087, Austin, TX 78773-0320.

(2) Fax to: (512) 424-2848.

(3) Email to: driver.improvement@dps.texas.gov. Emailed documents must be in PDF format.

§15.168. Surcharge Reduction - Driving Without Valid Driver License.

(a) To obtain the surcharge reduction, an individual must submit a request for the reduction to the department and indicate the individual obtained a driver license no later than 60 days after the date of the offense.

(b) The driver license must be issued by the department or the appropriate driver license agency in another U.S. state, U.S. territory, or Canadian province. If the driver license was obtained in another U.S. state, U.S. territory, or Canadian province, the individual must provide sufficient proof of the issuance that can be verified with the issuing agency.

(c) The request for the reduction must be submitted to the department by mail, fax, or email. All submissions must include the name, date of birth, and driver license number of the requestor.

(1) Mail to: Texas Department of Public Safety, Enforcement and Compliance Service, P.O. Box 4087, Austin, TX 78773-0320.

(2) Fax to: (512) 424-2848.

(3) Email to: driver.improvement@dps.texas.gov. Emailed documents must be in PDF format.

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 June 15, 2017.

TRD-201702347

D. Phillip Adkins
General Counsel

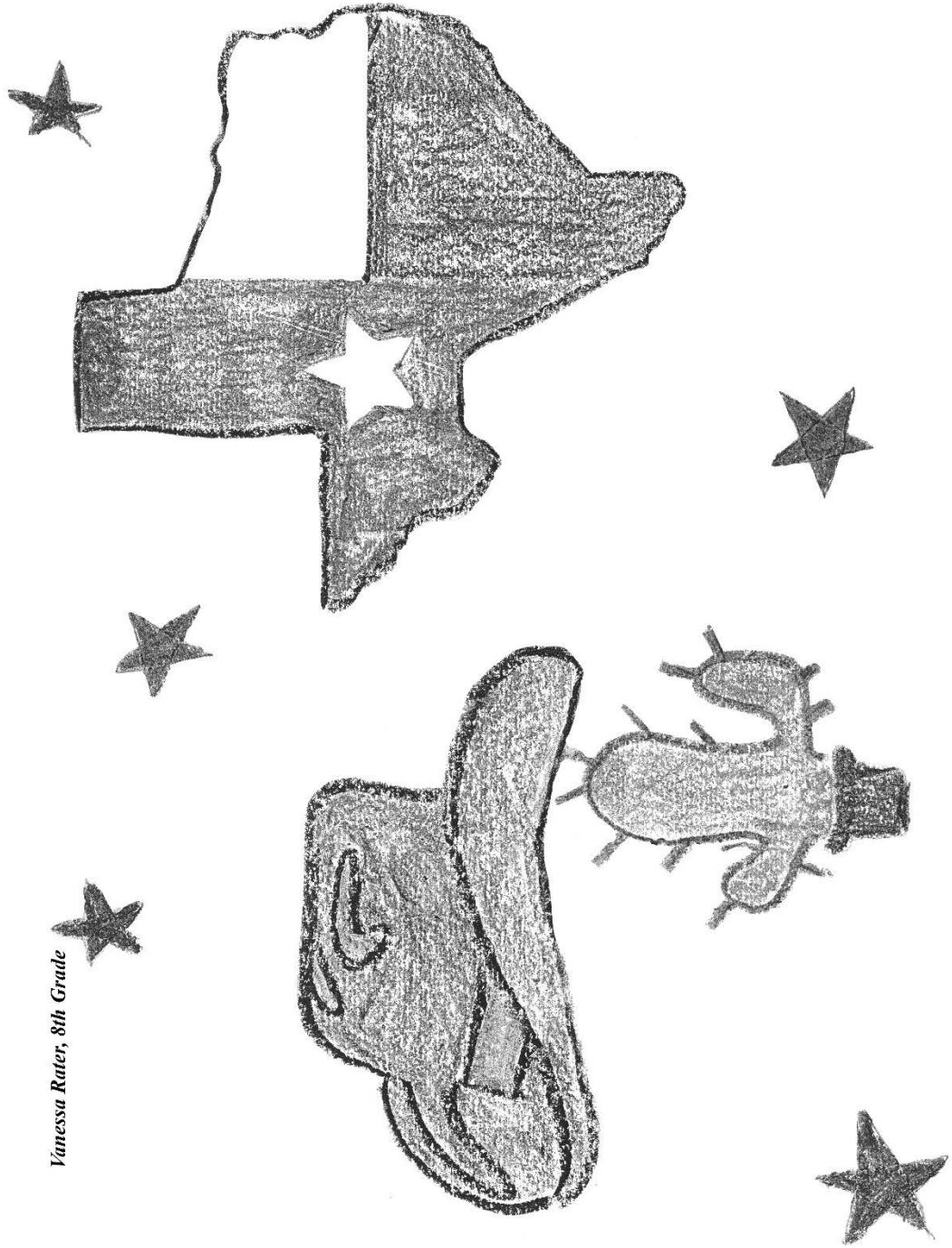
Texas Department of Public Safety

Earliest possible date of adoption: July 30, 2017

For further information, please call: (512) 424-5848



Vanessa Rater, 8th Grade



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §§110.1 - 110.6, 110.9, 110.11

Proposed amended §§110.1 - 110.6, and §110.9, and new §110.11, published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9857), are automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 19, 2017.

TRD-201702367



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.15

Proposed amended §571.15, published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9876), is automati-

cally withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 19, 2017.

TRD-201702368



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

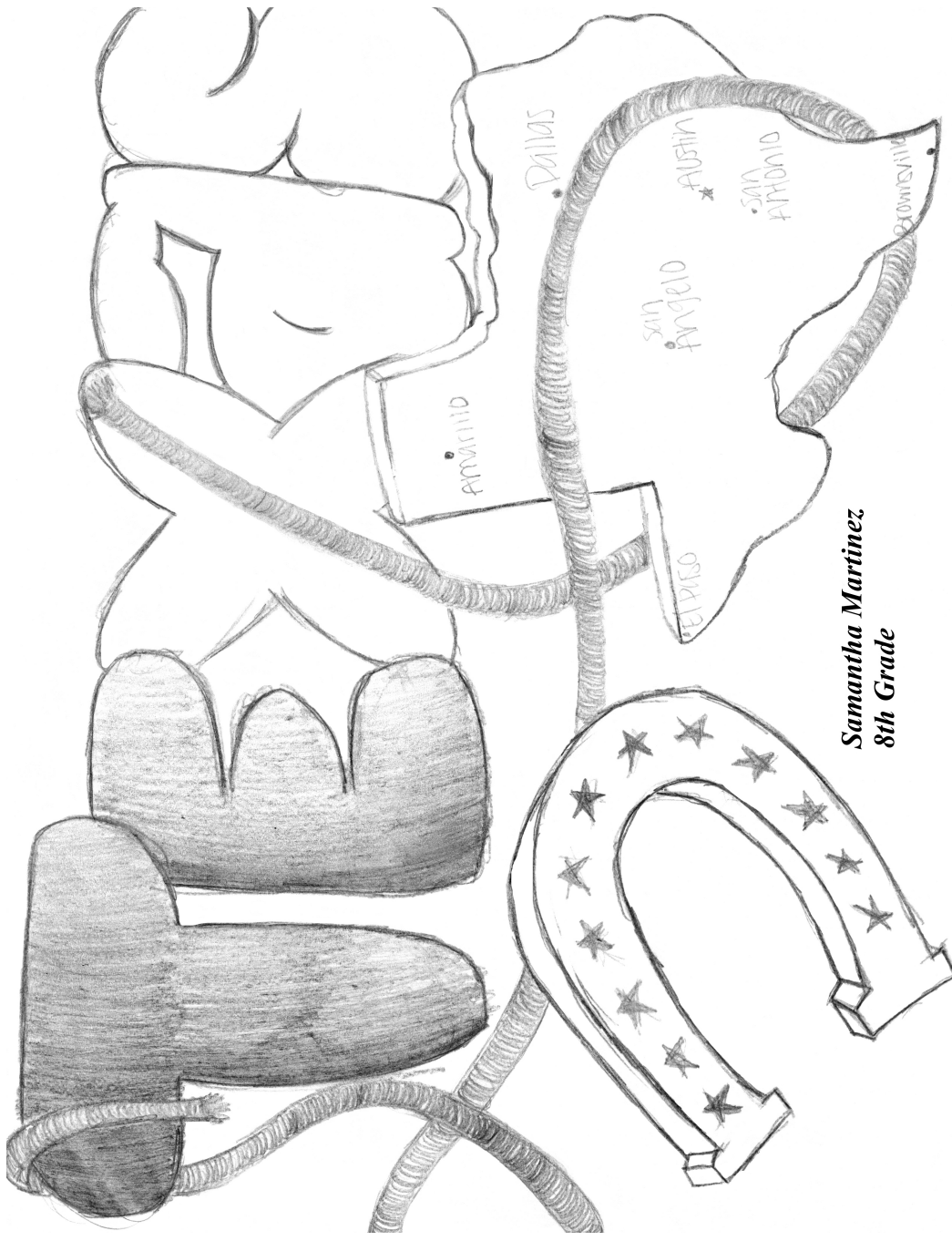
22 TAC §573.51

Proposed amended §573.51, published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9878), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 19, 2017.

TRD-201702369





Samantha Martinez
8th 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.112, concerning Attendant Compensation Rate Enhancement, with changes to the proposed text as published in the March 17, 2017, issue of the *Texas Register* (42 TexReg 1203). An amendment to §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs, is adopted without changes to the proposed text as published in the March 17, 2017, issue of the *Texas Register* (42 TexReg 1203).

Background and Justification

Methods of Communication between HHC and Contracted Providers

Section 355.112 outlines procedures for the Attendant Compensation Rate Enhancement program. The Rate Enhancement program is an optional program that offers contracted providers the option to receive increased payments if they meet certain spending requirements. HHSC offers providers the opportunity annually to enroll in the program. As amended, the rule requires HHSC to notify providers of open enrollment by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. Providers will also be notified by e-mail if open enrollment has been postponed or cancelled.

During the open enrollment period, providers who have never been participants in the enhancement program, or who are current or prior participants who have met the spending requirements outlined in §355.112(s) may request enrollment at any level. Providers who are current or prior participants who did not meet the spending requirements are limited to a certain level of participation in the next rate year and may be subject to recoupment.

Contracted providers who are subject to an enrollment limitation may request revision of their enrollment limitation, and the request may result in a change to or elimination of the enrollment limitation.

Likewise, contracted providers who are subject to recoupment are allowed to request that HHSC recalculate the recoupment by combining the cost data on multiple reports

Beginning with the cost reports collected for the 2015 cost report period, HHSC Rate Analysis implemented a new data collection system, the State of Texas Automated Information Reporting System (STAIRS). As amended, §355.112 allows HHSC to

use STAIRS to notify contracted providers of any enrollment limitations and/or any estimated recoupments. It also allows contracted providers to submit requests for revisions of enrollment limitations or recalculations of recoupments by e-mail. As a result of these changes, costs and staff time will be reduced and contracted providers will have more options to request revisions of enrollment limitations and recalculations of recoupments.

Aligning Certain HCS and TxHmL Rates with Costs and Rates for Similar Services

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

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

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

Section 355.723 establishes the rate methodology for all other HCS SHL and TxHmL CSS cost components. HHSC is amending this rule to align its rate methodology for these cost components with rate methodologies for similar services. Specifically, HHSC is tying the HCS SHL and TxHmL indirect cost component (also known as the administration and facility cost component) to the administrative and facility cost component of the Community Living Assistance and Support Services (CLASS) waiver program residential habilitation service and deleting the other direct service staffing cost component. The CLASS residential ha-

ilitation service has similar requirements for these cost areas and was incorporated in the calculation of the STAR+PLUS CFC proxy rate as described in §355.9090, Reimbursement Methodology for Community First Choice. Specifically, §355.9090(b)(1) states that the STAR+PLUS CFC rate will be equal to a weighted average of rates established for CLASS habilitation services and proxy rates for attendant services under the Community Based Alternatives waiver prior to its termination.

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

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

High Medical Needs Support, High Medical Needs RN, and High Medical Needs LVN services will provide additional support for eligible persons who have medical needs that exceed the service specification for existing HCS services and who need additional support in order to remain in a community setting. However, these services have not been added as reimbursable services by HHSC. While the rate methodology for High Medical Needs Support, High Medical Needs RN, and High Medical Needs LVN will be effective with the effective date of the rule, the associated rate cannot be paid until the services are reimbursable.

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

Other Changes

The amendment to §355.112 also corrects an outdated rule reference to Title 40 of the Texas Administrative Code (TAC) §49.15 (relating to Contract Assignment) with the correct rule reference of 40 TAC §49.210 (relating to Contractor Change of Legal Entity).

COMMENTS

The 30-day comment period ended April 17, 2017. During this period, HHSC received comments regarding adoption of the amendments from 167 commenters, including the following organizations:

- The Mary Lee Foundation, an HCS provider;
- Disability Rights of Texas, a consumer advocacy group;
- ARC of Texas, a consumer advocacy group;
- Berry Family Services, an HCS provider;
- The Providers Alliance for Community Services of Texas (PAC-STX), a provider advocacy group;
- Daybreak, an HCS provider;
- Texas Council of Community Centers, a provider advocacy group;

- Every Child, Inc., a provider advocacy group;
- Star Care, an HCS provider;
- Texas Panhandle Centers, an HCS provider;
- Emergence Health Network, an HCS provider;
- Coalition of Texans with Disabilities, a consumer advocacy group;
- Coastal Plains Community Center, an HCS provider;
- Volunteers of America Texas, an HCS provider;
- Disability Rights of Texas, a consumer advocacy group;
- Private Providers Association of Texas (PPAT), a provider advocacy group;
- Texana Center, an HCS provider; and
- Betty Hardwick Center, an HCS provider.

A summary of the comments and HHSC's responses follow.

Comment: Multiple commenters stated the amendments to §355.723 and §355.112 and resulting rate reduction will have a negative impact on attendant quality, and subsequently consumer health and safety. Many commenters who participate in the Consumer Directed Services (CDS) option stated they are using as much of the reimbursement rate as legally allowed to pay attendant salaries. They stated they have employed the same attendant for many years who has become familiar with the consumers' needs, which results in attendant stability and continuity of care. The commenters stressed the importance of attendant stability and continuity of care for this population as a major factor in consumer health and safety. The commenters stated that the salary reductions necessitated by the rate reduction resulting from adoption of the rule will increase the attendant turnover rate, and will result in attendants who are not as well trained or experienced in caring for consumers in the HCS program. Commenters also stated that reduced salaries will result in a smaller pool of potential attendants who have the appropriate skills necessary to provide services to HCS consumers.

Response: As pertains to non-Consumer Directed Services, HHSC respectfully disagrees with these comments. After an analysis of non-Consumer Directed Services cost data, HHSC believes the rate will be adequate. The data from the most recently audited cost report database shows that the actual attendant costs for these services, calculated as a weighted median and inflated to the 2018-19 biennium per the reimbursement methodology, are lower than the attendant costs currently included in the rate. As well, funds associated with the non-Consumer Directed Services part of the rate reduction are not included in HHSC's appropriations for the 2018-19 biennium. Therefore, HHSC will make no changes to the amendments as a result of these comments.

Article II of the 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Health and Human Services, Rider 214) appropriated funds to exempt CDS from any rate reductions resulting from the adoption of the amendments to §355.112 (l)(2)(D), §355.723(c), and §355.723(d)(10). In order to comply with Rider 214, HHSC will not apply the rate reductions resulting from the adoption of these amendments to the CDS option. Article II has not appropriated any funds to exempt any other rates from the rate reduction resulting from the adoption of these amendments. No changes to the amendments re-

garding this exemption are needed because the sections within which the amendments appear do not refer to CDS.

Comment: Multiple commenters stated the amendments to §355.723 and §355.112 and resulting rate reduction will result in financial hardships for current attendants and can impact attendant quality and turnover. These commenters stated that attendants, who are currently paid up to \$20 per hour, may no longer be able to afford to work as a paid attendant if their salaries are cut commensurate with the rate reduction. This would result in these attendants seeking other employment, which would result in less attendant stability, less continuity of care, and would replace an experienced workforce with one less experienced and without the same level of expertise in caring for HCS consumers.

Response: As pertains to non-Consumer Directed Services, HHSC respectfully disagrees with these comments. After an analysis of the non-Consumer Directed Services cost data, HHSC believes the rate will be adequate. The data from the most recently audited cost report database shows that actual attendant costs for these services, calculated as a weighted median, inflated to the 2018-19 biennium per the reimbursement methodology, and marked up by 4.4 percent are lower than the current attendant cost component of the rate. In addition, funds associated with the non-Consumer Directed Services part of the rate reduction are not included in HHSC's appropriations for the 2018-19 biennium. Therefore, HHSC will make no changes to the amendments as a result of these comments.

Article II of the 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Health and Human Services, Rider 214) appropriated funds to exempt CDS from any rate reductions resulting from the adoption of these amendments to §355.112 (l)(2)(D), §355.723(c), and §355.723(d)(10). In order to comply with Rider 214, HHSC will not apply the rate reductions resulting from the adoption of these amendments to the CDS option. Article II has not appropriated any funds to exempt any other rates from the rate reduction resulting from the adoption of these amendments. No changes to the amendments regarding this exemption are needed because the sections within which the amendments appear do not refer to CDS.

Comment: Multiple commenters expressed concerns that the amendments to §355.723 and §355.112 and resulting rate reduction could result in increased institutionalization. The commenters stated that many of the HCS consumers require an attendant with very specific skills to remain safely in the community. They stated that without the support of an attendant with the appropriate skills to support them in the community, some consumers would have to move to an institutional setting. They stated that finding an attendant with the appropriate skills may not be possible at salaries that can be paid within the rate resulting from the adoption of the rule amendment.

Response: As pertains to non-Consumer Directed Services, HHSC respectfully disagrees with these comments. After an analysis of the non-Consumer Directed Services cost data, HHSC believes the rate will be adequate. The data from the most recently audited cost report database shows that the attendant costs for these services, inflated to the 2018-19 biennium, are lower than the attendant costs currently included in the rate. Furthermore, funds associated with the non-Consumer Directed Services part of the rate reduction are not included in HHSC's appropriations for the 2018-19 biennium. Therefore, HHSC will make no changes to the amendments as a result of these comments.

Article II of the 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Health and Human Services, Rider 214) appropriated funds to exempt CDS from any rate reductions resulting from the adoption of these amendments to §355.112 (l)(2)(D), §355.723(c), and §355.723(d)(10). In order to comply with Rider 214 HHSC will not apply the rate reductions resulting from the adoption of these amendments to the CDS option. Article II has not appropriated any funds to exempt any other rates from the rate reduction resulting from the adoption of these amendments. No changes to the amendments regarding this exemption are needed because the sections within which the amendments appear do not refer to CDS.

Comment: Multiple commenters stated that the amendments to §355.723 and §355.112 and resulting rate reduction will result in a smaller pool of potential attendants due to the reduced salaries necessitated by the rate reductions. They also stated how the smaller pool of potential attendants will be less likely to have the appropriate skills necessary to provide services to HCS consumers. Commenters stated that they must pay higher wages in order to be competitive with other local employers for staff. They also stated that the salary reductions necessitated by the rate reduction resulting from the adoption of the proposed rule will increase the attendant turnover rate due to the attendant's ability to find other employment with the same or increased salary that does not require the provision of personal care services.

Response: As pertains to non-Consumer Directed Services, HHSC respectfully disagrees with these comments. After an analysis of the non-Consumer Directed Services cost data, HHSC believes the rate will be adequate. The data from the most recently audited cost report database shows that the attendant costs for these services, inflated to the 2018-19 biennium, are lower than the attendant costs currently included in the rate. Additionally, funds associated with the non-Consumer Directed Services part of the rate reduction are not included in HHSC's appropriations for the 2018-19 biennium. Therefore, HHSC will make no changes to the amendments as a result of these comments.

Article II of the 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Health and Human Services, Rider 214) appropriated funds to exempt CDS from any rate reductions resulting from the adoption of these amendments to §355.112 (l)(2)(D), §355.723(c), and §355.723(d)(10). In order to comply with Rider 214, HHSC will not apply the rate reductions resulting from the adoption of these amendments to the CDS option. Article II has not appropriated any funds to exempt any other rates from the rate reduction resulting from the adoption of these amendments. No changes to the amendments regarding this exemption are needed because the sections within which the amendments appear do not refer to CDS.

Comment: One commenter stated that HHSC's analysis for the amendments to §355.723 and §355.112 does not appear to take into consideration the reported turnover reported in the results of the recruitment and retention survey required by Article II of the 2016-17 General Appropriations Act, H.B. 1, 85th Legislature, Regular Session, 2017 (Health and Human Services, Rider 89) for CLASS Habilitation compared to the reported turnover in HCS Supported Home Living / TxHmL Community Support Services. The survey shows a higher turnover rate in CLASS Habilitation compared to HCS Supported Home Living / TxHmL Community Support Services. The commenter states the data from the Rider 89 survey supports that higher rates have a positive impact in keeping attendant turnover rates low.

Response: HHSC respectfully disagrees with this comment. The data used for the Rider 89 recruitment and retention report is from the 2015 unaudited cost reports which are subject to change post-audit. The audited data may produce different results for both attendant salaries and turnover rates. As well, funds associated with the non-Consumer Directed Services part of the rate reduction are not included in HHSC's appropriations for the 2018-19 biennium. Therefore, HHSC will make no changes to the amendments as a result of this comment.

Comment: One commenter stated that HHSC's analysis for the amendments to §355.723 and §355.112 does not appear to take into consideration the average wage rates paid for CLASS Habilitation services compared to the average wage rates paid in HCS Supported Home Living / TxHmL Community Support Services in the results of the recruitment and retention survey required by Article II of the 2016-17 General Appropriations Act, H.B. 1, 85th Legislature, Regular Session, 2017 (Health and Human Services, Rider 89). More importantly, neither the analysis nor the Rider 89 Survey include information about the HCS/TxHmL contract staff costs, which, as presented in testimony at the April 6, 2017, hearing on the proposed rules, revealed that many providers, families, and individuals pay significantly higher wages (some as high as \$20.00/hour) to ensure stability in their attendants and continuity in their care. Though not all of these higher wage rates are paid only to contract staff (some pay 'employed' staff these higher wages too), combined with the turnover data, the information supports the potential for significant turnover and challenges in recruiting staff when providers, families, and individuals have to lower the wages they currently pay staff. Moreover, it shows there will be an adverse impact on local economies and employment and on the persons required to adhere to the rule if adopted.

Response: HHSC respectfully disagrees with this comment. The data used for the Rider 89 recruitment and retention report is from the 2015 unaudited cost reports while the rates were calculated using the 2014 audited cost reports. As indicated above, unaudited data is subject to change and audited 2015 data may produce different results for attendant salaries.

As well, the statement that contract staff costs were excluded from HHSC's calculations is not accurate. HHSC's calculation of the attendant wage incorporated in the amendment of §355.112 included data for both employee and contract labor attendants.

Finally, HHSC's conclusion that the proposed amendments will not have an impact on local economies and employment is based on the fact that the rate resulting from the amendments is based on actual median employee and contract attendant hourly wages plus a 4.4 percent mark-up. As a result, the new rate will cover the median hourly wage plus 4.4 percent.

Therefore, HHSC will make no changes to the amendments as a result of this comment.

Comment: One commenter stated that the amendments to §355.723 and §355.112 and the related rate reduction will disrupt the stability of these two programs, but, more importantly, the lives of the individuals who rely on these services. The commenter stated that the amendments to these rules are both premature and shortsighted given changes at the Federal level and that the transition to STAR+PLUS is not targeted until 2021 for HCS and, if HB 3295 becomes law, not until 2020 for TxHmL.

Response: HHSC respectfully disagrees that the adoption of a payment rate that covers the median hourly wage of both employee and contract attendants plus 4.4 percent will lead to a dis-

ruption of the stability of the impacted programs. As well, HHSC cannot base its rules and policies on potential changes to federal guidance or state statute. While HB 3295 has been approved by the Legislature, it has not yet become law. Finally, funds associated with the non-Consumer Directed Services part of the rate reduction are not included in HHSC's appropriations for the 2018-19 biennium. Therefore, HHSC will make no changes to the amendments as a result of this comment.

Comment: One commenter stated that HHSC's justification for the amendments to §355.723 and §355.112 and the resulting rate reduction do not appear to take into consideration how many current providers in the HCS and TxHmL waiver programs participate in the Attendant Compensation Rate Enhancement program and whether the levels awarded will help offset the staffing challenges as a result of the rate reduction.

Response: HHSC respectfully disagrees with this comment. The rate enhancements referred to by the commenter are enhancements above the base rate and will not be impacted by the rule amendments. Providers participating in the rate enhancement will be paid a rate that is equal to the median wage for employee and contract attendants plus 4.4 percent plus enhancement funds. Therefore, HHSC will make no changes as a result of this comment.

Comment: One commenter stated that the HCS and TxHmL rates were structured to enable providers to attract a qualified workforce, reduce turnover, support continuity of care, and promote the safety and well-being of individuals who rely on these services to remain in the community. The proposed methodology does not support these critical principles, placing individuals at risk of placement in more costly, restrictive settings away from family and friends.

Response: HHSC respectfully disagrees with this comment. Cost report data for 2014 inflated to the 2018-19 biennium shows the median hourly wage paid to employee and contract attendants is significantly below the attendant wage built into the HCS and TxHmL rates. This indicates that providers have not used the funding built into the rate for its stated purpose of supporting wage rates that will attract a qualified workforce, reduce turnover, etc. Therefore, HHSC will make no changes as a result of this comment.

Comment: One commenter stated that the rate reduction resulting from the amendments to §355.723 and §355.112 and the resulting rate reduction will reduce valuable resources in an already stressed system. The commenter stated that providers already experienced significant cuts to the HCS and TxHmL rates in 2011, and along with the underfunded services in these programs, the amendments to §355.723 and §355.112 and the resulting rate reduction will jeopardize the ability of providers to remain a viable service option for individuals either seeking services or currently receiving services through the least costly IDD waiver service option.

Response: HHSC respectfully disagrees with this comment. The rate component representing attendant wages will be equal to the median provider cost plus 4.4 percent and the rate component representing the indirect cost component (also known as the administration and facility cost component) will be equal to the CLASS waiver program rate for the same cost component. The requirements for the indirect cost component for HCS and TxHmL SHL and CSS are similar to the requirements for the same cost component in the CLASS waiver program. These facts indicate that an economic and efficient provider should be

able to provide services of acceptable quality under the rate resulting from this rule amendment. Therefore, HHSC will make no changes to the amendments as a result of this comment.

Comment: One commenter supported the rule amendments related to the methods of communication between HHSC and contracted providers, the rate methodology for HCS High Medical Needs Services, the correction to the rate methodology for HCS Nursing Services, and other miscellaneous changes to these rules.

Response: HHSC appreciates this commenter's support of the indicated aspects of the rule amendments.

Changes from the proposed version that are not in response to comments

HHSC revised the amendment to §355.112(u)(2) to make minor technical changes.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

STATUTORY AUTHORITY

These amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 40 TAC §9.203 (relating to Definitions)), Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Integrated Care Management (ICM)-HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); CBA--Assisted Living/Residential Care (AL/RC) programs; and ICM AL/RC are eligible to participate in the attendant compensation rate enhancement. References in this section to CBA program services also apply to the parallel services offered under the ICM program.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to individuals with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS Supervised Living (SL)/Residential Support Services (RSS) and HCS and TxHmL Day Habilitation (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting

and Documentation Requirements, Methods, and Procedures) for staff in the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Intellectual Disability Professionals (QIDPs) or assistant QIDPs, (formerly known as Qualified Mental Retardation Professionals (QMRPs) or assistant QMRPs), direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver who is transporting individuals in the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings.

(4) An attendant also includes a medication aide in the HCS SL/RSS setting and the ICF/IID, RC and CBA AL/RC programs.

(5) An attendant also includes direct care workers, direct care trainers, job coaches, supported employment direct care workers, and employment assistance direct care workers.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/IID, attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

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

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

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, ICM--HCSS and AL/RC, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement.

(B) For providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/IID, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels

during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

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

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participat-

ing at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title, coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment.

This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(C) When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

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

(A) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

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

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

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs and for providers delivering both HCS and TxHmL services, participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/IID, participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-day habilitation services category and the day habilitation services category as defined in subsection (f)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

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

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report data-base used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC; DAHS; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD and by 1.07 for RC; CBA--AL/RC; and ICM AL/RC. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage.

Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

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

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

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

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

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

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

(1) ICF/IID providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-day habilitation and/or day habilitation services they have selected for participation.

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM--HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/IID; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering both RC and CBA AL/RC services in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (l) of this section.

(3) In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment and request for recalculation.

(1) Notification of recoupment. The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and accountability reports. STAIRS will generate an e-mail to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified by e-mail to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

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

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

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

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

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

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

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis no later than the

deadline indicated in the notification of open enrollment specified in subsection (e). A request for revision that is not received by the stated deadline will not be accepted, and the enrollment limitation specified in STAIRS will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation that shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than STAIRS indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests that fail to support an attendant compensation level different from what is indicated STAIRS will result in a rejection of the request, and the enrollment limitation specified in STAIRS will apply.

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

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

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

(4) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

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

(v) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (h) of this section, HHSC, or

its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

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

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

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

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

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

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

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

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a

vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(1) HCS and TxHmL providers required to repay enhancement funds will be jointly and severally liable for any repayment.

(2) Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all HHSC or DADS contracts controlled by the responsible entity.

(dd) Manual Repayment. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds using an automated system, providers will be required to repay some or all of the enhancement funds to be recouped through a check, money order or other non-automated method. Providers will be required to submit the required repayment amount within 60 days of notification.

(ee) Determination of compliance with spending requirements in the aggregate.

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

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. For the ICF/IID, HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC and ICM AL/RC programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on

an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) Conditions of participation for day habilitation. The following conditions of participation apply to each ICF/IID, HCS and TxHmL provider specifying its wish to have day habilitation services participate in the attendant compensation rate enhancement.

(1) A provider who provides day habilitation in-house or who contracts with a related party to provide day habilitation will report job trainer and job coach compensation and hours on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). Day habilitation costs cannot be combined and reported in one cost report item.

(2) A provider who contracts with a non-related party to provide day habilitation will report its payments to the contractor in a single cost report item as directed in the instructions for the cost report or Attendant Compensation Report as described in subsection (h)(2) and (3) of this section. HHSC will allocate 50 percent of reported payments to the attendant compensation cost area for inclusion with other allowable day habilitation attendant costs in order to determine the total attendant compensation spending for day habilitation services as described in subsection (s) of this section.

(3) The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report.

(4) HHSC will require each ICF/IID, HCS and TxHmL provider specifying their wish to have day habilitation services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(gg) New contracts within existing component codes. For ICF/IID, HCS and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code's level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(hh) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

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 June 14, 2017.

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Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: March 17, 2017

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



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

INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

STATUTORY AUTHORITY

These amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

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 Health and Human Services Commission

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 115. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

The State Board of Education (SBOE) adopts amendments to §§115.22, 115.23, 115.32, and 115.33, concerning Texas Essential Knowledge and Skills (TEKS) for health education. The amendments are adopted without changes to the proposed text as published in the March 3, 2017, issue of the *Texas Register* (42 TexReg 919) and will not be republished. The adopted amendments add student expectations for prescription drug awareness to the health education TEKS in accordance with Senate Bill (SB) 968, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. SB 968, 84th Texas Legislature, 2015, added the Texas Education Code, §28.002(w), to require that the SBOE adopt TEKS that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs. Recommendations for amendments to add student expectations for prescription drug awareness to the health education TEKS were provided to the committee for discussion at the November 2016 meeting. The draft recommendations were also shared with state health organizations and stakeholders for review and feedback.

The amendments were approved by the SBOE for first reading and filing authorization at its February 3, 2017, meeting and for second reading and final adoption at its April 21, 2017, meeting. The effective date of the amendments is August 28, 2017.

SUMMARY OF COMMENTS AND RESPONSES. Following is a summary of the public comments received and the corresponding responses regarding the proposed amendments to 19 TAC Chapter 115, Subchapters B and C.

Comment. One counselor recommended including real statistics on the incidence of sexual abuse, primarily the abuse of women and sexual minorities, in the health education TEKS.

Response. The SBOE disagrees with including the commenter's suggested change in rule and provides the following clarification. The changes in the proposal were specifically to address SB 968, 84th Texas Legislature, 2015, which required the SBOE to adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs.

Comment. One counselor recommended emphasizing a man's shared responsibility in pregnancy prevention in the health education TEKS.

Response. The SBOE disagrees with including the commenter's suggested change in rule and provides the following clarification. The changes in the proposal were specifically to address SB 968, 84th Texas Legislature, 2015, which required the SBOE to adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs.

Comment. One counselor recommended that, in addition to the student expectation in §115.23 that requires students to describe the seriousness of various forms of bullying such as harassment, acquaintance rape, and sexual abuse, the health education TEKS should include next steps for people who have suffered sexual abuse. The commenter stated that limiting student expectations to a discussion of the seriousness of sexual violence dilutes the subject matter and provides no additional information to students who have been victims.

Response. The SBOE disagrees with including the commenter's suggested change in rule and provides the following clarification. The changes in the proposal were specifically to address SB 968, 84th Texas Legislature, 2015, which required the SBOE to adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs.

Comment. One counselor recommended revising student expectations in §115.32 and §115.33 to read, "analyze the importance of abstinence from sexual activity as a choice of behavior in relationship to all sexual activity for unmarried persons of school age." The commenter stated that the current student expectations that read "analyze the importance of abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age" are moralistic statements.

Response. The SBOE disagrees with including the commenter's suggested change in rule and provides the following clarification. The changes in the proposal were specifically to address the requirements of SB 968, 84th Texas Legislature, 2015, which required the SBOE to adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs.

Comment. One counselor recommended engaging elementary school students in developmentally appropriate topics on sexual health, including sexual abuse. The commenter stated that not

explaining the most basic functions of their bodies to students is a disservice.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One community member expressed support for the proposed amendments to the health education TEKS. The commenter stated that prevention education related to alcohol, tobacco, and drugs in students' formative years is essential.

Response. The SBOE agrees and took action to adopt amendments to the health education TEKS as proposed.

SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §115.22, §115.23

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(c), which identifies the subjects of the required curriculum and requires the SBOE by rule to identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.002(w), which requires the SBOE to adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §7.102(c)(4) and §28.002(c) and (w).

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 June 12, 2017.

TRD-201702289

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 28, 2017

Proposal publication date: March 3, 2017

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



SUBCHAPTER C. HIGH SCHOOL

19 TAC §115.32, §115.33

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(c), which identifies the subjects of the required curriculum and requires the SBOE by rule to identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.002(w), which requires the SBOE to adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of nonmedical use of prescription drugs.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §7.102(c)(4) and §28.002(c) and (w).

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

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 7. ADMINISTRATION

22 TAC §7.11

Introduction. The Texas Board of Architectural Examiners (Board) adopts Part 1, Title 22 §7.11, relating to Enhanced Contract and Performance Monitoring. The amendments are adopted without changes to the proposed text published in the March 17, 2017, issue of the *Texas Register* (42 TexReg 1236).

Reasoned Justification. The adopted rule implements Texas Government Code §2261.253, which requires state agencies to adopt a rule which establishes a procedure to identify contracts that require enhanced contract monitoring and submit information on such contracts to the agency's governing body.

Under the adopted rule, the agency finance manager is required to complete a risk assessment for every contract over \$25,000 to identify whether the contract requires enhanced contract monitoring. For contracts of a lesser value, the finance may complete a risk assessment. The adopted rule identifies factors that may be considered in determining whether enhanced contract or performance monitoring is required. Contracts identified for enhanced contract will be reported to the Board, along with the basis for the determination, any serious risks or issues identified with the contract, and staff's plan for carrying out enhanced contract monitoring. Subsequently, the Board will be provided status reports on the contract, as directed by the Board.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority.

Rule 7.11 is adopted under §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code, and §2261.253 of the Texas Government Code, which requires state agencies to adopt a rule which establishes a procedure to identify contracts that require enhanced contract monitoring and submit information on such contracts to the agency's governing body.

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 June 12, 2017.

TRD-201702295

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Effective date: July 2, 2017

Proposal publication date: March 17, 2017

For further information, please call: (512) 305-8519



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 421. HEALTH CARE INFORMATION

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts amendments to §§421.1, 421.4, 421.6 - 421.9, and repeals of §421.5 and §421.10, concerning collection and release of hospital discharge data; new §§421.45 - 421.47, concerning reports, data requests, and data fees; amendments to §§421.61, 421.64, 421.66 - 421.68, and new §421.69, concerning collection and release of outpatient surgical and radiological procedures at hospitals and ambulatory surgical centers; amendments to §§421.71, 421.78, and new 421.79, concerning collection and release of hospital outpatient emergency room data; and new §421.81, concerning health care facility exemptions.

The amendments to §§421.4, 421.7, 421.8, 421.66, 421.68, and 421.78 are adopted with changes to the proposed text as published in the March 31, 2017, issue of the *Texas Register* (42 TexReg 1703). The amendments to §§421.1, 421.6, and 421.9; the repeals of §421.5 and §421.10; new §§421.45 - 421.47; amendments to §§421.61, 421.64, and 421.67 and new 421.69; amendments to §421.71 and new §421.79; and new §421.81 are adopted without changes to the proposed text as published in the March 31, 2017, issue of the *Texas Register* and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repealed sections are necessary to comply with the following Legislative bills and Sunset Advisory Commission recommendations.

Senate Bill (SB) 219 (84th Texas Legislature Regular Session) amended Health and Safety Code, Chapter 108 and requires that fees for the recoupment and support of the program be established in the rules.

House Bill (HB) 2641 (84th Texas Legislature, Regular Session) amended Government Code, §531.0162 and requires that any data collection efforts that are implemented after September 1, 2015, to use the American National Standards Institute (ANSI) approved formats and the 2014-2015 Sunset Advisory Commission Recommendation 7.1 Modification 3 for the Texas Health Care Information Collection program (THCIC) within DSHS to

reduce the time for health care facilities to certify the data submitted to DSHS and consolidate and clarify the rules. The amendments update technology language on how data is stored for transfer. The amendments consolidate language that is repetitive in several sections regarding similar processes for data requests and release of public use data and research data files, which requires the Institutional Review Board approval.

The purpose of the amendments to §421.9(c)(1) - (2) and §421.67(c)(1) - (2) were necessary to comply with changes made to the Government Code, §531.0162, by HB 2641, 84th Regular Legislative Session, which requires the department rules to be applicable to the data exchange standards developed by the ANSI. By moving the location of the data fields for the patient ethnicity and patient race and moving the patient's social security number over two characters in the information system will satisfy the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and subsequent amendments and revisions requirements which are outlined in Government Code, §531.0162.

COMMENTS

The 30-day comment period ended on May 1, 2017. DSHS has reviewed and prepared responses to comments regarding the proposed rules that were submitted during the 30-day comment period.

During the comment period, DSHS received comments regarding the proposed rules from two commenters, including the Dallas Fort Worth Hospital Council Foundation and the Texas Ambulatory Surgery Center Society.

DSHS has prepared responses to the comments received regarding the proposed rules. The commenters were not against the rules in their entirety; however, the commenters recommended changes as discussed in the summary of comments.

Comment: Regarding proposed §421.7(b) (reducing the deadline for submitting corrections at the time of certification) and §421.7(d) (reducing the certification period by two months), the Dallas Fort Worth Hospital Council Foundation provided a written comment that the 30-day timeframe to perform the required validation, including the physician validation of reports was too short and recommended a 60-day certification deadline.

Response: HHSC disagrees with revising the certification deadline to 60 days but agrees to extend the correction at time of certification to 30 days in §421.7(b) and the certification period to 45 days instead of the commenter's suggested time of 60 days in §421.7(d).

Comment: Regarding proposed "§421 et al, not shorten the time for ASCs (ambulatory surgery centers) to certify the requested information from THCIC and the certification time limit for ASCs remain 90 days" as suggested by the Texas Ambulatory Surgery Center Society. DSHS staff assumes the amendments to §421.66(d) is the subsection referred to by the commenter, because that subsection is the only subsection in 25 TAC Chapter 421 that addresses the certification deadline affecting ASCs.

Response: HHSC disagrees with retaining the certification period at 90 days but agrees to extend the proposed 30-day certification period to 45 days in §421.7(d) and §421.66(d).

Comment: The Texas Ambulatory Surgery Center Society submitted a comment regarding DSHS referencing the "2014-2015 Sunset Advisory Commission Recommendation 7.1 Modification 3" in the preamble as statutory authority for proposing the

change in §421.7(d) and §421.66(d) from 90 days to 30 days to reduce the time for facilities to certify the data submitted to DSHS.

Response: HHSC acknowledges the comment. The Sunset Advisory Commission was created by the legislature, is charged with monitoring state agency performance, and is authorized by Government Code, Chapter 325 to make recommendations, such as amendments to rules. They did so here, and HHSC considered the recommendation and proposed the amendments to §421.7(d) and §421.66(d).

On May 9, 2017, the THCIC program staff arranged a conference call meeting with the Data Collection Workgroup. This informal group meets periodically at the request of staff to discuss issues that may affect data collection, providers, researchers, publications, or data release. This meeting was called by staff to discuss the issues and concerns of the stakeholders on moving the certification period to 45 days or 60 days. The following organizations participated in the conference call: Baylor-Scott & White Health System; Dallas-Fort Worth Hospital Council Foundation; DSHS; Texas A&M Health Science Center; Texas Association of Businesses; Texas Hospital Association; RPC Consulting and System13, Inc. A summary of the comments and responses follows.

Comment: Concerning §421.7(d) and §421.66(d), the Data Collection Workgroup did not oppose the rules in their entirety; Dallas Fort Worth Hospital Council Foundation and the Texas Hospital Association did, however, express a concern that the 30-day certification period was too short for the health care facilities to make changes to their data. These representatives stated that the facility's vendors generally took more than 30 days to make changes to the information systems. They also noted that the physician review and comment requirement (Health and Safety Code, §108.011(g)) requires a significant amount of time for the outpatient data, due to the large number of physicians that are in some health care facilities. The Data Collection Workgroup had a consensus that 45 days is an acceptable time for the quarterly certification deadline.

Response: HHSC agrees to modify the certification period and has changed the certification period in communication with the Data Collection Workgroup to 45 days. The changes were made because the Sunset Advisory Commission's recommendation of 30 days for certification, which was proposed, creates a burden on the health care facilities to meet the deadline. Extending the certification period will provide additional time for the health care facilities required to submit the data under Health and Safety Code, Chapter 108, and to correct any erroneous data that is identified during this certification period.

HHSC has extended the certification period from the proposed 30 days to 45 days in §421.7(d) and §421.66(d). The certification period will have a due date of the fifteenth day of the seventh month (Quarter 1- October 15; Quarter 2- January 15; Quarter 3- April 15; and Quarter 4- July 15) after the end of the reporting period.

Also, HHSC has extended the correction at the time of certification deadline from the proposed 15 days to 30 days in §421.7(b) and §421.66(b) to be within the certification period in §421.7(d) and §421.66(d). The corrections at the time of certification will have the due date of the first day of the month (Quarter 1- October 1; Quarter 2- January 1; Quarter 3- April 1; and Quarter 4- July 1.)

Comment: Texas Ambulatory Surgery Center Society, which is a member of the Data Collection Workgroup, did not participate in the conference call but contacted THCIC staff approximately one hour after the meeting. The commenter expressed that they preferred that the certification period in §421.66(d) should remain at 90 days. Alternatively, the commenter stated that changing the certification period to 60 days is a workable time period.

Response: HHSC disagrees to retain the 90-day certification period or change the certification period to 60 days because the Sunset Advisory Commission made a recommendation to shorten the certification time period. However, HHSC agreed to extend the certification period from the proposed 30 days to 45 days.

The following language was revised to update rule and statute references.

The following language "The department's instructions shall follow Department of Information Resources standards for data storage media established under 1 TAC Chapter 201." was removed from §421.4(a)(4), as the Department of Information Resources rules in 1 TAC no longer addresses standards for magnetic data storage.

Health and Safety Code, §108.011(i)(2) was corrected to §108.011(i) in §421.8(c)(7), §421.68(d)(7) and §421.78(d)(7) due to the removal of numbering by SB 219, but the same language applies.

SUBCHAPTER A. COLLECTION AND RELEASE OF HOSPITAL DISCHARGE DATA

25 TAC §§421.1, 421.4, 421.6 - 421.9

The amendments are adopted under Health and Safety Code, §§108.006, 108.009 - 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect, establish fees for the recoupment and support of the program, and disseminate data as authorized by the chapter regarding hospital inpatient stays, hospital and ambulatory surgical center outpatient visits including hospital emergency department visit data in public use data files and the DSHS Institutional Review Board approved research data files; and Government Code, §531.0055, and 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 Health and Safety Code, Chapter 1001.

§421.4. *Instructions for Filing Discharge Reports.*

(a) **Portable Data Storage Media.** A discharge report may be filed on computer diskettes, USB flash drive, or other portable data storage media approved by the department. All discharges shall be reported using the same file and record formats specified in §421.9 of this title (relating to Discharge Reports--Records, Data Fields and Codes) regardless of medium.

(1) Media specifications are:

(A) **Optical Media:** Devices or disc that uses digital optical disc data storage format, for example Compact Disc (CD) or Digital Video Disc (DVD); MS-DOS formatted; PC Text file (ASCII).

(B) **Universal Serial Bus (USB) flash drive:** portable data memory device using flash memory with a USB interface.

(C) **Other electronic, magnetic or other portable data storage media:** Discharge reports may be filed on other data storage media only with the prior written approval of the department. The department will not normally approve any medium which the department is not currently equipped to read.

(2) Hospitals shall submit no more than one tape or two diskettes per submission, with the following external identification affixed as listed in subparagraphs (A) - (G) of this paragraph:

(A) hospital name;

(B) facility identifier (THCIC 6 digit identifier);

(C) reporting period for discharges;

(D) number of transaction sets;

(E) tape density: 1600/6250 BPI (if applicable);

(F) collating sequence for tapes (if applicable);

(G) the description: "DISCHARGE DATA."

(3) Data for more than one hospital may be submitted on a single tape if the submitter provides external identification items in subparagraphs (A) - (D) of this paragraph for each hospital.

(4) In addition to the provisions of this section, the department shall document instructions for filing discharge reports on data storage media and shall make this documentation available to hospitals at no charge and to the public for the cost of reproduction. The department shall notify hospitals or their designated agents directly in writing at least 90 days in advance of any change in instructions for filing discharge reports on data storage media.

(b) **Electronic Data Interchange.** Discharge reports may be filed by modem using electronic data interchange (EDI). All discharges shall be reported using the same file and record formats specified in §421.9 of this title regardless of the medium of transmission, unless the hospital has obtained an exemption authorized by §421.81 of this title (relating to Health Care Facilities Exemptions from Filing Requirements). The department shall document instructions for filing discharge reports by EDI and shall make this documentation available to hospitals at no charge and to the public for the cost of reproduction. The department shall notify hospitals and their designated agents directly in writing at least 90 days in advance of any change in instructions for filing discharge reports by EDI. The department's instructions shall follow Department of Information Resources standards for EDI.

§421.7. *Certification of Discharge Reports.*

(a) Within five months after the end of each reporting quarter, the department shall compile one or more electronic data files for each reporting hospital using all discharge claims received from each hospital. The file shall have one record for each patient discharged during the reporting quarter and one record for any patient discharged during one prior reporting quarter for whom additional discharge claims have been received. This file will include all data submitted by the hospital, which the department intends to use in the creation of the public use data file. The data files, including reports and any additional information returned to the hospital, allows the hospital to provide physicians and other health professionals the opportunity to review, request correction of, and comment on records of discharged patients for whom they are shown as "attending" or "operating or other". The department shall determine the format and medium in which the quarterly file will be delivered to hospitals.

(b) The chief executive officer or chief executive officer's designated agent of each hospital shall indicate whether the hospital is certifying or not certifying the discharge encounter data specified in subsection (a) of this section, sign and return the form corresponding

to the discharge report for each quarter using forms supplied by the department. The certification form may be signed by a person designated by the chief executive officer and acting as the officer's agent. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide the department with detailed comments regarding the errors or submit a written request (on a form supplied by the department) and provide the data necessary to correct any inaccuracy and certify the file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification discharge data shall be submitted on or prior to the following schedule: Quarter 1- October 1; Quarter 2- January 1; Quarter 3- April 1; and Quarter 4- July 1. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach the justification to the certification form. Election to not certify data does not prevent data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that:

(1) policies and procedures are in place within the hospital's processes to validate and assure the accuracy of the discharge encounter data and any corrections submitted; and

(2) all errors and omissions known to the hospital have been corrected or the hospital has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted accurately represents the hospital's administrative status of discharged inpatients for the reporting quarter; and

(4) the hospital has provided physicians and other health professionals a reasonable opportunity to review and comment on the discharge data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §421.9 of this title (relating to Discharge Reports-Records, Data Fields and Codes) (for example, "attending physician" or "operating or other physician" as applicable). The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent and the chief executive officer or the chief executive officer's designated agent, shall address any comments by the physicians or other health professionals.

(5) if the chief executive officer or the officer's designee elects not to certify the discharge encounter data for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and completeness of the data at the time of the certification shall be included on the certification form. Discharge data that has been edited, returned to hospital and is not certified may be released and published in the public use data file.

(d) Each hospital shall submit its certification form for each quarter's data to the department by the fifteenth day of the seventh month (Quarter 1- October 15; Quarter 2- January 15; Quarter 3- April 15; and Quarter 4- July 15) following the last day of the reporting quarter as specified in §421.3(a)(1) - (4) of this title (relating to Schedule for Filing Discharge Reports). Individual hospital requests for an extension to these deadlines will not be granted. The department may extend the deadline for all hospitals when deemed necessary.

(e) Hospitals, physicians or other health professionals may submit concise written comments regarding any data submitted by them or relating to services, they have delivered which may be released

as public use data. Comments shall be submitted to the department on or before the dates specified in subsection (d) of this section, regarding the submission of the certification form. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §421.4(a) and (b) of this title (relating to Instructions for Filing Discharge Reports).

(f) Failure to either correct a discharge report which has been submitted and contains errors or omissions known to the hospital on or prior to the dates specified in subsection (b) of this section or to address in the comments the errors known to the hospital contained in the data and return the comments on or prior to the dates specified in subsection (d) of this section is punishable by a civil penalty pursuant to Health and Safety Code, §108.014(b).

§421.8. Hospital Discharge Data Creation.

(a) Department records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §108.010 and §108.013. Copies of such records may be obtained upon request and upon payment of user fees established by the department. The public use data file shall be available for public inspection during normal business hours. Discharge claims in the original format as submitted to the department are not available to the public, are not stored at the department's office and are exempt from disclosure pursuant to Health and Safety Code, §108.010 and §108.013, and shall not be released. Likewise, patient and physician identifying data collected by the department through editing of hospital data shall not be released.

(b) Creation of codes and identifiers. The department shall develop the following codes and identifiers, as listed in paragraphs (1) - (2) of this subsection, required for creation of the public use data file and for other purposes.

(1) The executive director shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) The executive director shall create a process for assigning geographic identifiers to each discharge record.

(c) Creation of public use data file. The department will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1) - (11) of this subsection:

(1) delete patient, and insured name, Social Security Number, address and certificate data elements and any patient identifying information, if submitted; delete patient control and medical record numbers.

(2) convert patient birth date to age;

(3) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(4) convert procedure and occurrence dates to day of stay values;

(5) delete physician and other health professional names and numbers and assign an alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "attending" or "operating or other" on discharged patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by §108.011(i) of the Health and Safety Code shall be five, unless the department determines that a higher cell size is required to protect the confidentiality of an individual patient or physician;

(8) convert all procedure codes to ICD codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add risk and severity adjustment scores utilizing an algorithm approved by the department;

(10) suppress admission source data at patient level when the admission type code represents "Newborn;"

(11) data elements to be included in the public use data file:

(A) Discharge Year and Quarter;

(B) Provider Name (Facility Name);

(C) THCIC Identification Number;

(D) Facility Type Indicators;

(E) Patient Sex/Gender;

(F) Type of Admission;

(G) Source of Admission;

(H) Patient ZIP Code;

(I) County Code;

(J) Public Health Region Code;

(K) Patient State;

(L) Patient Status;

(M) Patient Race;

(N) Patient Ethnicity;

(O) Claim Type Indicator Code;

(P) Type of Bill;

(Q) Encounter Indicator: This indicates whether more than one claim was used to create the encounter;

(R) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted);

(S) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. Current version of ICD codes at the time data is submitted);

(T) Principal Procedure code (if applicable) (Current version of ICD codes at the time data is submitted);

(U) Other Procedure codes (Up to 24 procedure codes can be submitted and report Current version of ICD codes at the time data is submitted);

(V) Admitting Diagnosis (Current version of ICD codes at the time data is submitted);

(W) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted) up to 9 E-codes can be submitted and reported;

(X) Day of Week Patient is admitted code (Sun. = 1, Mon. = 2, Tues. = 3, Wed. = 4, Thur. = 5, Fri. = 6, Sat. = 7);

(Y) Length of Stay;

(Z) Age of patient;

(AA) Day number of Principal Procedure (Calculated: Principal Procedure Date minus Admission/Start of Care Date);

(BB) Day number of Procedure (1) (Calculated: Procedure Date (1) minus Admission/Start of Care Date);

(CC) Day number of Procedure (2) (Calculated: Procedure Date (2) minus Admission/Start of Care Date);

(DD) Day number of Procedure (3) (Calculated: Procedure Date (3) minus Admission/Start of Care Date);

(EE) Day number of Procedure (4) (Calculated: Procedure Date (4) minus Admission/Start of Care Date);

(FF) Day number of Procedure (5) (Calculated: Procedure Date (5) minus Admission/Start of Care Date);

(GG) Major Diagnostic Category (MDC);

(HH) HCFA-DRG Code (Obtained from the 3M HCFA-DRG Grouper);

(II) APR-DRG Code (Obtained from 3M APR-DRG Grouper);

(JJ) Risk of Mortality Score (Obtained from 3M APR-DRG Grouper);

(KK) Severity of Illness Score (Obtained from 3M APR-DRG Grouper);

(LL) Uniform Physician Identifier assigned to Attending Physician;

(MM) Uniform Physician Identifier assigned to Operating or Other Physician;

(NN) Service unit indicator from which the patient received services;

(OO) Accommodations Private Room Charges;

(PP) Accommodations Semi-Private Charges;

(QQ) Accommodations Ward Charges;

(RR) Accommodations Intensive Care Charges;

(SS) Accommodations Coronary Care Charges;

(TT) Ancillary Service - Other Charges;

(UU) Ancillary Service - Pharmacy Charges;

(VV) Ancillary Service - Medical/Surgical Supply Charges;

(WW) Ancillary Service - Durable Medical Equipment Charges;

(XX) Ancillary Service - Used Durable Medical Equipment Charges;

(YY) Ancillary Service - Physical Therapy Charges;

(ZZ) Ancillary Service - Occupational Therapy Charges;

(AAA) Ancillary Service - Speech Pathology Charges;

(BBB) Ancillary Service - Inhalation Therapy Charges;

(CCC) Ancillary Service - Blood Charges;

- Charges;
- (DDD) Ancillary Service - Blood Administration
 - (EEE) Ancillary Service - Operating Room Charges;
 - (FFF) Ancillary Service - Lithotripsy Charges;
 - (GGG) Ancillary Service - Cardiology Charges;
 - (HHH) Ancillary Service - Anesthesia Charges;
 - (III) Ancillary Service - Laboratory Charges;
 - (JJJ) Ancillary Service - Radiology Charges;
 - (KKK) Ancillary Service - MRI Charges;
 - (LLL) Ancillary Service - Outpatient Services Charges;
- Charges;
- (MMM) Ancillary Service - Emergency Service
 - (NNN) Ancillary Service - Ambulance Charges;
 - (OOO) Ancillary Service - Professional Fees Charges;
 - (PPP) Ancillary Service - Organ Acquisition Charges;
 - (QQQ) Ancillary Service - ESRD Revenue Setting
- Charges;
- (RRR) Ancillary Service - Clinic Visit Charges;
 - (SSS) Total Charges - Accommodations;
 - (TTT) Total Charges - Ancillary;
 - (UUU) Total Non-Covered Accommodation Charges;
 - (VVV) Total Non-Covered Ancillary Charges;
 - (WWW) Total Charges;
 - (XXX) Total Non-Covered Charges;
 - (YYY) Encounter Identifier - a unique number for each encounter for the quarter;
 - (ZZZ) Service Line Revenue Code;
 - (AAAA) Service Line Procedure Code;
 - (BBBB) HCPCS/HIPPS Procedure Code;
 - (CCCC) HCPCS/HIPPS Procedure Modifiers (Up to 4 may be submitted and reported);
 - (DDDD) Service Line Charge Amount;
 - (EEEE) Service Line Unit Code;
 - (FFFF) Service Line Unit Count;
 - (GGGG) Service Line Non-Covered Charge Amount;
 - (HHHH) Patient Country (when address is not in the United States of America and confidentiality can be maintained);
 - (IIII) POA indicator (if applicable).

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25 TAC §421.5, §421.10

The repealed sections are adopted under Health and Safety Code, §§108.006, 108.009 - 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect, establish fees for the recoupment and support of the program, and disseminate data as authorized by the chapter regarding hospital inpatient stays, hospital and ambulatory surgical center outpatient visits including hospital emergency department visit data in public use data files and the DSHS Institutional Review Board approved research data files; and Government Code, §531.0055, and 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 Health and Safety Code, Chapter 1001.

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SUBCHAPTER C. RULES RELATING TO REPORTS, DATA REQUESTS AND DATA FEES

25 TAC §§421.45 - 421.47

The new sections are adopted under Health and Safety Code, §§108.006, 108.009 - 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect, establish fees for the recoupment and support of the program, and disseminate data as authorized by the chapter regarding hospital inpatient stays, hospital and ambulatory surgical center outpatient visits including hospital emergency department visit data in public use data files and the DSHS Institutional Review Board approved research data files; and Government Code, §531.0055, and 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 Health and Safety Code, Chapter 1001.

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SUBCHAPTER D. COLLECTION AND RELEASE OF OUTPATIENT SURGICAL AND RADIOLOGICAL PROCEDURES AT HOSPITALS AND AMBULATORY SURGICAL CENTERS

25 TAC §§421.61, 421.64, 421.66 - 421.69

The amendments and new section are adopted under Health and Safety Code, §§108.006, 108.009 - 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect, establish fees for the recoupment and support of the program, and disseminate data as authorized by the chapter regarding hospital inpatient stays, hospital and ambulatory surgical center outpatient visits including hospital emergency department visit data in public use data files and the DSHS Institutional Review Board approved research data files; and Government Code, §531.0055, and 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 Health and Safety Code, Chapter 1001.

§421.66. Certification of Compiled Event Data.

(a) Within 5 months after the end of each reporting quarter, DSHS shall establish a process to compile one or more electronic data files for each facility using the event claims received from each facility. The certification file shall have one record for each patient event during the reporting quarter and one record for any patient event occurring during one prior reporting quarter for which additional event claims have been received. The data files, including reports returned to the facilities, allow the facility to provide physicians and other health professionals the opportunity to review, request correction of, and comment on patients for whom an event occurred under the jurisdiction of the facilities and they are indicated as "attending" or "operating or other." DSHS shall determine the format and medium in which the quarterly file will be delivered to facilities.

(b) The chief executive officer or chief executive officer's designated agent of each facility shall mark the appropriate box on the form provided indicating whether the facility is certifying or not certifying the event data and reports in the certification file specified in subsection (a) of this section. The chief executive officer or chief executive

officer's designated agent shall sign and return the form to DSHS by fax or mail. A person designated by the chief executive officer and acting as the officer's agent may sign the certification form. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide DSHS with detailed comments regarding the errors or submit a written request (on a form supplied by DSHS) and provide the data, processes and resources necessary to correct any inaccuracy and certify the certification file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification event data shall be submitted on or prior to the following schedule: Quarter 1- October 1; Quarter 2- January 1; Quarter 3- April 1; and Quarter 4- July 1. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach the justification to the certification form. Election to not certify data does not prevent certification file data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that:

(1) policies and procedures are in place within the facility's processes to validate and assure the accuracy of the event data and any corrections submitted; and

(2) all errors and omissions known to the facility have been corrected or the facility has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted accurately represents the facility's administrative status of patients for which the services covered by the revenue codes or surgical and radiological categories identified in §421.67(f) or §421.67(g) of this title (relating to Event File--Records, Data Fields and Codes) were provided for the reporting quarter; and

(4) the facility has provided physicians and other health professionals a reasonable opportunity to review and comment on the event data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §421.67 of this title (for example, "attending physician" or "operating or other physician" as applicable). The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent who shall address any comments by the physicians or other health professionals; or

(5) if the chief executive officer or the officer's designee elects not to certify the event data file for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and completeness of the data at the time of the certification shall be included on the certification form. Event claim data that has been audited, returned to the facility and is not certified, may be released and published in the public use data file and used by DSHS for analysis.

(d) Each facility shall submit its certification form for each quarter's data to DSHS by the fifteenth day of the seventh month (Quarter 1- October 15; Quarter 2- January 15; Quarter 3- April 15; and Quarter 4- July 15) following the last day of the reporting quarter as specified in §421.63(a)(1) - (4) of this title (relating to Schedule for Filing Event Files). DSHS may extend the deadline for any or all facilities when deemed necessary.

(e) Facilities, physicians or other health professionals may submit concise written comments regarding any data submitted by the associated facilities or relating to services they have delivered which

may be released as public use data. Comments shall be submitted to DSHS on or before the dates specified in subsection (d) of this section, regarding the submission of the certification form. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §421.64(a) and (b) of this title (relating to Instructions for Filing Event Files).

(f) Failure to submit a signed certification form that is supplied by DSHS on or before the dates specified in subsection (d) of this section corresponding to event data previously submitted shall be considered as not certified.

§421.68. *Event Data Release.*

(a) DSHS records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §§108.010, 108.011 and 108.013 or other state or federal law. Copies of such records may be obtained upon request and upon payment of user fees established by DSHS. The public use data file shall be available for public inspection during normal business hours. Event claims in any format as submitted to DSHS are not available to the public and are exempt from disclosure pursuant to Health and Safety Code, §§108.010, 108.011 and 108.013, and shall not be released. Likewise, patient and physician identifying data collected by the DSHS through editing of facility data shall not be released.

(b) Creation of codes and identifiers. DSHS shall develop the following codes and identifiers, as listed in paragraphs (1) - (2) of this subsection, required for creation of the public use data file and for other purposes.

(1) DSHS shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) DSHS shall create a process for assigning geographic identifiers to each event record.

(c) The data elements specified for outpatient event reports in this section do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(d) Creation of public use data file. DSHS will create a public use data file by creating a single record for each reportable outpatient event and adding, modifying or deleting data elements in the following manner as listed in this subsection:

(1) delete patient and insured name, Social Security number, address and certificate data elements, any patient identifying information, and patient control and medical record numbers;

(2) convert patient birth date to age;

(3) convert procedure dates to a code for the day of the week;

(4) convert occurrence dates to day values;

(5) delete physician and other health professional names and numbers and assign a alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "rendering," "operating or other" or "other provider" on patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by Health and Safety Code, §108.011(i), shall be five, unless DSHS determines that a higher cell size is required to protect the confidentiality of an individual patient or physician;

(8) convert all procedure codes to HCPCS codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add nationally accepted risk and severity adjustment scores utilizing an algorithm approved by DSHS, when available and applicable;

(10) data elements to be included in the public use data file:

(A) Event Year and Quarter;

(B) Provider Name (Facility Name);

(C) THCIC Identification Number;

(D) Facility Type Indicators;

(E) Patient Sex/Gender;

(F) Patient ZIP Code;

(G) County Code;

(H) Health Service Region Code;

(I) Patient State;

(J) Patient Race;

(K) Patient Ethnicity;

(L) Claim Type Indicator;

(M) Type of Bill;

(N) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted);

(O) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. Current version of ICD codes at the time data is submitted);

(P) Procedure codes (Up to 24 procedure codes can be submitted and reported. Current version of HCPCS codes at the time data is submitted);

(Q) Reason For Visit (Current version of ICD or HCPCS codes at the time data is submitted);

(R) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted. Up to nine (9) E-codes can be submitted and reported);

(S) Related Cause Code, (if applicable) (Up to three (3) codes can be submitted and reported);

(T) Day of Week Patient is provided services code (Sunday = 1, Monday = 2, Tuesday = 3, Wednesday = 4, Thursday = 5, Friday = 6, Saturday = 7);

(U) Age group of patient;

(V) CRG Code (and associated codes if applicable);

(W) APG Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(X) APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Y) APG Type Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Z) Final APG Assignment Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(AA) Final APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(BB) APC Procedure Code (if applicable) (Up to 10);

(CC) APC Procedure Status Indicator Code (if applicable) (Up to 10);

(DD) APC Diagnosis Edits (if applicable) (Up to 10);

(EE) APC Procedure Code Edits (if applicable) (Up to 10);

(FF) APC Weight (if applicable) (Up to 10);

(GG) APC Base Procedure (if applicable) (Up to 10);

(HH) Clinical Classification Software Category Codes and associated codes, if applicable;

(II) Uniform Physician Identifier assigned to Rendering Physician or Rendering Other Health Professional;

(JJ) Uniform Physician Identifier assigned to Operating Physician or Other Physician or Other Health Professional;

(KK) Uniform Physician Identifier assigned to Other Provider or Other Health Professional;

(LL) Ancillary Service--Other Charges;

(MM) Ancillary Service--Pharmacy Charges;

(NN) Ancillary Service--Medical/Surgical Supply Charges;

(OO) Ancillary Service--Durable Medical Equipment Charges;

(PP) Ancillary Service--Used Durable Medical Equipment Charges;

(QQ) Ancillary Service--Physical Therapy Charges;

(RR) Ancillary Service--Occupational Therapy Charges;

(SS) Ancillary Service--Speech Pathology Charges;

(TT) Ancillary Service--Inhalation Therapy Charges;

(UU) Ancillary Service--Blood Charges;

(VV) Ancillary Service--Blood Administration Charges;

(WW) Ancillary Service--Operating Room Charges;

(XX) Ancillary Service--Lithotripsy Charges;

(YY) Ancillary Service--Cardiology Charges;

(ZZ) Ancillary Service--Anesthesia Charges;

(AAA) Ancillary Service--Laboratory Charges;

(BBB) Ancillary Service--Radiology Charges;

(CCC) Ancillary Service--MRI Charges;

(DDD) Ancillary Service--Outpatient Services Charges;

(EEE) Ancillary Service--Emergency Service Charges;

(FFF) Ancillary Service--Ambulance Charges;

(GGG) Ancillary Service--Professional Fees Charges;

(HHH) Ancillary Service--Organ Acquisition Charges;

(III) Ancillary Service--ESRD Revenue Setting Charges;

(JJJ) Ancillary Service--Clinic Visit Charges;

(KKK) Total Charges--Ancillary;

(LLL) Total Non-Covered Ancillary Charges;

(MMM) Total Charges;

(NNN) Total Non-Covered Charges;

(OOO) Encounter Identifier--a unique number for each encounter for the quarter;

(PPP) Service Line Revenue Code;

(QQQ) Service Line Procedure Code;

(RRR) HCPCS/HIPPS Procedure Code;

(SSS) HCPCS/HIPPS Procedure Modifiers (Up to 4 may be submitted and reported);

(TTT) Service Line Charge Amount;

(UUU) Service Line Unit Code;

(VVV) Service Line Unit Count;

(WWW) Service Line Non-Covered Charge Amount;

(XXX) Patient Country (when the address is not in the United States of America and confidentiality can be maintained);

(YYY) Point of Origin (Source of Admission) (Hospital Emergency Department Visits only); and

(ZZZ) Patient Status (Hospital Emergency Department Visits only).

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SUBCHAPTER E. COLLECTION AND RELEASE OF HOSPITAL OUTPATIENT EMERGENCY ROOM DATA

25 TAC §§421.71, 421.78, 421.79

The amendments and new section are adopted under Health and Safety Code, §§108.006, 108.009 - 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect, establish fees for the recoupment and support of the program, and disseminate data as authorized by the chapter regarding hospital inpatient stays, hospital and am-

bulatory surgical center outpatient visits including hospital emergency department visit data in public use data files and the DSHS Institutional Review Board approved research data files; and Government Code, §531.0055, and 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 Health and Safety Code, Chapter 1001.

§421.78. *Outpatient Emergency Visit Event Data Release.*

(a) DSHS records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §§108.010, 108.011 and 108.013 or other state or federal law. Copies of such records may be obtained upon request and upon payment of user fees established by DSHS. Event claims in any format as submitted to DSHS are not available to the public and are exempt from disclosure pursuant to Health and Safety Code, §§108.010, 108.011 and 108.013, and shall not be released. Likewise, patient and physician identifying data collected by the DSHS through editing of facility data shall not be released.

(b) Creation of codes and identifiers. DSHS shall develop the following codes and identifiers, as listed in paragraphs (1) - (2) of this subsection, required for creation of the public use data file and for other purposes.

(1) DSHS shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) DSHS shall create a process for assigning geographic identifiers to each event record.

(c) The data elements specified for outpatient emergency visit event reports in this section do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(d) Creation of public use data file. DSHS will create a public use data file by creating a single record for each reportable outpatient emergency visit event and adding, modifying or deleting data elements in the following manner as listed in this subsection:

(1) delete patient and insured name, Social Security number, address and certificate data elements, any patient identifying information, and patient control and medical record numbers;

(2) convert patient birth date to age;

(3) convert procedure dates to a code for the day of the week;

(4) convert occurrence dates to day values;

(5) delete physician and other health professional names and numbers and assign an alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "Attending", or "operating or other" on patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by Health and Safety Code, §108.011(i), shall be five, unless DSHS determines that a higher cell size is required to protect the confidentiality of an individual patient or physician;

(8) convert all procedure codes to HCPCS codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add nationally accepted risk and severity adjustment scores utilizing an algorithm approved by DSHS, when available and applicable;

(10) data elements to be included in the public use data file:

(A) Event Year and Quarter;

(B) Provider Name (Facility Name);

(C) THCIC Identification Number;

(D) Facility Type Indicators;

(E) Patient Sex/Gender;

(F) Patient ZIP Code;

(G) County Code;

(H) Health Service Region Code;

(I) Patient State;

(J) Patient Race;

(K) Patient Ethnicity;

(L) Claim Type Indicator;

(M) Type of Bill;

(N) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted);

(O) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. Current version of ICD codes at the time data is submitted);

(P) Procedure codes (Up to 24 procedure codes can be submitted and reported. Current version of HCPCS codes at the time data is submitted);

(Q) Reason for Visit (Current version of ICD or HCPCS codes at the time data is submitted);

(R) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted. Up to nine (9) E-codes can be submitted and reported);

(S) Related Cause Code, (if applicable) (Up to three (3) codes can be submitted and reported);

(T) Day of Week Patient is provided services code (Sunday = 1, Monday = 2, Tuesday = 3, Wednesday = 4, Thursday = 5, Friday = 6, Saturday = 7);

(U) Age group of patient;

(V) CRG Code (and associated codes if applicable);

(W) APG Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(X) APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Y) APG Type Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Z) Final APG Assignment Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(AA) Final APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(BB) APC Procedure Code (if applicable) (Up to 10);
(CC) APC Procedure Status Indicator Code (if applicable) (Up to 10);
(DD) APC Diagnosis Edits (if applicable) (Up to 10);
(EE) APC Procedure Code Edits (if applicable) (Up to 10);
(FF) APC Weight (if applicable) (Up to 10);
(GG) APC Base Procedure (if applicable) (Up to 10);
(HH) Clinical Classification Software Category Codes and associated codes, if applicable;
(II) Uniform Physician Identifier assigned to Rendering Physician or Rendering Other Health Professional;
(JJ) Uniform Physician Identifier assigned to Operating Physician or Other Physician or Other Health Professional;
(KK) Uniform Physician Identifier assigned to Other Provider or Other Health Professional;
(LL) Ancillary Service--Other Charges;
(MM) Ancillary Service--Pharmacy Charges;
(NN) Ancillary Service--Medical/Surgical Supply Charges;
(OO) Ancillary Service--Durable Medical Equipment Charges;
(PP) Ancillary Service--Used Durable Medical Equipment Charges;
(QQ) Ancillary Service--Physical Therapy Charges;
(RR) Ancillary Service--Occupational Therapy Charges;
(SS) Ancillary Service--Speech Pathology Charges;
(TT) Ancillary Service--Inhalation Therapy Charges;
(UU) Ancillary Service--Blood Charges;
(VV) Ancillary Service--Blood Administration Charges;
(WW) Ancillary Service--Operating Room Charges;
(XX) Ancillary Service--Lithotripsy Charges;
(YY) Ancillary Service--Cardiology Charges;
(ZZ) Ancillary Service--Anesthesia Charges;
(AAA) Ancillary Service--Laboratory Charges;
(BBB) Ancillary Service--Radiology Charges;
(CCC) Ancillary Service--MRI Charges;
(DDD) Ancillary Service--Outpatient Services Charges;
(EEE) Ancillary Service--Emergency Service Charges;
(FFF) Ancillary Service--Ambulance Charges;
(GGG) Ancillary Service--Professional Fees Charges;
(HHH) Ancillary Service--Organ Acquisition Charges;
(III) Ancillary Service--ESRD Revenue Setting Charges;

(JJJ) Ancillary Service--Clinic Visit Charges;
(KKK) Total Charges--Ancillary;
(LLL) Total Non-Covered Ancillary Charges;
(MMM) Total Charges;
(NNN) Total Non-Covered Charges;
(OOO) Encounter Identifier--a unique number for each encounter for the quarter;
(PPP) Service Line Revenue Code;
(QQQ) Service Line Procedure Code;
(RRR) HCPCS Procedure Code;
(SSS) HCPCS Procedure Modifiers (Up to 4 may be submitted and reported);
(TTT) Service Line Charge Amount;
(UUU) Service Line Unit Code;
(VVV) Service Line Unit Count;
(WWW) Service Line Non-Covered Charge Amount;
and
(XXX) Patient Country (when the address is not in the United States of America and confidentiality can be maintained).

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SUBCHAPTER F. HEALTH CARE FACILITY EXEMPTIONS

25 TAC §421.81

The new section is adopted under Health and Safety Code, §§108.006, 108.009 - 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect, establish fees for the recoupment and support of the program, and disseminate data as authorized by the chapter regarding hospital inpatient stays, hospital and ambulatory surgical center outpatient visits including hospital emergency department visit data in public use data files and the DSHS Institutional Review Board approved research data files; and Government Code, §531.0055, and 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 Health and Safety Code, Chapter 1001.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES SUBCHAPTER Z. DATA COLLECTING AND REPORTING RELATING TO MANDATED HEALTH BENEFITS AND MANDATED OFFERS OF COVERAGE

28 TAC §§21.3401 - 21.3409

The Texas Department of Insurance adopts amendments to 28 TAC §§21.3401 - 21.3409, relating to the collecting and reporting of data relating to certain mandated health benefits and mandated offers of coverage, with changes to the proposed text published in the March 31, 2017, issue of the *Texas Register* (42 TexReg 1722). TDI adopts the amendments to §§21.3401, 21.3403, 21.3405, and 21.3407 - 21.3409 without changes to the proposed text. TDI adopts §§21.3402, 21.3404, and 21.3406 with nonsubstantive changes to the text as proposed.

TDI has revised the text as proposed to correct nonsubstantive typographical errors. In §21.3402(4), the word "be" in the phrase "Mandates for Which Data Must be Reported" has been capitalized, and the semicolon and the words "Mandated Benefits" have been deleted for consistency with TDI style for citation to Administrative Code sections. In §21.3402(5), the word "be" in the phrase "Mandates for Which Data Must be Reported" has been capitalized, and the semicolon and the words "Mandated Offers" have been deleted for consistency with TDI style for citation to Administrative Code sections. In §21.3404(b), the word "reports" is changed to "report."

REASONED JUSTIFICATION. The amendments are necessary because the list of mandated benefits and offers, and the types of information for which the rule requires data submission, has not been updated since TDI first adopted the rule in 2002. In addition, over time, it has become clear that the data collection process under the original rules has not yielded consistent and accurate information. The amendments require data on mandates that the agency believes are now useful; and the revised collection process will improve the accuracy and standardization of the data collected. The amendments are necessary to determine the impact of mandated benefits and mandated offers of coverage for which data collection and reporting is now required.

The amendments also revise the reporting period to match the calendar year.

Section 21.3401 states the purpose of the rule and identifies the entities to which the rule applies. The amendments are necessary because of changes in the healthcare market and in the state's health insurance laws since the rule was initially adopted. The amendments require reporting entities to report information separately for small group and large group coverages that meet the threshold of \$10 million in reported direct premiums earned. Entities should report data on individual plans separately, and the reporting threshold for these plans is \$10 million in reported direct premiums earned.

Section 21.3402 defines certain words and terms used in Subchapter Z. The amendments to §21.3402 are necessary to: clarify that TDI requires information on claims incurred and premiums earned; enable the reporting of additional and more uniform data that will be more useful to TDI and to the legislature; remove items that will no longer be reported; and to revise the reporting period to match the calendar year.

Section 21.3403 directs reporting entities to collect and report the information required by the rule. The amendments to this section conform the text of the section to TDI's current writing style and improve the rule's clarity.

Section 21.3404 establishes the rule's reporting periods and due dates. The amendments to this section allow reporting entities, after a conversion period, to report data one calendar year at a time, and to require the data be reported on June 1 of the following year.

Section 21.3405 lists certain exceptions to reporting requirements, and it requires reporting entities to provide justification for excluding otherwise required information. The amendments to this section conform the text of the section to TDI's current writing style to improve its clarity.

Section 21.3406 identifies the mandated benefits and mandated offers for which data must be reported. As amended, reporting entities must report data separately for small and large group plans. The mandates are listed in separate subsections, based on whether they are mandated benefits or mandated offers. Subsection (b) lists the mandated benefits for which data must be reported. Subsection (c) lists the mandated offers for which data must be reported.

Section 21.3407 requires that a reporting entity submit its report using the Mandated Benefits and Mandated Offers Reporting Form found on TDI's website. It also requires the reporting entity to use medical billing codes to identify applicable claims for each mandated benefit and mandated offer of coverage. As amended, the section requires the report to show, for all plans on which it is reporting, the total direct premiums earned instead of the total premiums written; the total claims incurred instead of the total claims paid; and the total member months. As amended, the section also requires that similar information to be reported for the mandated benefits and mandated offers. For example, the data requirements include the number of individual claims incurred instead of the number of claims paid; and the total number of member months instead of the number of certificates, policies, or lives covered.

Section 21.3408 provides notice of possible penalties for non-compliance with the rule. The section is amended to conform the text of the section to TDI's current writing style to improve its clarity.

Section 21.3409 addresses severability of a section of the rule found invalid by a court of law. Amendments to this section conform the text of the section to TDI's current writing style to improve the rule's clarity.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. TDI adopts the amendments to 28 TAC §§21.3401 - 21.3409 under Insurance Code §38.252 and §36.001.

Insurance Code §38.252 directs the commissioner to require a health benefit plan issuer to collect and report cost and utilization data for mandated benefits and mandated offers designated by the commissioner; to adopt rules specifying which issuers must report data based on dollar amounts of premiums collected in Texas; and to specify the data to be collected, the dates of the reporting period and the report's submission, the detail and form of the report, and any other reasonable requirements necessary to determine the impact of those mandated benefits and mandated offers of coverage.

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

§21.3402. Definitions.

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

- (1) Claims incurred--Paid claims plus amounts held in reserve for claims that have been incurred but have not yet been paid.
- (2) Direct premium--The amount of health premiums earned for comprehensive health coverage as reported on an issuer's submission to the NAIC for the year for which it is reporting data.
- (3) Health benefit plan--A health benefit plan regulated under Insurance Code Title 8 (concerning Health Insurance and Other Health Coverages), Subtitles A (concerning Health Coverage in General), B (concerning Group Health Coverage), C (concerning Managed Care), D (concerning Provider Plans), and G (concerning Health Coverage Availability).
- (4) Mandated benefit--A health benefit listed in §21.3406(b) of this title (relating to Mandates for Which Data Must Be Reported) that must be included in a health benefit plan.
- (5) Mandated offer--An offer of coverage listed in §21.3406(c) of this title (relating to Mandates for Which Data Must Be Reported) that must be offered and made available to the holder or sponsor of an individual or group health benefit plan.
- (6) Medical billing codes--Standard code sets used to bill for specific medical services, including the Healthcare Common Procedure Coding System (HCPCS) and diagnosis-related group (DRG) system established by the Centers for Medicare and Medicaid Services (CMS), the Current Procedural Terminology (CPT) code set maintained by the American Medical Association, and the International Classification of Diseases (ICD) code sets developed by the World Health Organization. TDI's list of suggested mandated benefit codes is shown on its website, www.tdi.texas.gov.
- (7) Member months--The cumulative number of months that all enrollees were covered during the reporting year.
- (8) Reporting entity--A health benefit plan issuer or a third-party administrator that performs claims payment services for a health benefit plan issuer to which this subchapter applies.

(9) Reporting year--A one-year period, beginning each January 1 and ending the following December 31, for which health benefit plan issuers must collect the data required by §21.3407 of this title (relating to Reporting of Required Information).

(10) Third-party administrator--An administrator holding a certificate of authority under Insurance Code Chapter 4151 (concerning Third-Party Administrators).

§21.3404. Deadline for Submission of Reports.

(a) First reporting date. The first reporting date for the rule will be June 1, 2018, for data collected from January 1, 2017, through December 31, 2017. Subsequent annual reporting will follow this schedule.

(b) Submission of annual reports. A reporting entity must submit the report required by this subchapter no later than June 1 following the reporting year.

§21.3406. Mandates for Which Data Must Be Reported.

(a) Data to be reported separately. For all mandated benefits and mandated offers to be reported, a reporting entity must report separately its data for individual, small group, and large group health benefit plans.

(b) Mandated benefits. The following is a list of mandated benefits about which data relating to a health benefit plan must be filed under §21.3403 of this title (relating to Collection of Data Necessary to Provide Report):

- (1) Certain Benefits Related to Acquired Brain Injury, Insurance Code §1352.003 and §1352.0035;
- (2) Serious Mental Illness, Insurance Code §1355.004;
- (3) Autism Spectrum Disorder, Insurance Code §1355.015;
- (4) Low-Dose Mammography, Insurance Code §1356.005;
- (5) Reconstructive Surgery Following Mastectomy, Insurance Code §1357.004;
- (6) Diabetes Equipment, Supplies, and Self-Management Training, Insurance Code §1358.054;
- (7) Formulas for Phenylketonuria (PKU) or Other Heritable Diseases, Insurance Code §1359.003;
- (8) Temporomandibular Joint (TMJ) Diagnosis and Treatment, Insurance Code §1360.004;
- (9) Osteoporosis, Detection and Prevention, Insurance Code §1361.003;
- (10) Certain Tests for Detection of Prostate Cancer, Insurance Code §1362.003;
- (11) Certain Tests for Detection of Colorectal Cancer, Insurance Code §1363.003;
- (12) Childhood Immunizations, Insurance Code §1367.053;
- (13) Hearing Screening for Children, Insurance Code §1367.103;
- (14) Chemical Dependency Coverage, Insurance Code §§1368.004, 1368.005, and 1368.007;
- (15) Prescription Contraceptive Drugs and Devices and Related Services, Insurance Code §1369.104;
- (16) Certain Tests for Detection of Human Papillomavirus and Cervical Cancer, Insurance Code §1370.003;

(17) Certain Tests for Detection of Ovarian Cancer, Insurance Code §1370.003;

(18) Certain Tests for Early Detection of Cardiovascular Disease, Insurance Code §1376.003; and

(19) Certain Amino Acid-Based Elemental Formulas, Insurance Code §1377.051.

(c) Mandated offers. The following is a list of mandated offers about which data relating to a health benefit plan must be filed under §21.3403 of this title:

(1) Loss or Impairment of Speech or Hearing, Insurance Code §1365.003;

(2) In Vitro Fertilization Procedures, Insurance Code §1366.003; and

(3) Developmental Delays, Insurance Code §1367.204.

(d) Suggested procedure and diagnosis codes. TDI will provide on its website, www.tdi.texas.gov, suggested procedure and diagnosis codes that may be used in capturing the required data for the report. Regardless of whether a reporting entity uses the suggested codes or some other method of capturing the required information, each reporting entity must maintain information and documentation supporting the accuracy and completeness of its data and the report, including, but not limited to, a list of all procedural and diagnosis codes used in collecting data for the report for five years following the submission of the report on which the information was based. On receiving a request from TDI, a reporting entity must make available the supporting information described in this subsection.

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 June 16, 2017.

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Norma Garcia

General Counsel

Texas Department of Insurance

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Proposal publication date: March 31, 2017

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017 adopted amendments to §§53.2, 53.14, 53.60, and 53.91, concerning Finance, without changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10066). The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §53.2, concerning License Issuance Procedures, Fees, and Exemption Rules, corrects statutory and regulatory cross-references in subsection (a)(3)(B)(iii) and (iv). Current §53.2(a)(3) provides that a person who has acquired a hunting license electronically may hunt prior to obtaining the physical license so long as the person has a valid confirmation number. However, the current provisions in subparagraph (B)(iii) and (iv), regarding hunting on certain public lands and or department-leased land, contain inaccurate references to provisions authorizing those public hunting activities. The amendment corrects the inaccuracy.

The amendment to §53.14, concerning Deer Management and Removal Permits deletes the reference to the "antlerless and spike buck control permit application processing fee." The regulations providing for the issuance of antlerless and spike buck control permits were repealed by action of the Parks and Wildlife Commission in March 2016, and published in the August 12, 2016 issue of the *Texas Register* (41 TexReg 6052). The elimination of the antlerless and spike buck control permit obviates the need for the associated permit application fee.

The amendment to §53.60, concerning Stamps, modifies the references to stamp form, design, and issuance to reflect current practice, and eliminates provisions regarding nongame and endangered species stamps and collector's edition stamps. The department no longer issues collector's edition stamps. Currently, a "stamp" is issued as an endorsement on the appropriate license issued through the department's electronic license sales system. The amendment is necessary to reflect current practice.

The amendment to §53.91, concerning Documented Vessels, clarifies various provisions. The amendment adds the term "certificate of number" in subsection (a) and "participating Tax Assessor-Collector office" in subsections (a) - (c) to more accurately describe the locations where vessels may be registered. The amendment also eliminates the reference to the tax for vessels greater than 65 feet in length in subsection (c)(3), since the tax on these vessels is not collected by the department. In addition, a reference to Parks and Wildlife Code, §31.026, is added to subsection (c)(4) to more completely describe the authority for collection of the appropriate registration fee.

The department received no comments opposing adoption of the proposed amendments.

The department received six comments supporting adoption of the proposed amendments.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2, §53.14

The amendments are adopted under the authority of Parks and Wildlife Code, §42.006 which authorizes the commission to prescribe by rule requirements relating to the possessing a license issued under Parks and Wildlife Code, Chapter 42; §42.010, which allows the department to issue tags for deer during each year or season; §61.054, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic

animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §61.057, which authorizes the commission to determine when conditions warrant the issuance of antlerless permits.

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 June 12, 2017.

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For further information, please call: (512) 389-4775



SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is adopted under the authority of Parks and Wildlife Code, §11.055 and §11.056, which authorize, but do not require, the department to issue art decal or stamps; §12.701, which allows the department to authorize the issuance of a license, stamp, permit, or tag by a license deputy; Parks and Wildlife Code, §12.702, which authorizes the commission to set collection and issuance fees by rule for a license, stamp, tag, permit, or other similar item issued under any chapter of the code; §42.010 which requires the department to prescribe the form of and issue the license and tags authorized by Chapter 42.

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. DISPLAY OF BOAT REGISTRATION

31 TAC §53.91

The amendment is adopted under the authority of Parks and Wildlife Code, §§31.024, 31.025, and 31.0341, which provide for the submission of an application to and issuance by the county tax assessor-collector of certificates of number and certificate of title for vessels; Parks and Wildlife Code, §31.026 concerning the establishment of fees by the commission for an original or renewal certificate of number for a vessel; Parks and Wildlife Code,

§31.003(1) and Tax Code, Chapter 160 which does not include vessels greater than 65 feet in length from the provisions regarding the collection of taxes in Parks and Wildlife Code, Chapter 31, and Tax Code, Chapter 160.

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 57. FISHERIES

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017 adopted amendments to §§57.117, 57.120, 57.252, 57.392, 57.395, 57.399, and 57.951, concerning Fisheries, without changes to the proposed text as published in the February 17, 2017, issue of the *Texas Register* (42 TexReg 650).

The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §57.117, concerning Exotic Species Permit: Application Requirements, alters subsection (a)(5) to waive the permit fee for persons removing prohibited nuisance aquatic vegetation in accordance with an approved treatment proposal. Because such activity is consistent with department goals, department-approved, and is not undertaken at department expense, the department believes that a fee waiver is appropriate. The amendment to §57.120, concerning Exotic Species Permit: Expiration and Renewal, alters subsection (a) to clarify that permits allowing removal of prohibited plants from a public water body in accordance with an approved treatment proposal may share the same period of validity with the treatment proposal. The amendment will increase efficiency and prevent confusion regarding the removal of exotic plants pursuant to approved treatment proposals.

The amendment to §57.252, concerning General Provisions, alters subsection (d) to provide that a period of permit validity other than 60 days may be specified in the terms and conditions of the permit, which is intended to enhance efficiency and compliance in instances in which repeated introductions are scheduled over a period of time longer than 60 days or when a project is delayed.

The amendment to §57.392, concerning General Rules, alters subsection (a) to eliminate the reference to a saltwater stamp. A valid recreational fishing license now includes a freshwater stamp, saltwater stamp, or both. The language being removed is an artifact and predates the implementation of the freshwater stamp.

The amendment to §57.395, concerning Broodfish Permits; Fees, Terms of Issuance, alters subsection (d) to eliminate the reference to the \$25 fee for a broodfish permit. The fees for such permits are established in §53.15(h)(3).

The amendment to §57.399, concerning Permit Denial Review, alters paragraph (3)(C) to afford additional latitude in the composition of panels that review agency decisions to deny issuance or renewal of permits. The current rules require the Deputy Executive Director for Natural Resources, the Director of the Coastal Fisheries Division, and the Deputy Director of the Coastal Fisheries Division to function as the review panel. In practice this is problematic, because such personnel are typically not in the same place at the same time very often, making the scheduling of review panels difficult. Therefore, the amendment requires a review panel to consist of three agency employees at the level of program director or above who have knowledge of the affected resources, to be appointed by the Executive Director or the Chief Operating Officer.

The amendment to §57.951, concerning Definitions, alters the definitions of "Agent" in paragraph (1) and "Applicant" in paragraph (2) to clarify that an "Applicant" includes the applicant's agent.

The department received no comments opposing adoption of the amendments as proposed.

The department received one comment supporting adoption of the amendments as proposed.

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.117, §57.120

The amendments are adopted under the authority of Parks and Wildlife Code, §66.0072, which authorizes the commission to regulate by rule or permit the importation, possession, sale, and placement into the public water of this state exotic harmful or potentially harmful aquatic plants.

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 June 19, 2017.

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Robert D. Sweeney, Jr.

Acting General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.252

The amendment is adopted under the authority of Parks and Wildlife Code, §66.015, which requires the department to establish rules and regulations governing the issuance of permits under that section.

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

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Robert D. Sweeney, Jr.

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For further information, please call: (512) 389-4775



SUBCHAPTER F. COLLECTION OF BROODFISH FROM TEXAS WATERS

31 TAC §§57.392, 57.395, 57.399

The amendments are adopted under the authority of Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for issuance of a permit authorized under Parks and Wildlife Code, Chapter 43, Subchapter P.

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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Robert D. Sweeney, Jr.

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For further information, please call: (512) 389-4775



SUBCHAPTER M. ARTIFICIAL REEFS

31 TAC §57.951

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 89, which authorizes the commission to adopt rules and guidelines as necessary to implement the chapter.

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) 389-4775



SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017 adopted amendments to §§57.971, 57.973, 57.981, and 57.992, concerning the Statewide Recreational and Commercial Fishing Proclamations. Section 57.973, concerning Devices, Means, and Methods, is adopted with changes to the proposed text as published in the February 17, 2017, issue of the *Texas Register* (42 TexReg 652). Sections 57.971, 57.981, and 57.992 are adopted without change and will not be republished.

The change to §57.973 affects the gear restrictions proposed for Kirby Lake in Taylor County. The department has determined that additional outreach and communications efforts are required; therefore, the proposed gear restrictions were not adopted.

The amendment to §57.971, concerning Definitions, adds the Alabama bass to the list of game fishes and makes a grammatical correction. In Texas, Alabama bass are known to exist only in Alan Henry Reservoir, and heretofore have been considered a subspecies of spotted bass. However, this fish is now considered a separate species called the Alabama bass. The amendment also makes a nonsubstantive grammatical correction in paragraph (5).

The amendment to §57.973, concerning Devices, Means, and Methods, prohibits the use of commercial crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County. The public waters north of Highway 146 represent a very large geographical expanse and commercial crabbing in the area is not intense (because of a Department of State Health Services consumption advisory).

The amendment to §57.981, concerning Bag, Possession, and Length Limit, consists of several actions.

Department data indicate decreased angling success for smallmouth bass in the Devils River, which skirts the western edge of the Edwards Plateau. The average number of smallmouth bass caught per angler day in 2015 (6.8 fish) was 37% less than in previous years (10.8 fish). Outfitters, Devils River State Natural Area staff, and anglers have reported an increase in the harvest of black bass for consumption during float trips (i.e., shore meals). The current level of fishing pressure may be having a negative effect on the Devils River black bass populations, resulting in decreased in fishing quality. Therefore, the amendment to §57.981 restricts the harvest of black bass to catch-and-release only on the Devils River and its tributaries from the State Highway 163 bridge downstream to Big Satan Creek Canyon. The current harvest regulations impose an 18-inch minimum length limit and three-fish daily bag limit on smallmouth bass between the State Highway 163 bridge and Dolan Falls, with the remainder of the river under the statewide standard of a 14-inch minimum length limit and five-fish daily bag limit. The goal of the amendment is to maintain black bass abundance and angling success by protecting against overharvest. Catch-and-release angling is biologically consistent with the preservation-focused management model implemented on the Devils River.

The amendment also alters harvest regulations for largemouth bass and sunfish on Bedford Boys Ranch Lake in Tarrant County.

Bedford Boys Ranch Lake is a 5.4-acre impoundment located totally within a public park which qualifies it as a Community Fishing Lake (CFL). The reservoir was recently drained and renovated, and habitat was installed to benefit fish population. Department staff are working with the City of Bedford to provide quality fishing opportunities in the local area. Overharvest of fish such as bass and sunfish is a common problem in small urban ponds. Protecting these species from harvest will increase abundance and maintain catch rates for those species. Therefore, the amendment replaces the current harvest regulations for largemouth bass (14-inch minimum length limit and five-fish daily bag) and sunfish (no minimum length limit or daily bag) and implements a catch-and-release-only regulation for largemouth bass and sunfish.

The amendment to 57.981 also makes changes to harvest regulations where necessary to accommodate the nomenclature change for Alabama bass discussed earlier in the amendment to §57.971.

The remainder of the amendment to §57.981 and the amendment to §57.992, concerning Bag, Possession, and Length Limits for commercial fishing, alters bag and possession limits for great, scalloped, and smooth hammerhead sharks and black, gag, and Nassau grouper. The amendment prohibits the take of Nassau grouper, which were designated by the federal government as threatened on July 29, 2016 (81 FR 42268). The state cannot pre-empt or modify a federal designation of any species as threatened or endangered.

With respect to great, scalloped, and smooth hammerhead sharks and the two species of grouper (black and gag), the amendment implements state regulations that are consistent with federal regulations regarding those species. Federal action in 2013 (81 FR 40318) altered the minimum length and possession limits for great, scalloped, and smooth hammerhead sharks in federal waters and federal action in April of 2016 (81 FR 24039) implemented new bag and possession limits for gag and black grouper in federal waters. The amendment alters the current size and possession limits for those species to be consistent with the federal regulations, which the department believes will reduce confusion and enhance compliance, administration, and enforcement.

The department received no comments opposing adoption of the proposed amendment to §57.973 affecting commercial crab traps in Harris County.

The department received no comments supporting adoption of the proposed amendment.

The department received one comment opposing adoption of the portion of the proposed amendment to §57.981 that imposed catch-and-release restrictions on Bedford Boys Ranch Lake. The commenter stated that youth enjoy eating the catch and that the bag limit should therefore be lowered rather replaced with a catch-and-release restriction. The department disagrees with the comment and responds that the lake was recently drained and refilled, necessitating a conservative harvest regime in order for populations to establish themselves without being overfished. The department also notes that channel catfish and rainbow trout are stocked in Bedford Boys Ranch Lake, so all anglers have opportunities to harvest other fish species if they so desire. No changes were made as a result of the comment.

The department received 26 comments supporting adoption of the proposed amendment.

The department received seven comments opposing adoption of the portion of the proposed amendment to §57.981 that restricts the harvest of black bass on a portion of the Devils River to catch-and-release only. Of the seven comments, five presented a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the bag limit should be lowered instead of implementing catch-and-release restrictions, noting that there is no point to catching fish if one cannot eat them. The department disagrees with the comment and responds that the point of the regulation is to maintain a viable fishery for future generations. By imposing catch-and-release restrictions, the department hopes to maintain population abundances at their current levels and prevent against future overharvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would hurt local economies that depend on tournament fishing. The department disagrees with the comment and responds that it knows of no such tournaments occurring due to the size and remote location of the Devils River; therefore, there will not be any economic harm to local businesses. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the limit should be one smallmouth bass of at least 16 inches; one of the commenters also stated that kayak outfitters have more access than persons who access the river at the Del Norte Unit. The department disagrees with the comments and responds that staff are concerned that the smallmouth bass population in this reach of the river may be experiencing overharvest; therefore, implementation of a catch-and-release restriction is necessary to maintain the population and create a sustainable fishery. The department also responds that all persons have equal access to the river, although some may access the river more frequently, which is not a suitable basis for establishing harvest restrictions, which are based on the totality of angling effort to which a population is subjected. The department also notes that staff will continue to monitor the resource and adjust harvest regulations as necessary to prevent depletion or waste of the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that catch-and-release provisions should apply only to persons on commercial float trips. The department disagrees with the comment and responds that all persons are entitled to equal enjoyment of the resource. No changes were made as a result of the comment.

The department received 26 comments supporting adoption of the proposed amendment.

The department received 43 comments opposing adoption of the portion of the proposed amendment to §57.973 that would have imposed gear restrictions on Kirby Lake. The department agrees with the comments and the proposed change was withdrawn while the department conducts outreach efforts.

The department received 32 comments supporting adoption of the proposed amendment.

The department received two comments opposing adoption of the portion of the proposed amendment to §57.981 that designates the Alabama bass as a distinct species. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 27 comments supporting adoption of the proposed amendment.

The department received 11 comments opposing adoption of the portion of the proposed amendment to §57.981 and §57.992 that made state regulations for black grouper consistent with federal regulations for that species. Of the comments, four presented a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that because the species is so rarely taken there is no need to change the rule. The department disagrees with the comment and responds that differential regulations in state and federal waters can cause confusion, noncompliance, and unintended consequences for anglers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the size limit should be retained with no bag limit. The department disagrees with the comment and responds that the purpose of the amendment is to create a standardized regulation; adopting a differential regulation would defeat that purpose. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas is sovereign and the federal government cannot preempt bag and possession limits established by the state. The department disagrees with the comment and responds that rulemaking is not the result of federal preemption of state laws but an action of the state to make state rules consistent with the rules that apply in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no data was offered to support the change. The department agrees with the comment and responds that the rulemaking is not driven by resource management concerns but by a desire to eliminate possible angler confusion; therefore, biological data is not a factor. No changes were made as a result of the comment.

The department received 64 comments supporting adoption of the proposed amendment.

The department received nine comments opposing adoption of the portion of the proposed amendment to §57.981 and §57.992 that made state regulations for gag grouper consistent with federal regulations for that species. Of the nine comments, three presented a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there is no reason to change the regulation. The department disagrees with the comment and responds that by making regulations consistent with regulations in federal waters with respect to these species, the chances of an uninformed angler becoming confused and unintentionally violating state or federal law are reduced. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas is sovereign and the federal government cannot preempt bag and possession limits established by the state. The department disagrees with the comment and responds that rulemaking is not the result of federal preemption of state laws but an action of the state to make state rules consistent with the rules that apply in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no data was offered to support the change. The department agrees with the comment and responds that the rulemaking is not driven by resource management concerns but by a desire to eliminate possible angler confusion; therefore, biological data is not a factor. No changes were made as a result of the comment.

The department received 64 comments supporting adoption of the proposed amendment.

The department received eight comments opposing adoption of the portion of the proposed amendment to §57.981 and §57.992 that prohibit the take of Nassau grouper. Of the eight comments, one presented a reason or rationale for opposing adoption. The commenter opposed adoption and stated that recreational anglers are getting blamed for the activities of commercial fishing. The department disagrees with the comment and responds that the federal determination to list a species as endangered is based on population, habitat, and threat assessments, and in any case, the federal decision is independent of the department and not within the authority of the Parks and Wildlife Commission to modify or rescind. No changes were made as a result of the comment.

The department received 66 comments supporting adoption of the proposed amendment.

The department received 21 comments opposing adoption of the portion of the proposed amendment to §57.981 and §57.992 that made state regulations for hammerhead sharks consistent with federal regulations for that species. Of the 21 comments, nine presented a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the department should be going after poachers because there are too many laws and the department is only interested in enforcement actions against recreational anglers. The department disagrees with the comment and responds that poaching activity does not appear to be correlated to or predicate upon the presence, absence, or number of laws, and that the department does not engage in preferential enforcement with respect to commercial and recreational angling activities. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the harvest of hammerhead sharks should be catch-and-release. The department disagrees with the comment and responds that the harvest of hammerhead sharks is believed to be sustainable under the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the regulation of species that are seldom seen or caught results in increased costs and places a burden on persons who might accidentally catch such a species. The department disagrees with the comment and responds that the regulation of uncommon species costs no more than the regulation of common species and that catch that cannot be positively identified should not be retained. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no reason to match federal rules with respect to sharks caught from the beach or near the shore. The department disagrees with the comment and responds that as a practical matter, once a resource has been transported from where it was caught, to de-

termine where it was caught, which makes enforcement problematic. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many hammerhead sharks and there should be no size limit. The department disagrees with the comment and responds that biological data definitely support the imposition of harvest restrictions on hammerhead sharks in order to protect that species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that not too many sharks are caught. The department disagrees with the comment and responds that biological data definitely support the imposition of harvest restrictions on hammerhead sharks in order to protect that species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas is sovereign and the federal government cannot preempt bag and possession limits established by the state. The department disagrees with the comment and responds that rulemaking is not the result of federal preemption of state laws but an action of the state to make state rules consistent with the rules that apply in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the increased length limit would effectively prohibit the harvest of smooth and scalloped hammerheads because it is near the maximum attainable size of those species. The department disagrees with the comment and responds that the rules are intended to reduce harvest of those two species, both of which are species of concern. No changes were made as a result of the comment.

The department received 64 comments supporting adoption of the proposed amendment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.971, §57.973

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§57.973. *Devices, Means and Methods.*

(a) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(b) Game and non-game fish may be taken only by pole and line in or on:

- (1) community fishing lakes;
- (2) sections of rivers lying totally within the boundaries of state parks;
- (3) any dock, pier, jetty, or other manmade structure within a state park;

- (4) Canyon Lake Project #6 (Lubbock County);
- (5) Lake Pflugerville (Travis County);
- (6) North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam;
- (7) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam; and
- (8) Wheeler Branch (Somervell County).

(c) No person may employ more than two pole-and-line devices at the same time on:

- (1) any dock, pier, jetty, or other manmade structure within a state park;
- (2) community fishing lakes that are not within or part of a state park;
- (3) Canyon Lake Project #6 (Lubbock County);
- (4) North Concho River (Tom Green County) from O. C. Fisher Dam to Bell Street Dam; and
- (5) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(d) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subchapter.

(e) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(f) Aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by the Parks and Wildlife Commission and regulations adopted by the Parks and Wildlife Code.

(g) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(A) Only non-game fish may be taken with a cast net.

(B) In salt water, non-game fish may be taken for bait purposes only.

(2) Crab line. It is unlawful to fish a crab line for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length and six inches in width bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the end fixtures.

(3) Crab trap. It is unlawful to:

(A) fish for commercial purposes under authority of a commercial crab fisherman's license with more than 200 crab traps at one time;

(B) fish for commercial purposes under authority of a commercial finfish fisherman's license with more than 20 crab traps at one time;

(C) fish for non-commercial purposes with more than six crab traps at one time;

(D) fish a crab trap in the fresh waters of this state;

(E) fish a crab trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the outside trap walls of each chamber; and

(iii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed;

(F) fish a crab trap for commercial purposes under authority of a commercial crab fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;

(G) fish a crab trap for commercial purposes under authority of a commercial finfish fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the letter 'F' and the commercial finfish fisherman's license plate number

in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(H) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(I) fish a crab trap in public salt waters for non-commercial purposes without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 10 days after date set out;

(J) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place:

(i) for recreational purposes, more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County; or

(ii) for commercial purposes, a crab trap in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County.

(K) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(L) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(M) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(N) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(4) Dip net.

(A) It is unlawful to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; and

(ii) to take non-game fish.

(B) In salt water, non-game fish may be taken for bait purposes only.

(5) Folding panel trap.

(A) Only crabs may be taken with a folding panel trap.

(B) It is unlawful to use a folding panel trap with an overall surface area, including panels, exceeding 16 square feet.

(6) Gaff.

(A) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(B) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(7) Gig. Only non-game fish may be taken with a gig.

(8) Handfishing. For use in fresh water only.

(A) Only blue, channel, and flathead catfish may be taken by means of handfishing.

(B) It is unlawful to intentionally place or use a trap in public waters for the purpose of taking catfish by handfishing.

(9) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(A) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 10 days after the date set out, and must include the number of the permit to sell non-game fish taken from fresh water, if applicable;

(B) for commercial purposes that is not marked with an orange free-floating device;

(C) for non-commercial purposes that is not marked with a free-floating device of any color other than orange;

(D) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(10) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(11) Minnow trap (fresh water and salt water). It is unlawful to use a minnow trap that is not equipped with a gear tag. A gear tag is valid for 10 days after the date it is set out.

(A) Only non-game fish may be taken with a minnow trap.

(B) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(12) Perch traps. For use in salt water only.

(A) Perch traps may be used only for taking non-game fish.

(B) It is unlawful to fish a perch trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than

3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(iii) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 10 days after date set out.

(13) Pole and line.

(A) Game and non-game fish may be taken by pole and line. It is unlawful to use a pole and line to take or attempt to take fish by foul-hooking, snagging, or jerking. A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(B) Game and non-game fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take non-game fish.

(C) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to a point 800 yards downstream of the Canyon Lake dam outlet, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(14) Purse seine.

(A) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore.

(B) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(C) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(15) Sail line. For use in salt water only.

(A) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(B) Line length shall not exceed 1,800 feet from the reel to the sail.

(C) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(D) No float on the line may be more than 200 feet from the sail.

(E) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(F) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(G) There is no hook spacing requirement for sail lines.

(H) No more than one sail line may be used per fisherman.

(I) Sail lines may not be used by the holder of a commercial fishing license.

(J) Sail lines must be attended at all times the line is fishing.

(K) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(16) Sand pump. It is unlawful for any person to use a sand pump:

(A) that is not manually operated; or

(B) for commercial purposes.

(17) Seine.

(A) Only non-game fish may be taken with a seine.

(B) It is unlawful to use a seine:

(i) which is not manually operated;

(ii) with mesh exceeding 1/2-inch square; or

(iii) that exceeds 20 feet in length.

(C) In salt water, non-game fish may be taken by seine for bait purposes only.

(18) Shad trawl. For use in fresh water only.

(A) Only non-game fish may be taken with a shad trawl.

(B) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(C) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(19) Spear. Only non-game fish may be taken with a spear.

(20) Spear gun. Only non-game fish may be taken with spear gun.

(21) Throwline. For use in fresh water only.

(A) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(B) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in

Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(C) It is unlawful to use a throwline that is not equipped with a gear tag. A gear tag is valid for 10 days after the date it is set out.

(22) Trotline.

(A) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(B) It is unlawful to use a trotline:

(i) with a mainline length exceeding 600 feet;

(ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 10 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(iii) with hook interval less than three horizontal feet;

(iv) with metallic stakes; or

(v) with the main fishing line and attached hooks and stagings above the water's surface.

(C) In fresh water, it is unlawful to use a trotline:

(i) with more than 50 hooks;

(ii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(D) In salt water:

(i) it is unlawful to use a trotline:

(I) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(II) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(III) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(IV) baited with other than natural bait, except sail lines;

(V) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(VI) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of

Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(ii) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When smallcraft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(iii) It is unlawful to fish for commercial purposes with:

(I) more than 20 trotlines at one time;

(II) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(III) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(IV) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(iv) It is unlawful to fish for non-commercial purposes with:

(I) more than 1 trotline at any time; or

(II) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(23) Umbrella net.

(A) Only non-game fish may be taken with an umbrella net.

(B) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

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 June 19, 2017.
TRD-201702371

Robert D. Sweeney, Jr.
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Texas Parks and Wildlife Department
Effective date: September 1, 2017
Proposal publication date: February 17, 2017
For further information, please call: (512) 389-4775



DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

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 June 19, 2017.

TRD-201702372
Robert D. Sweeney, Jr.
Acting General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: February 17, 2017
For further information, please call: (512) 389-4775



DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

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) 389-4775



CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.165

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017, adopted an amendment to §58.165, concerning Noncommercial (Recreational) Shrimping, without changes to the proposed text as published in the February 17, 2017, issue of the *Texas Register* (42 TexReg 659).

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment eliminates the count and size requirements for the Fall season by removing subsection (c)(3)(D). This action is necessary to provide consistency with commercial shrimping regulations. The amendment also alters subsection (d)(3) to provide consistency with commercial shrimping regulations by clarifying that legal shrimping hours are 30 minutes before sunrise to 30 minutes after sunset.

The department received no comments opposing adoption of the amendment as proposed.

The department received two comments supporting adoption of the amendment as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 77, which provides the Commission with authority to regulate the catching, possession, purchase, and sale of shrimp.

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 59. PARKS

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §§59.2 - 59.4

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017, adopted amendments to §§59.2 - 59.4, concerning State Parks, without changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10082). The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §59.2, concerning Park Entrance Fees, deletes references to "permit" in subsection (a). In parks at which a fee is required for park entrance, the department has determined that it is more accurate to describe the fee as an entrance fee, rather than a permit fee. The amendment also alters subsection (a)(3) to eliminate the reference to an overnight facility use fee, since such fees are addressed in §59.4. The amendment also replaces the word "imposed" in subsection (b) with the more accurate term "collected" to clarify that that fee is actually collected, rather than imposed.

The amendment to §59.3, concerning Park Entry Passes, deletes the reference to a "tour" fee, since that fee is addressed in §59.4(c)(7). In addition, the amendment deletes the word "other" from paragraph (1)(A)(ii) and (iii) because it is unnecessary for purposes of describing the number of persons authorized to enter a park by an annual park pass. Similarly, "motorcycle" is added to the list of means by which persons may enter a park other than a vehicle in paragraph (1)(A)(iii) and the word "guided" is removed from paragraph (1)(B)(ii), since not all tours in parks are guided. The amendment also removes reference to an "order of" the department's executive director from paragraphs (1)(D) and (2)(C) since the executive director may document the establishment of the referenced fee by a method other than an executive order.

The amendment to §59.4, concerning Activity and Facility Use Fees, combines the group day use facility fee in subsection (b)(3) with the group day use area fee in subsection (b)(4) and removes the reference to "recreation/meeting hall/dining hall" in subsection (b)(3) to better describe the facilities for which the fee is imposed. In addition, the amendment relocates the fee for group use of a swimming pool facility from subsection (c)(2)(C) to subsection (b)(8), since other group fees are located in subsection (b). The amendment also alters subsection (c)(7) by removing the detailed description of various types of tours and instead inserts a reference to "tour fees." The amendment also alters subsection (c)(7) to replace "\$.25" with the more accurate "\$0.25."

The department received no comments concerning adoption of the proposed amendments.

The department received eight comments supporting adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §11.027(e), which authorizes the commission by rule to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015(a), which authorizes the commission to set park user fees for park services; §13.018(e), which requires the commission to establish by rule the eligibility requirements and

privileges available to the holder of a state parklands passport; and §13.0191, which authorizes the department to set fees for the use of a facility or lodging at a state park in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department.

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

Filed with the Office of the Secretary of State on June 12, 2017.

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Robert D. Sweeney, Jr.

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Texas Parks and Wildlife Department

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Proposal publication date: December 23, 2016

For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017, adopted the repeal of §§65.26, 65.28, 65.34, and 65.42, amendments to §§65.7, 65.9, 65.10, 65.24, 65.25, 65.33, and new §65.42, concerning the Statewide Hunting Proclamation. New §65.42, concerning Deer, is adopted with changes to the proposed text as published in the February 17, 2017, issue of the *Texas Register* (42 TexReg 660). The repeal of §§65.26, 65.28, 65.34, and 65.42 and amendments to §§65.7, 65.9, 65.10, 65.24, 65.25, and 65.33 are adopted without change and will not be republished.

The change to §65.42 corrects a typographical error in subsection (b)(2)(C). The bag limit for buck deer in the affected counties should be one buck deer, not two. As stated in the proposal preamble, the intent of the rulemaking is to remove references to certain deer-management programs and nonsubstantively reorganize the section for purposes of clarity (i.e., without any changes to season lengths, bag limits, or other substantive provisions). The buck bag limit for the affected counties has been one buck for many years and the department did not intend to increase it.

The repeals, amendments, and new section are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The repeal of §65.26, concerning Managed Lands Deer Permits (MLDP)--White-tailed Deer; §65.28, concerning Landowner Assisted Management Permit System (LAMPS); and §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer and the amendments to §65.7, concerning Harvest Log; §65.9, concerning Open Seasons: General Rules; §65.10, concerning Possession of Wildlife Resources; §65.24, concerning Permits; §65.25, concerning Wildlife Management Plan (WMP); and §65.33, concerning Mandatory Check Stations, are necessary to accommodate the provisions of §65.29, concerning Managed

Lands Deer (MLD) Programs. In 2016, the department adopted new §65.29 *Texas Register* (41 TexReg 806), concerning Managed Lands Deer Program (MLDP), to replace the current MLDP programs for white-tailed and mule deer and the Landowner Assisted Management Program (LAMPS) for white-tailed deer. Those rules were adopted with an effective date that would allow program implementation beginning with the 2017-18 deer seasons. In order to prevent regulatory conflict, references to and provisions of the programs being replaced therefore need to be removed or altered.

The repeal of §65.42, concerning Deer, and new §65.42, concerning Deer, remove references to deer permit programs that no longer exist and nonsubstantively reorganize the remaining provisions of the current rule to make it more concise and user-friendly. As discussed earlier in this preamble, a single MLD program will take effect for the 2017-18 hunting seasons; therefore, references and provisions regarding the previous permit programs must be removed from the current rule or altered to conform to the new rule. In addition, the amendment also rewords the roadway definition that delineates the north and south deer zones in Val Verde County in the interests of clarity. Finally, new §65.42 nonsubstantively reorganizes and restructures existing provisions to eliminate repetition and categorizes regulatory provisions in a more consistent fashion.

The department received three comments opposing adoption of the rules as proposed. All three commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the muzzleloader season should open on January 15 and run through February 15. The department disagrees with the comment and responds that as mentioned in the proposal preamble and earlier in this preamble, the intent of this rulemaking is a nonsubstantive reorganization of existing provisions and therefore it does not contemplate changes to existing season dates or bag limits. Deer harvest regulations are developed based upon the deer population characteristics within individual Deer Management Units (DMUs) and reviewed on a four-year cycle, which the department believes is the minimum length of time necessary to generate statistically meaningful data for purposes of assessing the biological impacts of harvest regulations. The next regulations cycle for deer harvest regulations will begin in November of 2019. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in lieu of the MLD program in Milam County, each landowner should be allowed to shoot one doe. The department disagrees with the comment and responds that white-tailed deer are a public resource and the department is required by statute (Parks and Wildlife Code, §61.055) to "provide to the people the most equitable and reasonable privilege to hunt game animals or game birds or catch aquatic animal life." Therefore, the department cannot condition the privilege of harvesting deer upon land ownership. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deer harvest regulations for Goliad County should include "doe days." The department presumes that the commenter is alluding to the portion of Goliad County north of U.S. Hwy. 59, in which the take of antlerless deer is by permit only, and disagrees with the comment. As mentioned in the proposal preamble and earlier in this preamble, the intent of this rulemaking is a nonsubstantive reorganization of existing provisions and therefore it does

not contemplate changes to existing season dates or bag limits. Deer harvest regulations are developed based upon the deer population characteristics within individual Deer Management Units (DMUs) and reviewed on a four-year cycle, which the department believes is the minimum length of time necessary to generate statistically meaningful data for purposes of assessing the biological impacts of harvest regulations. The next regulations cycle for deer harvest regulations will begin in November of 2019. No changes were made as a result of the comment.

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

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.7, 65.9, 65.10, 65.24, 65.25, 65.33

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for deer during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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) 389-4775



31 TAC §§65.26, 65.28, 65.34

The repeals are adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for deer during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for deer during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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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31 TAC §65.42

The new section is adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for deer during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.42. *Deer.*

(a) General.

(1) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three

bucks) and two mule deer (no more than one buck), except as provided by:

(A) §65.29 of this title (relating to Managed Lands Deer Program);

(B) use of an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(C) use of a special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(D) use of special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(2) During an archery-only open season, deer may be taken only by the means described in §65.11(2) and (3) of this title (relating to Lawful Means).

(3) The issuance and use of MLDP tags is prescribed by §65.29 of this title.

(b) White-tailed deer. The open seasons and bag limits for white-tailed deer shall be as follows.

(1) South Zone. The general open season for the counties listed in this subparagraph is from the first Saturday in November through the third Sunday in January.

(A) In Aransas, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Webb, Willacy, Zapata, and Zavala counties, there is a general open season. The bag limit is five deer, no more than three bucks.

(B) In Atascosa County there is a general open season.

(i) The bag limit is five deer, no more than two bucks; and

(ii) antler restrictions apply.

(2) North Zone. The general open season for the counties listed in this subparagraph is from the first Saturday in November through the first Sunday in January.

(A) In Bandera, Baylor, Bexar, Blanco, Burnet, Callahan, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Haskell, Hays (west of Interstate 35), Howard, Irion, Jones, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Knox, Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mitchell, Nolan, Pecos, Real, Reagan, Runnels, San Saba, Schleicher, Shackelford, Sterling, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis (west of Interstate 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), and Wilbarger counties, the bag limit is five deer, no more than two bucks.

(B) In Archer, Bell (west of IH 35), Bosque, Brown, Clay, Coryell, Hamilton, Hill, Jack, Lampasas, McLennan, Mills, Palo Pinto, Somervell, Stephens, Wichita, Williamson (west of IH 35) and Young counties:

(i) the bag limit is five deer, no more than two bucks; and

(ii) the antler restrictions described in paragraph (3) of this subsection apply.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochilree, Roberts, Scurry, Stonewall, and Wheeler counties, the bag limit is five deer, no more than one buck.

(D) In Brewster, Culberson, Jeff Davis, Presidio, and Reeves counties, the bag limit is four deer, no more than two bucks.

(E) In Comanche, Cooke, Denton, Eastland, Erath, Hood, Johnson, Montague, Parker, Tarrant, and Wise counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) on USFS, Corps of Engineers, and river authority lands, the take of antlerless deer shall be by MLDP tag only, except on USFS lands in Montague and Wise counties, where antlerless deer may be taken without MLDP tags from Thanksgiving Day through the Sunday immediately following Thanksgiving Day. On all other tracts of land, no MLDP tag is required to hunt antlerless deer unless MLDP antlerless tags have been issued for the tract of land.

(F) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken without MLDP tags from opening day through the Sunday immediately following Thanksgiving Day. From the Monday immediately following Thanksgiving Day until the end of the season, antlerless deer may be taken by MLDP tag only.

(G) In Anderson, Bowie, Brazos, Camp, Cass, Gregg, Grimes, Harrison, Henderson, Lamar, Leon, Madison, Marion, Morris, Nacogdoches, Panola, Red River, Robertson, Rusk, Sabine, San Augustine, Shelby, and Upshur counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply.

(iii) on USFS, Corps of Engineers, and river authority lands the take of antlerless deer shall be by MLDP tag only; and

(iv) on all other tracts of land, antlerless deer may be taken without MLDP tags during the first 16 days of the season. After the first 16 days of the season, antlerless deer may be taken by MLDP tag only.

(H) In Bell (East of IH 35), Burleson, Delta, Ellis, Falls, Fannin, Franklin, Freestone, Hopkins, Hunt, Kauffman, Limestone, Milam, Navarro, Rains, Smith, Titus, Van Zandt, Williamson (East of IH 35), and Wood counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) on USFS, Corps of Engineers, and river authority lands, the take of antlerless deer shall be by MLDP tag only, except in Fannin County; and

(iv) on all other tracts of land, antlerless deer may be taken without MLDP tag from Thanksgiving Day through the Sunday immediately following Thanksgiving Day. At all other times, antlerless deer may be taken by MLDP tag only.

(I) In Collin, Dallas, Grayson, and Rockwall counties there is a general open season:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) lawful means are restricted to lawful archery equipment and crossbows only, including properties for which MLDP tags have been issued.

(J) In Austin, Bastrop, Caldwell, Colorado, Comal (east of IH 35), De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), and Wilson counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken by MLDP tag only.

(K) In Andrews, Bailey Castro, Cochran, Dallam, Dawson, Deaf Smith, Gaines, Hale, Hansford, Hartley, Hockley, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, and Yoakum counties, the bag limit is three deer, no more than one buck and no more than two antlerless.

(L) In Crane, Ector, Loving, Midland, Ward, and Winkler counties:

(i) the bag limit is three deer, no more than one buck and no more than two antlerless; and

(ii) antlerless deer may be taken by MLDP tag only.

(M) In all other counties, there is no general open season.

(3) Antler Restrictions. In any county for which antler restrictions are imposed under the provisions of this subsection:

(A) a legal buck is a buck deer with at least one unbranched antler or an inside spread of 13 inches or greater; and

(B) no person may take more than one buck with an inside spread of 13 inches or greater.

(4) Special Late General Seasons.

(A) There is a special late general season during which harvest is restricted to antlerless and unbranched antlered deer, as follows:

(i) in the counties listed in paragraph (1)(A) and (B) of this subsection: 14 consecutive days starting the first Monday following the third Sunday in January;

(ii) in the counties listed in paragraph (2)(A)-(C) and (E) of this subsection: 14 consecutive days starting the first Monday following the first Sunday in January; and.

(iii) in all other counties there is no special late general season.

(B) The bag limit during a special late general season is the bag limit established for the county for the general open season and is not in addition to any other bag limit.

(5) Archery-only open seasons.

(A) The open season is from the Saturday closest to September 30 for 35 consecutive days.

(B) The bag limit in any given county is as provided for that county during the general open season.

(C) No tag is required to hunt antlerless deer unless MLDP tags have been issued for the property.

(6) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Anderson, Angelina, Austin, Bastrop, Bell (East of IH 35), Bowie, Brazoria, Brazos, Brewster, Burleson, Caldwell, Camp, Cass, Chambers, Cherokee, Colorado, Comal (East of IH 35), Culberson, Delta, DeWitt, Ellis, Fannin, Falls, Fayette, Fort Bend, Franklin, Freestone, Galveston, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays (East of IH 35), Henderson, Hopkins, Houston, Hunt, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Presidio, Rains, Red River, Reeves, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Travis (East of IH 35), Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Williamson (East of IH 35), Wilson and Wood counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) The open season is 14 consecutive days starting the first Monday following the first Sunday in January.

(B) The bag limit is as specified in this section for the general season in the county in which take occurs.

(C) Special provisions:

(i) Buck deer. In any given county, all restrictions established in this subsection for the take of buck deer during the general season remain in effect.

(ii) Antlerless deer. No MLDP tag is required for the take of antlerless deer, except:

(I) on properties for which antlerless MLDP tags have been issued; and

(II) in the counties listed in paragraph (2)(J) of this subsection.

(7) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) The early open season is the Saturday and Sunday immediately before the first Saturday in November.

(B) The late open season is 14 consecutive days starting the first Monday following the first Sunday in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraph (2)(A)-(J) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (2)(H) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Other than properties where MLDP tags have been issued under the provisions of §65.29(c)(2), only licensed hunters 16 years of age or younger may hunt deer during the seasons established by this paragraph, and any lawful means may be used.

(F) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(G) Antlerless deer may be taken without an MLDP tag on USFS lands.

(c) Mule deer. The open seasons and bag limits for mule deer shall be as follows:

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, Swisher, and Wheeler counties:

(A) the Saturday before Thanksgiving for 16 consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken only by Antlerless Mule Deer permit or MLDP tag.

(2) In Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Presidio, Reagan, Reeves, Upton, Val Verde, Ward, and Winkler counties:

(A) the Friday immediately following Thanksgiving for 17 consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken only by antlerless mule deer permit or MLDP tag.

(3) In Brewster, Pecos, and Terrell counties:

(A) the Friday immediately following Thanksgiving for 17 consecutive days;

(B) bag limit: two deer, no more than one buck.

(4) In Andrews, Bailey, Castro, Cochran, Dawson, Gaines, Hale, Hockley, Lamb, Lubbock, Martin, Parmer, Terry, and Yoakum counties:

(A) the Saturday before Thanksgiving for nine consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken by MLDP tag only.

(5) In all other counties, there is no general open season for mule deer.

(6) Archery-only open seasons and bag and possession limits shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, Wheeler, and Winkler counties:

(i) from the Saturday closest to September 30 for 35 consecutive days; and

(ii) bag limit: one buck.

(B) In Brewster, Pecos, and Terrell counties:

(i) from the Saturday closest to September 30 for 35 consecutive days.

(ii) bag limit: two deer, no more than one buck. Antlerless deer may be harvested without a permit unless MLDP antlerless tags have been issued for the property.

(C) In all other counties, there is no archery-only open season for mule deer.

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

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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.40, §65.64

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017 adopted amendments to §65.40 and §65.64, concerning the Statewide Hunting Proclamation. Section 65.64 is adopted with changes to the proposed text as published in the February 17, 2017, issue of the Texas Register (42 TexReg 666). Section 65.40 is adopted without changes and will not be republished.

The change to §65.64, concerning Turkey, encloses the boundary description for Val Verde County in parentheses in subsection (b)(1)(A) and (C). The change is nonsubstantive.

The amendment to §65.40, concerning Pronghorn Antelope, expands the current experimental season for the take of buck pronghorn antelope to additional areas in the Texas Panhandle. Under Parks and Wildlife Code, §61.057, no person may hunt an antelope without first having acquired an antelope permit issued by the department. Under Parks and Wildlife Code, §61.051, the department is required to conduct scientific studies and investigations of game animals to determine, among other

things, supply, sex ratios, and the effects of any factors or conditions causing increases or decreases in supply. Under Parks and Wildlife Code, §61.052, the commission is required to regulate the means, methods, places, and periods of time when it is lawful to hunt or possess game animals. Until 2013, all take of pronghorn antelope was by permit issued by the department to landowners, who then distributed the permits to the hunter. The department manages pronghorn antelope populations by the concept of the "herd unit." A herd unit is an area containing similar pronghorn densities (during the timeframe of population surveys) and habitats. Some herd units are bounded by natural or man-made barriers that prevent or inhibit immigration/emigration. Other herd units are bounded by man-made infrastructure that facilitates a descriptive boundary but does not allow immigration/emigration. The department conducts population surveys and collects harvest data annually to determine the percentage of each herd unit that may be harvested each year without causing depletion or waste. Permits are then issued to landowners, who distribute them to hunters at their discretion. Over the last 10-15 years, pronghorn antelope populations in portions of the northern Panhandle have increased steadily and continue to expand their range. As a result, permit demand has increased and staff time accommodating that demand has increased accordingly. In response, the department in 2013 implemented an experimental season in three herd units where staff believe that buck populations could sustain additional hunting pressure. Under the experimental regulations, the bag limit and season length were retained; however, no permits for buck pronghorn antelope were issued to the landowners within the areas affected by the experimental season. Instead, the harvest of buck pronghorn antelope in those areas were conducted at the discretion of landowners. The amendment places additional areas under the effectiveness of the experimental season and merges current Areas 1 and 3. In order to measure the impact of the experiment and to assist law enforcement personnel in identifying lawfully taken pronghorn antelope, the department will continue to require hunters to obtain a permit from the department, attach it to harvested bucks, and present each harvested buck at a department-designated check station. The intent of the amendment is to reduce the amount of time spent on permit issuance by staff, increase hunter opportunity, and provide greater convenience for landowners, hunters, and outfitters.

The amendment to §65.64, concerning Turkey clarifies eastern turkey seasons on U.S. National Forest lands in Jasper County, corrects an error in the late spring youth-only season length, eliminates the option for hunters to present harvested eastern turkey at department-designated check stations, and rewords the roadway definition that delineates the north and south turkey zones in Val Verde County in the interests of clarity.

In 2015, the department closed the season for eastern turkey on National Forest lands in Jasper County. The department has since discovered that a small portion of the Sabine National Forest, jointly managed by the department as part of the Moore Plantation Wildlife Management Area, lies within Jasper County and the eastern turkey season was not intended to have been closed. The amendment corrects that oversight. In 2015 the department also extended the length of the fall youth-only turkey season from two days to 14 days, but inadvertently included the late spring youth-only season, which was not intended. The amendment rectifies that oversight as well. Department regulations in effect since 1994 require hunters to report the harvest of eastern turkey. Until 2013, this requirement could only be

satisfied by presenting a harvested bird in person at a department-designated check station within 24 hours of take. In 2014 the department altered the regulation to allow hunters the option of complying with the reporting requirement by use of a mobile application, which has been effective to the point that the department no longer has a need to establish physical check stations. Therefore, the proposed amendment eliminates that option and requires all mandatory reporting of harvested eastern turkey to be done via the mobile application.

The department received no comments opposing adoption of the proposed rules.

The department received four comments supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals allowed by law to be killed during each year or season, including antelope and turkey; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) The counties listed in this subparagraph are in the Fall South Zone. In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) The counties listed in this subparagraph are in the Fall North Zone. In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson,

Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) The counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Baylor, Bell, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kent, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis, Upton, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) The counties listed in this subparagraph are in the Spring South Zone. In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Calhoun, Cameron, Comal, Crockett, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Real, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, Matagorda, Milam, and Wharton counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the weekend (Saturday and Sunday) immediately preceding the first Saturday in November and from the Monday immediately following the close of the general open season for 14 consecutive days.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) and (B) of this subsection.

(i) open seasons:

(I) the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season; and

(II) the weekend (Saturday and Sunday) immediately following the last day of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Bowie, Cass, Fannin, Grayson, Jasper (other than the Angelina National Forest), Lamar, Marion, Nacogdoches, Newton, Panola, Polk, Red River, Sabine, San Augustine, and Upshur counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 15 through May 14.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered via the department's internet or mobile application within 24 hours of the time of kill. The department will publish the internet address and information on obtaining the mobile application in generally accessible locations, including the department internet web site (www.tpwd.texas.gov). Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

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 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2017 adopted the repeal of §69.6 and amendments to §§69.2, 69.8, 69.26, 69.102, 69.116, 69.121, 69.301 and 69.405, concerning Resource Protection. Sections 69.8 and 69.26 are adopted with changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10083). The repeal of §69.6 and amendments to §§69.2, 69.102, 69.116, 69.121, 69.301 and 69.405 are adopted without change and will not be republished.

The repeal and amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The change to §69.8, concerning Endangered and Threatened Plants, publishes the list of threatened species of plants to reflect the addition of the Neches River rose-mallow (*Hibiscus dasycalyx*) to the list of threatened species of plants in subsection (b). Although addressed in the preamble of the rulemaking as proposed, the published proposal indicated no changes to subsection (b), which is not the case.

The change to §69.26, concerning Commercial Species--Recovery Value, requires civil restitution to be assessed for all alligator eggs unlawfully taken or possessed and bases the civil restitution value on market value of alligator eggs in Texas. As proposed, the rule would have required civil recovery value to be calculated on the presumption that 85% of alligator eggs will hatch. The department has determined that civil recovery values should apply to all alligator eggs unlawfully taken or possessed, irrespective of viability. The change also specifies that the market value used to determine civil recovery values for alligator eggs is the market value in Texas.

The repeal of §69.6, concerning Permit and Tag, eliminates a duplicative provision regarding the fee for a commercial plant permit. Over the years, the department has sought to locate regulations regarding most department fees in 31 TAC Chapter 53. In 2004, the fee for the commercial plant permit was adopted as part of §53.15 (29 TexReg 6309) and is now at §53.15(h)(1) (34 TexReg 5381). Therefore, §69.6 is duplicative and unnecessary.

The amendment to §69.2, concerning Scientific Plant Permit, corrects a cross-reference in subsection (d)(2) regarding the letter of permission required to engage in regulated activities on public land. The requirement to obtain a letter of permission is

contained in subsection (c)(3) rather than subsection (b)(3). The amendment corrects that error.

The amendment to §69.8, concerning Endangered and Threatened Plants, removes Johnston's frankenia (*Frankenia johnstonii*) from the list of endangered species of plants in subsection (a) and adds the Neches River rose-mallow (*Hibiscus dasycalyx*) to the list of threatened species of plants in subsection (b). Under Parks and Wildlife Code, Chapter 88, a species of plant is endangered, threatened, or protected if it is indigenous to Texas and (1) listed by the federal government as endangered, or (2) designated by the executive director of the Texas Parks and Wildlife Department as endangered, threatened or protected. At the current time, the department maintains a single list of endangered plants that contains only those plants indigenous to Texas listed by the federal government as endangered. The amendment removes the Johnston's frankenia from the endangered species list because this species has been removed from the federal endangered species list.

The amendment to §69.26, concerning Commercial Species--Recovery Value, alters subsection (a) by adding a mechanism for calculating the value of alligator eggs. Parks and Wildlife Code, §12.301, provides that a "person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of this code or a proclamation or regulation adopted under this code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured." Parks and Wildlife Code, §12.302, requires the commission to adopt rules "to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds and animals." The current per-foot calculation applicable to alligators does not accurately reflect the commercial value of alligator eggs in Texas. Therefore, the amendment adds a mechanism for more accurately calculating the value of alligator eggs based on the market price in Texas.

The amendments to regulations in Subchapter H, concerning Issuance of Marl, Sand and Gravel Permits, make several non-substantive changes. The amendment to §69.102, concerning Definitions, replaces the reference to "TNRCC" in paragraph (8) with the current agency name, Texas Commission in Environmental Quality. The amendment to §69.116, concerning Conditions, corrects cross-references, replacing "\$65.115(b)" with "\$69.115(a)" and "\$69.101" with "\$69.118." The amendment to §69.121, concerning Prices, eliminates an outdated reference to the previous royalty of 6.25% in subsection (a) and replaces "\$.20 ton" with the more accurate "\$0.20 ton."

The amendment to §69.301, concerning Definitions, updates taxonomical information regarding the definition of "raptor" in paragraph (3). From time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy does not, in and of itself, affect the status of a species as endangered, threatened or protected, but the department believes that the common and scientific names of listed organisms should reflect the most current agreement by the scientific community. Current §69.601(3) defines raptor by reference to the order Falconiformes or Stringiformes. However, the classification of Falconiformes has been split into two orders, Accipitriformes (eagles, hawks, kites, harriers, osprey, secretary bird, etc.) and Falconiformes (all falcons, caracaras). In addition, all New World vultures have been placed into their own Order, Cathartiformes, based upon

recent phylogenetics research. The amendment makes these taxonomic changes. Stringiformes remains unchanged.

The amendment to §69.405, concerning Permit Renewal, eliminates a reference to a duplicative and inaccurate provision regarding the nongame species fee in §53.15(c)(5) and (6). Over the years, the department has sought to locate regulations regarding most department fees in 31 TAC Chapter 53. In 2004, the fee for a nongame species permit and permit renewal was included in the fees relocated to §53.15 (29 TexReg 6309), and was increased to \$210 in 2009 and redesignated as §53.15(c)(5) and (6) (34 TexReg 5381).

The department received seven comments opposing adoption of the rules as proposed. All seven commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Six commenters opposed adoption of the proposed amendments on the basis of a matter not germane to the rulemaking. The department disagrees with the comments. No changes were made as a result of the comments.

One commenter opposed adoption of the proposed amendment to §69.26 and stated that the change to alligator egg value devalued alligator eggs by assuming a certain percentage will not survive. The department agrees with the comment and has made changes accordingly. The commenter also opposed adoption of the proposed amendment to §69.8, and stated that the removal of one plant species from protection and addition of another does not explain how common or how much land is preserved or will be open for development or additional use after the change, and that mirroring federal law for the sake of mirroring federal law seems arbitrary. The department disagrees with the comment and responds that species are listed and delisted according to rarity and severity of threat. In regards to both Johnston's frankenia and Neches River rose mallow, the department agrees with the federal decision to remove Johnston's frankenia from the endangered list and to list the Neches River rose mallow as threatened; however, the decisions to delist one species and list another are not related. Johnston's frankenia is being delisted due to the significant increase in the number of documented populations, the major expansion of the species' range, added conservation protection for some populations, a population estimate of more than 4 million plants, and the lack of overall threats. The Neches River rose mallow is being designated as threatened because of habitat loss and modification. Already restricted to a narrow range, the Neches River rose mallow is mainly impacted by the encroachment of native and non-native plant species; the alteration of natural fire regimes and habitat hydrology; and the construction and maintenance of reservoirs, roads, and bridges. No changes were made as a result of the comment.

The department received eight comments supporting adoption of the rules as proposed.

SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

31 TAC §69.2, §69.8

The amendments are adopted under Parks and Wildlife Code, §88.006, which requires the department to adopt regulations to administer the provisions of Parks and Wildlife Code, Chapter 88.

§69.8. *Endangered and Threatened Plants.*

(a) The following plants are endangered:
Figure: 31 TAC §69.8(a)

(b) The following plants are threatened:
Figure: 31 TAC §69.8(b)

(c) Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy will not, in and of itself, affect the status of a species as endangered, threatened or protected.

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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31 TAC §69.6

The repeal is adopted under Parks and Wildlife Code §88.006, which requires the department to adopt regulations to administer Parks and Wildlife Chapter 88 concerning Endangered Plants, including regulations to address permit application fees.

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

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SUBCHAPTER B. FISH AND WILDLIFE VALUES

31 TAC §69.26

The amendment is adopted under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds and animals.

§69.26. *Commercial Species--Recovery Value.*

(a) Recovery of value for commercial species is based on the following:

- (1) ex-vessel or dockside price (by weight or individual as normally determined);
- (2) for alligators, current per-foot market value; and

(3) for alligator eggs, a number derived by multiplying the current market alligator egg price in Texas by the number of alligator eggs unlawfully taken or possessed.

(b) Ex-vessel or dockside price is determined by:

(1) the most recent department data on commercial harvest data; or

(2) average annual ex-vessel price for fish landed in the Gulf of Mexico as obtained from the National Marine Fisheries Service for the most recent calendar year.

(c) When commercial species cannot be processed according to the provisions of Parks and Wildlife Code, §12.109, ex-vessel or dockside price of a commercial species is multiplied by three to derive the recovery value of a species. The economic multiplier used is based on data from the latest revision of "Structure of the Texas Economy" developed by H.W. Grubb.

(d) Full recovery value will be applied to all fish and shellfish taken by illegal means, methods or manners and from closed areas, during closed seasons or prohibited periods.

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SUBCHAPTER H. ISSUANCE OF MARL, SAND, AND GRAVEL PERMITS

31 TAC §§69.102, 69.116, 69.121

The amendments are adopted under Parks and Wildlife Code, §86.020, which authorizes the commission to adopt rules governing applications, fees, and permits to disturb, take or carry away marl, sand, gravel, shell or mudshell, sand, shell and gravel.

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SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

31 TAC §69.301

The amendment is adopted under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules governing the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, zoological collection, rehabilitation and educational display.

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SUBCHAPTER K. SALE OF NONGAME SPECIES

31 TAC §69.405

The amendment is adopted under Parks and Wildlife Code, §67.004 and §67.0041, which requires the commission to establish by regulation any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and authorizes the department to issue permits for the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife, and to establish fees for such permits.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.834

The Comptroller of Public Accounts adopts amendments to §3.834 concerning volunteer fire department assistance fund assessment, without changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2522). This section is being amended to implement House Bill 7, 84th Legislature, 2015. Effective for fiscal years beginning on or after September 1, 2015, the calculation of the total amount of the Volunteer Fire Department Assistance Fund Assessment is amended to take into account appropriations for contributions to the Texas Emergency Services Retirement System under Government Code, §614.104(d) (Fund). In addition, effective for the fiscal years beginning on September 1, 2015, and September 1, 2016, only, the calculation of the total amount of the Volunteer Fire Department Assistance Fund Assessment is amended to take into account appropriations to the Texas A&M Forest Service for grants to volunteer fire departments.

Subsection (a) is amended to add a definition of the term "state fiscal year." This term appears in Insurance Code, Chapter 2007 (Assessment for Rural Fire Protection), but is not defined. The subsequent paragraph is renumbered accordingly.

Subsection (b) is reformatted and revised to include additional information. The subsection is reorganized into four paragraphs. Paragraph (1) addresses the total amount of the assessment for state fiscal years beginning September 1, 2013, and September 1, 2014, only. The term "fiscal year" is replaced with the defined term "state fiscal year." Paragraph (2) addresses the total amount of the assessment for state fiscal years beginning September 1, 2015, and September 1, 2016, only. This paragraph implements Sections 24 and 57 of House Bill 7, which reduce the calculation of the Volunteer Fire Department Assistance Fund Assessment for these years based upon appropriations to the Texas Emergency Services Retirement System and the Texas A&M Forest Service. Paragraph (3) addresses the total amount of the assessment for state fiscal years beginning on or after September 1, 2017. This paragraph implements Section 24 of House Bill 7. Paragraph (4) contains information from current subsection (b) relating to data used to calculate each insurer's portion of the assessment. The existing language is amended to incorporate the specific method for determining this amount based on the graphic that is currently attached to the rule. The graphic is no longer necessary and is deleted.

In addition, amendments are made throughout the section to include the titles of the statutes referenced.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application To Other Laws Administered By Comptroller), which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

This section is amended to implement House Bill 7, 84th Legislature, 2015, Sections 24 and 57 and Insurance Code, Chapter 2007.

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 June 19, 2017.

TRD-201702363
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: July 9, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER U. CONTRACTING

37 TAC §1.261

The Texas Department of Public Safety (the department) adopts amendments to §1.261, concerning Historically Underutilized Businesses (HUB). This rule is adopted without changes to the

proposed text as published in the May 12, 2017 issue of the *Texas Register* (42 TexReg 2529) and will not be republished.

This amendment updates references to the Comptroller's rules governing Historically Underutilized Businesses.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Government Code, §2161.003.

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

Filed with the Office of the Secretary of State on June 15, 2017.

TRD-201702348
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 5, 2017
Proposal publication date: May 12, 2017
For further information, please call: (512) 424-5848



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

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 70, Technology-Based Instruction, Subchapter AA, Commissioner's Rules Concerning the Texas Virtual School Network (TxVSN), pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 70, Subchapter AA, in the March 10, 2017 issue of the *Texas Register* (42 TexReg 1155).

Relating to the review of 19 TAC Chapter 70, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter AA. At a later date, the TEA may propose revisions to Subchapter AA to include any changes that may result from the 85th Texas Legislature, 2017.

This concludes the review of 19 TAC Chapter 70.

TRD-201702345

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: June 15, 2017



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 231, Requirements for Public School Personnel Assignments, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 231 are organized under the following subchapters: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments, Subchapter F, Special Education-Related Services Personnel Assignments, Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments, and Subchapter H, Assignments for Teachers Certified Before 1966. The SBEC proposed the review of 19 TAC Chapter 231 in the March 31, 2017 issue of the *Texas Register* (42 TexReg 1801).

Relating to the review of 19 TAC Chapter 231 the SBEC finds that the reasons for the adoption of Subchapters A-H continue to exist and readopts the rules. The SBEC received comments related to the review of Chapter 231. Following is a summary of the public comments received and the corresponding responses.

Comment: Forty-one individuals commented on the importance of individuals being certified to serve in the role of teacher of the deaf-blind due to the specialized preparation necessary for the certification and the benefits of that certification in meeting the unique needs of the students being served. All commenters also stated that Chapter 231 should retain the former Teacher of the Deaf-Blind certificate as one of several credentials appropriate to teach special education. All commenters have also requested creation of a new Teacher of the Deaf-Blind certificate.

Board Response: The SBEC recognizes the important role of the teacher of the deaf-blind and acknowledges the commenters' recommendation of retaining the current reference in rule to the former Teacher of the Deaf-Blind certificate. The TEA staff will review the commenters' recommendations at a later time to develop proposed rule changes for review by the SBEC. The SBEC adopts the review of 19 TAC Chapter 231.

Comment: Twenty-three individuals commented on the importance of keeping the former Teachers of the Deaf-Blind certificate on the list of certificates appropriate to serve in the assignment of Special Education Teacher.

Board Response: The SBEC acknowledges the commenters' recommendation of retaining the current reference in rule to the Teacher of the Deaf-Blind certificate. The TEA staff will review the commenters' recommendations at a later time to develop proposed rule changes for review by the SBEC. The SBEC adopts the review of 19 TAC Chapter 231.

Comment: Five individuals commented on the need for additional clarification on the last rule revisions related to requirements to serve as a special education teacher. The commenters asked for more specificity related to assignments to teach life skills, resource, and inclusion. The commenters have also requested guidance on the use of HOUSS (High Objective Uniform State Standard of Evaluation) as it relates to certification of elementary special education teachers versus secondary special education teachers and their respective requirements and eligibility for placement into various special education assignments.

Board Response: The SBEC acknowledges the commenters' recommendations for additional clarification in rule for special education assignments. The TEA staff will review the commenters' recommendations at a later time to develop proposed rule changes for review by the SBEC. The SBEC adopts the review of 19 TAC Chapter 231.

Comment: One individual commented on the assignment to teach Commercial Photography and the certificates currently defined in rule as being appropriate for placement into the assignment. The commenter requested that the SBEC add the Technology Applications certificate to the list of certificates appropriate to teach Commercial Photography.

Board Response: The SBEC acknowledges the commenters' recommendations to add the Technology Applications certificate to the list of certificates appropriate to teach Commercial Photography. The TEA staff will review the commenters' recommendations at a later time to develop proposed rule changes for review by the SBEC. The SBEC adopts the review of 19 TAC Chapter 231.

Comment: The director of the Outreach Program at the Texas School for the Blind and Visually Impaired commented in support of adopting the rule review and maintaining the reference to Teacher of Deaf-Blind students within the assignment chart for public school personnel assignments. The commenter shared plans to return to the SBEC at a later time to advocate for recognition of the Teacher of Deaf-Blind students as an important area of certification that deserves its own certification.

Board Response: The SBEC acknowledges the commenter's recommendations related to the important role of the Teacher of Deaf-Blind students and the unique set of knowledge and skills necessary to support this population of students. The TEA staff will review the commenter's recommendations at a later time to develop proposed rule changes for review by the SBEC. The SBEC adopts the review of 19 TAC Chapter 231.

Comment: An individual confirmed her agreement with retaining the reference to the Teacher of Deaf-Blind students within the assignment chart for public school personnel assignments. The commenter expressed support for having a unique certification for Teachers of Deaf-Blind students that would ensure the preparation of teachers that will be equipped with the training necessary to fully support a unique population of students.

Board Response: The SBEC acknowledges the commenter's recommendations related to the important role of the Teacher of Deaf-Blind students and the unique set of knowledge and skills necessary to support this population of students. The TEA staff will review the commenter's recommendations at a later time to develop proposed rule changes for review by the SBEC. The SBEC adopts the review of 19 TAC Chapter 231.

This concludes the review of 19 TAC Chapter 231.

TRD-201702374

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: June 19, 2017



The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 245 in the March 31, 2017 issue of the *Texas Register* (42 TexReg 1801).

Relating to the review of 19 TAC Chapter 245 the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The SBEC received comments related to the review of Chapter 245. Following is a summary of the public comments received and the corresponding responses.

Comment: Eight individuals commented on the current requirement for individuals to pass only the Speaking section of the TOEFL iBT to demonstrate English language proficiency. Five commenters recommended lowering the required score of 26 for Speaking and take into account the other test sections to give a better perception of the overall English ability of each individual. One commenter recommended an overall score of 96 on the TOEFL iBT, and one commenter recommended an overall score of 100 on the TOEFL iBT and CAE or IELTS and a bachelor's or master's degree in English philosophy or English translation and interpretation. One commenter recommended lowering Speaking from 26 to 22, averaging the scores of all sections of TOEFL iBT, and permitting an average score of 20 for all sections to qualify for the Visiting International Teacher (VIT) certificate.

Board Response: The SBEC acknowledges the commenters' recommendations regarding the current requirements of the TOEFL iBT to demonstrate English language proficiency. As part of a separate item, the SBEC took action at its June 9, 2017 meeting to approve as proposed the minimum TOEFL iBT scaled scores of 24 for speaking, 22 for listening, 22 for reading, and 21 for writing as an amendment to 19 TAC §230.11. The SBEC is scheduled to consider the amendment to 19 TAC §230.11 for adoption, subject to State Board of Education review, at its August 4, 2017 meeting. The SBEC adopts the review of 19 TAC Chapter 245.

Comment: Forty-five individuals utilized a template letter to provide comments on the VIT certificate program with three specific requests to 1) extend VISAs of participating candidates; 2) extend the current three-year VIT certification by two additional years to become a five-year VIT certificate; and 3) allow VIT candidates to meet certification requirements for out-of-country candidates (including passing the TOEFL iBT) at the end of the VIT certificate validity period to avoid a drastic shortage of teachers.

Board Response: Currently the rules for the VIT certificate are addressed in 19 TAC Chapter 230, Professional Educator Certification and Preparation, thus rendering the comments on the VIT certificate outside the scope of the purposes of the four-year rule review of Chapter 245. However, the SBEC recognizes that many VIT candidates transfer into the out-of-country certification process to become eligible for issuance of the standard certificate. The TEA staff will review the commenters' recommendations at a later time to develop proposed rule changes for review by the SBEC.

This concludes the review of 19 TAC Chapter 245.

TRD-201702376

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: June 19, 2017



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §151.1001(b)(1)

Passing Standards for Early Childhood through Grade 6 Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
801	Core Subjects EC-6 English Language Arts and Reading and the Science of Teaching Reading Texas Examinations of Educator Standards (TExES)	65	41
802	Core Subjects EC-6 Mathematics TExES	40	25
803	Core Subjects EC-6 Social Studies TExES	35	22
804	Core Subjects EC-6 Science TExES	45	28
805	Core Subjects EC-6 Fine Arts, Health, and Physical Education TExES	45	25

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(2)

Passing Standards for Grades 4-8 Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
113	English Language Arts and Reading/Social Studies 4-8 Texas Examinations of Educator Standards (TExES)	100	61
114	Mathematics/Science 4-8 TExES	100	71
115	Mathematics 4-8 TExES	80	56
116	Science 4-8 TExES	80	57
117	English Language Arts and Reading 4-8 TExES	80	52
118	Social Studies 4-8 TExES	80	53
806	Core Subjects 4-8: English Language Arts and Reading TExES	65	43
807	Core Subjects 4-8 Mathematics TExES	35	18
808	Core Subjects 4-8 Social Studies TExES	35	20
809	Core Subjects 4-8 Science TExES	35	23

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(3)

Passing Standards for Secondary Mathematics and Science Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
235	Mathematics 7-12 Texas Examinations of Educator Standards (TExES)	80	49
236	Science 7-12 TExES	120	79
237	Physical Science 6-12 TExES	80	59
238	Life Science 7-12 TExES	80	57
240	Chemistry 7-12 TExES	80	52
243	Physics/Mathematics 7-12 TExES	100	68
274	Mathematics/Physical Science/Engineering 6-12 TExES	110	65

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(4)

Passing Standards for Secondary English Language Arts and Social Studies Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
231	English Language Arts and Reading 7-12 Texas Examinations of Educator Standards (TExES)	125	74
232	Social Studies 7-12 TExES	120	83
233	History 7-12 TExES	80	48

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(5)

Passing Standards for Speech and Journalism Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
129	Speech 7-12 Texas Examinations of Educator Standards (TExES)	80	54
256	Journalism 7-12 TExES	80	46

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(6)

Passing Standards for Fine Arts Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
177	Music EC-12 Texas Examinations of Educator Standards (TExES)	80	49
178	Art EC-12 TExES	80	45
180	Theatre EC-12 TExES	80	58
279	Dance 6-12 TExES	80	56

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(7)

Passing Standards for Health and Physical Education Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
157	Health EC-12 Texas Examinations of Educator Standards (TExES)	80	51
158	Physical Education EC-12 TExES	80	52

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(8)

Passing Standards for Computer Science and Technology Applications Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
241	Computer Science 8-12 Texas Examinations of Educator Standards (TExES)	80	59
242	Technology Applications EC-12 TExES	80	60

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(9)

Passing Standards for Career and Technical Education Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
171	Technology Education 6-12 Texas Examinations of Educator Standards (TExES)	80	38
200	Family and Consumer Sciences Composite, American Association of Family and Consumer Sciences (AAFCS)	120	85
201	Hospitality, Nutrition, and Food Science, AAFCS	120	85
202	Human Development and Family Studies, AAFCS	120	95
272	Agriculture, Food, and Natural Resources 6-12 TExES	80	45
273	Health Science 6-12 TExES	80	54
275	Marketing 6-12 TExES	80	52
276	Business and Finance 6-12 TExES	80	57

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(10)

Passing Standards for Bilingual Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score* or Minimum Proficiency Level**)
190	Bilingual Target Language Proficiency Test (BTLPT) – Spanish Texas Examinations of Educator Standards (TExES)	153	109
614	Bilingual Arabic Oral Proficiency Interview, American Council for the Teaching of Foreign Languages (ACTFL)	NA	Intermediate High
615	Bilingual Arabic Writing Proficiency Test, ACTFL	NA	Intermediate High
616	Bilingual Japanese Oral Proficiency Interview, ACTFL	NA	Intermediate High
617	Bilingual Japanese Writing Proficiency Test, ACTFL	NA	Intermediate High
618	Bilingual Chinese-Mandarin Oral Proficiency Interview, ACTFL	NA	Intermediate High
619	Bilingual Chinese-Mandarin Writing Proficiency Test, ACTFL	NA	Intermediate High
620	Bilingual Vietnamese Oral Proficiency Interview, ACTFL	NA	Intermediate High
621	Bilingual Vietnamese Writing Proficiency Test, ACTFL	NA	Intermediate High

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

**Proficiency levels from lowest to highest are as follows: 1) Novice Low, 2) Novice Mid, 3) Novice High, 4) Intermediate Low, 5) Intermediate Mid, 6) Intermediate High, 7) Advanced Low, 8) Advanced Mid, 9) Advanced High, and 10) Superior.

Figure: 19 TAC §151.1001(b)(11)

Passing Standards for Languages Other Than English (LOTE) Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score* or Minimum Proficiency Level**)
184	American Sign Language EC-12 Texas Examinations of Educator Standards (TExES)	60	43
600	LOTE: Arabic Writing Proficiency Test, American Council for the Teaching of Foreign Languages (ACTFL)	NA	Advanced Low
601	LOTE: Chinese-Mandarin Writing Proficiency Test, ACTFL	NA	Advanced Low
602	LOTE: Japanese Writing Proficiency Test, ACTFL	NA	Intermediate High
603	LOTE: Russian Writing Proficiency Test, ACTFL	NA	Intermediate High
604	LOTE: Vietnamese Writing Proficiency Test, ACTFL	NA	Advanced Low
605	LOTE: Arabic Oral Proficiency Interview, ACTFL	NA	Advanced Low
606	LOTE: Chinese-Mandarin Oral Proficiency Interview, ACTFL	NA	Advanced Low
607	LOTE: Japanese Oral Proficiency Interview, ACTFL	NA	Intermediate High
608	LOTE: Russian Oral Proficiency Interview, ACTFL	NA	Intermediate High
609	LOTE: Vietnamese Oral Proficiency Interview, ACTFL	NA	Advanced Mid
610	LOTE: French EC-12 TExES	150	108
611	LOTE: German EC-12 TExES	150	103
612	LOTE: Latin EC-12 TExES	90	47
613	LOTE: Spanish EC-12 TExES	150	113
622	LOTE: Hindi Oral Proficiency Interview, ACTFL	NA	Advanced Low
623	LOTE: Hindi Writing Proficiency Test, ACTFL	NA	Advanced Low
624	LOTE: Italian Oral Proficiency Interview, ACTFL	NA	Advanced Low
625	LOTE: Italian Writing Proficiency Test, ACTFL	NA	Advanced Low
626	LOTE: Turkish Oral Proficiency Interview, ACTFL	NA	Advanced Low
627	LOTE: Turkish Writing Proficiency Test, ACTFL	NA	Intermediate High
630	LOTE: Korean Oral Proficiency Interview, ACTFL	NA	Advanced Low
631	LOTE: Korean Writing Proficiency Test, ACTFL	NA	Advanced Low
632	LOTE: Portuguese Oral Proficiency Interview, ACTFL	NA	Advanced Low
633	LOTE: Portuguese Writing Proficiency Test, ACTFL	NA	Advanced Low

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

**Proficiency levels from lowest to highest are as follows: 1) Novice Low, 2) Novice Mid, 3) Novice High, 4) Intermediate Low, 5) Intermediate Mid, 6) Intermediate High, 7) Advanced Low, 8) Advanced Mid, 9) Advanced High, and 10) Superior.

Figure: 19 TAC §151.1001(b)(12)

Passing Standards for Special Education Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
072	Texas Assessment of Sign Communication (TASC) [†]	5	3
073	TASC-American Sign Language [†]	5	3
161	Special Education EC-12 Texas Examinations of Educator Standards (TExES)	120	81
181	Deaf and Hard of Hearing TExES	80	55
182	Visually Impaired TExES	80	58
183	Braille TExES	36	24
283	Braille TExES	50	34

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

[†]For test codes 072 and 073, alphabetic scores reported to candidates were converted to numeric scores (A=5, B=4, C=3, D=2, E=1).

Figure: 19 TAC §151.1001(b)(13)

Passing Standards for Supplemental Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
154	English as a Second Language Supplemental Texas Examinations of Educator Standards (TExES)	60	40
162	Gifted and Talented Supplemental TExES	60	40
163	Special Education Supplemental TExES	80	51
164	Bilingual Education Supplemental TExES	60	41

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(14)

Passing Standards for Pedagogy and Professional Responsibilities Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
160	Pedagogy and Professional Responsibilities EC-12 Texas Examinations of Educator Standards (TExES)	90	62
270	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES	80	51

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(c)

Passing Standards for Student Services Examinations

Test Code	Test Title	Max Points	Average Passing Standard (Average Raw Cut Score*)
085	Master Reading Teacher EC-12 Texas Examinations for Master Teachers (TExMaT)	98	69
086	Master Technology Teacher EC-12 TExMaT	120	85
087	Master Mathematics Teacher EC-4 TExMaT	123	88
088	Master Mathematics Teacher 4-8 TExMaT	120	86
089	Master Mathematics Teacher 8-12 TExMaT	107	78
090	Master Science Teacher EC-4 TExMaT	126	90
091	Master Science Teacher 4-8 TExMaT	133	91
092	Master Science Teacher 8-12 TExMaT	114	81
150	School Librarian Texas Examinations of Educator Standards (TExES)	80	58
151	Reading Specialist TExES	80	45
152	School Counselor TExES	80	56
153	Educational Diagnostician TExES	80	57

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

For test code 085, an examinee must attain at least the raw cut score and a score of 3 or more on the case study assignment to pass.

Figure: 19 TAC §151.1001(d)

Passing Standards for Administrator Examinations

Test Code	Test Title	Max Points	Average Passing Standard (Average Raw Cut Score*)
068	Principal Texas Examinations of Educator Standards (TExES)	100	73
195	Superintendent TExES	80	55

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 31 TAC §69.8(a)

CACTI

star cactus (*Astrophytum asterias*)

Nellie cory cactus (*Escobaria minima*)

Sneed pincushion cactus (*Escobaria sneedii* var. *sneedii*)

black lace cactus (*Echinocereus reichenbachii* var. *albertii*)

Davis' green pitaya (*Echinocereus davisii*)

Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*)

TREES, SHRUBS, AND SUBSHRUBS

Walker's manioc (*Manihot walkerae*)

Texas snowbells (*Styrax platanifolius* ssp. *texanus*)

WILDFLOWERS

large-fruited sand verbena (*Abronia macrocarpa*)

South Texas ambrosia (*Ambrosia cheiranthifolia*)

Texas ayenia (*Ayenia limitaris*)

Texas poppy mallow (*Callirhoe scabriuscula*)

Terlingua Creek cat's-eye (*Cryptantha crassipes*)

slender rush-pea (*Hoffmannseggia tenella*)

Texas prairie dawn (*Hymenoxys texana*)

white bladderpod (*Physaria pallida*)

Texas trailing phlox (*Phlox nivalis* ssp. *texensis*)

Texas golden gladecress (*Leavenworthia texana*)

ashy dogweed (*Thymophylla tephroleuca*)

Zapata bladderpod (*Physaria thamnophila*)

ORCHIDS

Navasota ladies'-tresses (*Spiranthes parksii*)

GRASSES AND GRASS-LIKE PLANTS

Little Aguja pondweed (*Potamogeton clystocarpus*)

Texas wild-rice (*Zizania texana*)

Figure: 31 TAC §69.8(b)

CACTI

Bunched cory cactus (*Coryphantha ramillosa* ssp. *ramillosa*)

Chisos Mountains hedgehog cactus (*Echinocereus chisoensis* var. *chisoensis*)

Lloyd's mariposa cactus (*Sclerocactus mariposensis*)

TREES, SHRUBS, AND SUBSHRUBS

Hinckley's oak (*Quercus hinckleyi*)

Neches River rose-mallow (*Hibiscus dasycalyx*)

WILDLFLOWERS

Pecos Sunflower (*Helianthus paradoxus*)

Tinytim (*Geocarpon minimum*)

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.

Department of Aging and Disability Services

Open Solicitation

Pursuant to Title 2, Chapter 32 of the Human Resources Code and Texas Administrative Code (TAC), Title 40, Part 1, Chapter 19, §19.2322(h)(1), the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 31 days, beginning the date of this public notice, June 30, 2017, for an additional 90 Medicaid beds through the high occupancy waiver process for the counties identified below. In the identified counties, Medicaid-contracted nursing facility occupancy rates have equaled or exceeded the threshold of 85 percent occupancy for at least nine months in the twelve-month period of June 2016 through May 2017.

An applicant for the additional Medicaid beds in the counties identified in this public notice must submit a complete Medicaid Bed Waiver Application (Waiver Application) for Nursing Facilities (Form 3709) in accordance with 40 TAC §19.2322(h)(1)(E) by Overnight Express Mail or Hand Delivery to:

Texas Health and Human Services Commission

Procurement and Contracting Services (PCS)

1100 West 49th Street

Mail Code 2020

Austin, Texas 78756

Attn: Carol Marshall (sole point of contact)

Hours: 8:00 a.m. to 5:00 p.m.

Additional information regarding this open solicitation, including an copy of the application, has been posted on the Electronic State Business Daily (ESBD) under the listing "Open

Solicitation for Department of Aging and Disability Services High Occupancy Waiver for Medicaid Bed Allocation for Nursing Facilities," located at: http://esbd.cpa.state.tx.us/sagency-bid.cfm?startrow=1&endrow=25&ag_num=539&order by=Agency.

HHSC must receive the application by 5:00 p.m., July 31, 2017, the last day of the open solicitation period. HHSC will not accept telephone and facsimile applications. HHSC will reject late applications. The applicant must address and deliver the application to HHSC by the specified date and time.

An applicant must direct all communications relating to this open solicitation to the HHSC sole point of contact named above by email (carol.marshall2@hhsc.state.tx.us) unless specifically instructed to an alternate contact by HHSC Procurement and Contracting Services. All communications between applicants and other HHSC or DADS staff members concerning this open solicitation are strictly prohibited. **Failure to comply with these requirements may result in application disqualification.**

An applicant must submit a complete Waiver Application and comply with the level of acceptable care requirements at 40 TAC §19.2322(e). At the end of the solicitation period, DADS will determine if an applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, DADS will use a lottery to determine the applicant who will receive the allocation of beds. If no application for the waiver process is received or if no applicant meets the requirements to receive the additional beds, DADS will conduct no further solicitation and will close the process without allocating Medicaid beds.

County Code	County Name	Months Over 85%	June 2016	July 2016	August 2016	Sept. 2016	Oct. 2016	Nov. 2016	Dec. 2016	Jan. 2017	Feb. 2017	March 2017	April 2017	May 2017
132	Kent	12	97.5%	95.8%	96.6%	95.8%	99.2%	98.0%	97.5%	100%	98.5%	97.5%	100%	100%
137	Kleberg	12	89.3%	91.2%	91.7%	91.5%	88.1%	88.9%	90.2%	91.0%	88.2%	92.0%	88.0%	88.2%
251	Yoakum	12	91.8%	88.6%	90.9%	93.4%	96.7%	94.7%	91.0%	90.3%	89.6%	91.2%	90.6%	92.7%

TRD-201702418
Lawrence T. Hornsby
General Counsel
Department of Aging and Disability Services
Filed: June 21, 2017

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/26/17 - 07/02/17 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/26/17 - 07/02/17 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/17 - 07/31/17 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/17 - 07/31/17 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-201702393
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 20, 2017

◆ ◆ ◆
Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Space City Credit Union (Houston) seeking approval to merge with Houston Musicians Federal Credit Union (Houston), with Space City Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201702415
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2017

◆ ◆ ◆
Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Amplify Credit Union, Austin, Texas to expand its field of membership. The proposal would permit voting members of the American Red Cross - Central and South Texas Region who reside within the State of Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201702413
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2017

◆ ◆ ◆
Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

EECU, Fort Worth, Texas - See *Texas Register* issue dated March 31, 2017.

Texas Dow Employees Credit Union #1 (Lake Jackson) - See *Texas Register* issue dated March 31, 2017.

Texas Dow Employees Credit Union #2 (Lake Jackson) - See *Texas Register* issue dated March 31, 2017.

Texas Dow Employees Credit Union #3 (Lake Jackson) - See *Texas Register* issue dated March 31, 2017.

Texas Dow Employees Credit Union #4 (Lake Jackson) - See *Texas Register* issue dated March 31, 2017.

Associated Credit Union of Texas (League City) - See *Texas Register* issue dated March 31, 2017.

TRD-201702412
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2017

◆ ◆ ◆
Texas Council for Developmental Disabilities

Request for Proposal

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one local self-advocacy organization to provide leadership and advocacy training to individuals with disabilities, students with development disabilities, individuals living in in-

stitutions, family members of people with disabilities, and other interested community members who do not fall into any of these categories.

This Request for Proposals (RFP) applicants are limited to local self-advocacy groups and organizations. The self-advocates will take the lead and conduct the training.

TCDD has approved funding up to \$75,000 per year, for one project, for up to five years. Additional funding may be made available to provide reasonable accommodations to Project Directors or Project Coordinators who have a developmental disability if accommodations are necessary and exceed the amount the organization can afford. Additional funding must be based on level of need and may not exceed \$25,000 per project.

Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at www.DDSuite.org. More information about TCDD may be obtained through TCDD's website at www.tcdd.texas.gov/. All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at Danny.Fikac@tcdd.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through www.DDSuite.org by 8/30/2017. Proposals will not be accepted after the due date.

TRD-201702342

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: June 15, 2017



Request for Proposal

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one organization to develop and pilot a peer supports program for individuals who live independently with the use of Home and Community Based Services (HCBS) so they understand their options and can lead their own person centered planning process.

The purpose of offering funding for projects described in this Request for Proposals (RFP) is to specifically focus on connecting persons with developmental disabilities who are receiving HCBS waiver services with well-informed peers who can support them to take control of their person-centered plans and to ensure that the implementation of the plan includes the needed services and supports.

TCDD has approved funding for one organization to receive up to \$100,000 for year one and may award a maximum of \$125,000 for years two, three and four. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal

matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at www.DDSuite.org. More information about TCDD may be obtained through TCDD's website at www.tcdd.texas.gov/. All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at Danny.Fikac@tcdd.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through www.DDSuite.org by 8/30/2017. Proposals will not be accepted after the due date.

TRD-201702343

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: June 15, 2017



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 1, 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 1, 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 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Bell County Water Control and Improvement District 5; DOCKET NUMBER: 2017-0225-PWS-E; IDENTIFIER: RN102691466; LOCATION: Temple, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the well casing in all directions, is at least six inches thick and is sloped to drain away from the wellhead at not less than 0.25 inch per foot; 30 TAC §290.42(e)(3)(G), by failing to obtain an exception, in accordance with 30 TAC §290.39(l),

prior to blending water containing chloramines and water containing free chlorine; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$415; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: BRANDCO, INCORPORATED; DOCKET NUMBER: 2017-0288-AIR-E; IDENTIFIER: RN107787954; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Burlison Trucking I, LP dba Burlison Tree Service; DOCKET NUMBER: 2017-0077-MSW-E; IDENTIFIER: RN109149724; LOCATION: Burlison, Johnson County; TYPE OF FACILITY: mulch recycling facility; RULES VIOLATED: 30 TAC §332.8(b)(1), by failing to maintain the setback distance of at least 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product; and 30 TAC §37.921(a) and §328.5(d), by failing to establish and maintain financial assurance for closure of the facility; PENALTY: \$3,893; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2017-0091-AIR-E; IDENTIFIER: RN100825249; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2151, Special Terms and Conditions Number 25, and New Source Review Permit Numbers 22690 and PSDTX751M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$9,600; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Emory; DOCKET NUMBER: 2016-2037-MWD-E; IDENTIFIER: RN102916822; LOCATION: Emory, Rains County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination Systems Permit Number WQ0010082001, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with permitted effluent limits; PENALTY: \$16,500; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Fort Worth; DOCKET NUMBER: 2017-0417-AIR-E; IDENTIFIER: RN100222231; LOCATION: Fort

Worth, Denton County; TYPE OF FACILITY: aircraft maintenance plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1463, General Terms and Conditions (GTC), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(A) and (C), THSC, §382.085(b), and FOP Number O1463, GTC, by failing to submit a deviation report within 30 days after the end of the reporting period and to report all instances of deviations; and 30 TAC §122.143(4), THSC, §382.085(b), and FOP Number O1463, Special Terms and Conditions Number 3.B.(iii)(1), by failing to perform quarterly visible emissions observations of a building, enclosed facility, or other structure; PENALTY: \$14,100; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Shepherd; DOCKET NUMBER: 2017-0409-MWD-E; IDENTIFIER: RN101916666; LOCATION: Shepherd, San Jacinto County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$3,175; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: City of Strawn; DOCKET NUMBER: 2017-0483-PWS-E; IDENTIFIER: RN101424968; LOCATION: Strawn, Palo Pinto 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: \$201; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Cowtown Gas Processing Partners L.P.; DOCKET NUMBER: 2017-0232-AIR-E; IDENTIFIER: RN105471551; LOCATION: Granbury, Hood County; TYPE OF FACILITY: natural gas processor; RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O3638/Oil and Gas General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(2) and (9)(E)(ii), and Standard Permit Registration Number 87942, by failing to comply with maximum allowable hourly emissions rates; PENALTY: \$8,551; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Duval County Conservation and Reclamation District; DOCKET NUMBER: 2017-0507-PWS-E; IDENTIFIER: RN101390672; LOCATION: Benavides, Duval 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 ten sample sites for the January 1, 2013 - December 31, 2015, monitoring period, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, 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 ten sample sites for the January 1, 2016 - December 31, 2016, monitoring period, have the samples

analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; 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 the Disinfectant Level Quarterly Operating Report for the second quarter of 2015, the fourth quarter of 2015, and the second quarter of 2016; PENALTY: \$450; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: El Paso Water Utilities Public Service Board; DOCKET NUMBER: 2016-0942-MWD-E; IDENTIFIER: RN100812023; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit No. WQ0010408007, Monitoring and Reporting Requirements Number 5, by failing to ensure that flow measuring or recording devices are calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(12) COMPANY: Ethyl Corporation; DOCKET NUMBER: 2017-0133-AIR-E; IDENTIFIER: RN101613230; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: lubricant and fuel additives plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O1460, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), 382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1460, GTC and Special Terms and Conditions Number 16, and THSC, §382.085(b), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$7,351; Supplemental Environmental Project offset amount of \$2,940; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Global Jubilee 2007 Incorporated; DOCKET NUMBER: 2017-0017-MWD-E; IDENTIFIER: RN101516037; LOCATION: Dew, Freestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: H and K JOLLY LLC dba Jolly Truck Stop; DOCKET NUMBER: 2017-0006-PST-E; IDENTIFIER: RN102078334; LOCATION: Wichita Falls, Clay County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 1977 Industrial Boulevard Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: IKO Southwest Incorporated; DOCKET NUMBER: 2017-0525-AIR-E; IDENTIFIER: RN106869258; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: asphalt shingle manufacturing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: INEOS Styrolution America LLC; DOCKET NUMBER: 2017-0346-AIR-E; IDENTIFIER: RN104579487; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2849, Special Terms and Conditions Number 22, and New Source Review Permit Numbers 8978 and PSDTX459M3, Special Conditions Number 6, by failing to maintain the styrene in the Storage Tank, Emissions Point Number ST-255, at a temperature of less than or equal to 70 degrees Fahrenheit; PENALTY: \$3,338; Supplemental Environmental Project offset amount of \$1,335; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Jose Cruz Abundis; DOCKET NUMBER: 2017-0239-WQ-E; IDENTIFIER: RN109277442; LOCATION: San Elizario, El Paso County; TYPE OF FACILITY: automobile salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: \$1,612; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(18) COMPANY: MAAS VENTURES, LLC dba Mega Fuel 11; DOCKET NUMBER: 2017-0318-PST-E; IDENTIFIER: RN102065067; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.7(d)(3) and §334.8(c)(4)(C), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) to the TCEQ within 30 days from the date of occurrence of the change or addition; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; PENALTY: \$8,244; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: MAHEEN ENTERPRISES, INCORPORATED dba Sheldon King Savers; DOCKET NUMBER: 2017-0333-PST-E; IDENTIFIER: RN100861137; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30

TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to remove and properly dispose of any liquid or debris found in any sumps, manways, overspill containers, or catchment basins associated with a UST system within 96 hours of discovery; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves are securely anchored at the base of the dispensers; 30 TAC §334.51(b)(2)(B)(ii) and TWC, §26.3475(c)(2), by failing to equip the spill containment device with a liquid-tight lid or cover; 30 TAC §334.7(d)(3) and (e)(2), by failing to provide a completely and accurately filled out UST registration form; and 30 TAC §115.241(b)(4) and Texas Health and Safety Code, §382.085(b), by failing to submit the decommissioning completion notice no later than ten calendar days after completion of all decommissioning activity at the gasoline dispensing station; PENALTY: \$7,034; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Martin Ramirez, Jr.; DOCKET NUMBER: 2017-0136-LII-E; IDENTIFIER: RN106006877; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.50(a) and §344.51(d)(2), by failing to connect an irrigation system through a reduced pressure principal backflow prevention assembly on a property that is served by an on-site sewage facility and connected to a potable water supply; 30 TAC §344.52(c), by failing to ensure the backflow prevention device is tested prior to being placed in service; and 30 TAC §344.38, by failing to provide or make available to the TCEQ records of irrigation services within ten business days of the request; PENALTY: \$1,616; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Marty R. Blair; DOCKET NUMBER: 2017-0270-WOC-E; IDENTIFIER: RN103817383; LOCATION: Little Elm, Denton County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to obtain a valid water system operator's license prior to performing process control duties in the production or distribution of public drinking water; PENALTY: \$1,601; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Mazin Foteh; DOCKET NUMBER: 2017-0643-EAQ-E; IDENTIFIER: RN109642249; LOCATION: Austin, Travis County; TYPE OF FACILITY: residential site; 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: \$3,375; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(23) COMPANY: Ollin B. Crumpler and Sarah Crumpler; DOCKET NUMBER: 2017-0249-MSW-E; IDENTIFIER: RN101933067; LOCATION: Spurger, Tyler County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to cause, suffer, allow, or permit the unauthorized disposal of MSW; and 30 TAC §330.9(b)(3), by failing to obtain a registration for an MSW transfer station; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(24) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2017-0076-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refin-

ing; RULES VIOLATED: 30 TAC §§101.20(1) and (2), 113.520, 115.352(2), and 122.143(4), 40 Code of Federal Regulations §§60.482-9(a), 61.242-10(a), and 63.1024(d)(1), Federal Operating Permit Number O1668, Special Terms and Conditions Number 1.A, and Texas Health and Safety Code, §382.085(b), by failing to repair a leaking component by the end of the next process unit shutdown; PENALTY: \$60,000; Supplemental Environmental Project offset amount of \$24,000; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: TERRA SOUTHWEST, INCORPORATED; DOCKET NUMBER: 2017-0376-PWS-E; IDENTIFIER: RN101265882; LOCATION: Ponder, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; PENALTY: \$307; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Town of Van Horn; DOCKET NUMBER: 2017-0399-MWD-E; IDENTIFIER: RN103014999; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: sewage treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014241001, Effluent Limitations and Reporting Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(27) COMPANY: UVM INVESTMENT INCORPORATED dba Conoco Express; DOCKET NUMBER: 2017-0275-PST-E; IDENTIFIER: RN101570091; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,688; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201702389

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 20, 2017



Enforcement Orders

An agreed order was adopted regarding Texas Parks and Wildlife Department, Docket No. 2015-1165-MWD-E on June 20, 2017, assessing \$4,014 in administrative penalties with \$802 deferred. Information concerning any aspect of this order may be obtained by contact-

ing Had Darling, 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 DFW Pro Lawn Care, LLC d/b/a Pro Lawn Care, Docket No. 2015-1810-LII-E on June 20, 2017, assessing \$250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding James Lee Den Boer, Docket No. 2016-0304-PST-E on June 20, 2017, assessing \$6,300 in administrative penalties with \$2,700 deferred. 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 City of Premont, Docket No. 2016-0316-PWS-E on June 20, 2017, assessing \$2,530 in administrative penalties with \$506 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 Circle "R" Ranchettes Recreation And Community Corporation, Docket No. 2016-0366-MLM-E on June 20, 2017, assessing \$1,570 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, 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 SADAF GLOBAL CORPORATION dba Pakco 3, Docket No. 2016-0708-PST-E on June 20, 2017, assessing \$4,800 in administrative penalties with \$960 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rakesh Jain d/b/a Sea Isle Supermarket, Docket No. 2016-0899-PST-E on June 20, 2017, assessing \$4,786 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, 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 Central Texas Water Supply Corporation, Docket No. 2016-1079-IWD-E on June 20, 2017, assessing \$4,687 in administrative penalties with \$937 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jose Luis Simental dba Simental Stone Yard, Docket No. 2016-1218-SLG-E on June 20, 2017, assessing \$2,619 in administrative penalties with \$523 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ADO ALLIANCE INC. dba Super Stop 3, Docket No. 2016-1227-PST-E on June 20, 2017, assessing \$7,385 in administrative penalties with \$1,477 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blanchard Refining Company LLC, Docket No. 2016-1250-AIR-E on June 20, 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 GLOBAL GOLDEN, INC. dba Smiley Face Truck Stop, Docket No. 2016-1279-PST-E on June 20, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Catex Acquisitions, Llc, Docket No. 2016-1378-PWS-E on June 20, 2017, assessing \$1,443 in administrative penalties with \$288 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 Green Ground LLC and Scott Meek, Docket No. 2016-1397-MSW-E on June 20, 2017, assessing \$4,349 in administrative penalties with \$869 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Smith International, Inc., Docket No. 2016-1476-PWS-E on June 20, 2017, assessing \$575 in administrative penalties with \$115 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 PINCO INC. dba Thelma Food Store, Docket No. 2016-1558-PST-E on June 20, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Young Men's Christian Association of Metropolitan Dallas, Docket No. 2016-1682-MWD-E on June 20, 2017, assessing \$3,300 in administrative penalties with \$660 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, 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 Basf Corporation, Docket No. 2016-1699-AIR-E on June 20, 2017, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hilltop Estates Water Supply Corporation, Docket No. 2016-1741-PWS-E on June 20, 2017, assessing \$675 in administrative penalties with \$135 deferred. Information concerning any aspect of this order may be obtained by contact-

ing 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 B.O.S. SERVICE, INC., Docket No. 2016-1770-SLG-E on June 20, 2017, assessing \$2,625 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 City of Lovelady, Docket No. 2016-1789-MLM-E on June 20, 2017, assessing \$2,303 in administrative penalties with \$460 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 Phillips 66 Gulf Coast Properties Llc, Docket No. 2016-1804-PWS-E on June 20, 2017, assessing \$1,753 in administrative penalties with \$350 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 Cuney, Docket No. 2016-1837-MWD-E on June 20, 2017, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E. I. du Pont de Nemours and Company, Docket No. 2016-1857-AIR-E on June 20, 2017, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cornerstone 1626 Retail, Ltd., Docket No. 2016-1865-EAQ-E on June 20, 2017, assessing \$5,625 in administrative penalties with \$1,125 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 City of Port Arthur, Docket No. 2016-1895-MSW-E on June 20, 2017, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxy Vinyls, LP, Docket No. 2016-1910-AIR-E on June 20, 2017, assessing \$3,313 in administrative penalties with \$662 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 Universal Services Fort Hood, Inc., Docket No. 2016-1948-MWD-E on June 20, 2017, assessing \$3,250 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Georgetown, Docket No. 2016-1956-EAQ-E on June 20, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nalle Custom Homes, Inc., Docket No. 2016-1971-EAQ-E on June 20, 2017, assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, 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 H & S BUSINESS LLC dba 7 STORE, Docket No. 2016-2032-PST-E on June 20, 2017, assessing \$2,567 in administrative penalties with \$513 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, 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 CHAUDHRY ENTERPRISES INCORPORATED dba Bearcat Grocery, Docket No. 2016-2067-PST-E on June 20, 2017, assessing \$6,100 in administrative penalties with \$1,220 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dale K. Farrow, Docket No. 2016-2071-WQ-E on June 20, 2017, assessing \$2,764 in administrative penalties with \$552 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Lingham, 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 George Baray and Loretta Baray, Docket No. 2016-2077-MLM-E on June 20, 2017, assessing \$1,574 in administrative penalties with \$314 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sahi Brothers, Inc., Docket No. 2016-2080-PST-E on June 20, 2017, assessing \$2,567 in administrative penalties with \$513 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bullard, Docket No. 2016-2083-MWD-E on June 20, 2017, assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Ariel Ramirez, 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 TIB - The Independent BankersBank dba Farmers Branch MTSO, Docket No. 2016-2094-PST-E on June 20, 2017, assessing \$5,352 in administrative penalties with \$1,070 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALINA & ARISH INVESTMENTS, LLC dba Nick Food Mart, Docket No. 2016-2095-PST-E

on June 20, 2017, assessing \$3,088 in administrative penalties with \$617 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enbridge Pipelines (Texas Gathering) L.P., Docket No. 2016-2101-AIR-E on June 20, 2017, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2016-2105-MWD-E on June 20, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Ariel Ramirez, 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 HSS Investments, Inc. dba Lamar Food & Fuel, Docket No. 2017-0016-PST-E on June 20, 2017, assessing \$7,313 in administrative penalties with \$1,462 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 Lyondell Chemical Company, Docket No. 2017-0027-AIR-E on June 20, 2017, assessing \$3,600 in administrative penalties with \$720 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 Jimmie W. Anderton, Docket No. 2017-0032-LII-E on June 20, 2017, assessing \$766 in administrative penalties with \$153 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NABLUS #1, INC. dba Hannas Deli, Docket No. 2017-0075-PST-E on June 20, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 INCE DISTRIBUTING, INC., Docket No. 2017-0086-PST-E on June 20, 2017, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Westwood Shores Municipal Utility District, Docket No. 2017-0088-PWS-E on June 20, 2017, assessing \$380 in administrative penalties with \$76 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, 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 Regal Oil, Inc., Docket No. 2017-0130-PST-E on June 20, 2017, assessing \$4,106 in administrative penalties with \$821 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 Mabank Independent School District, Docket No. 2017-0186-PST-E on June 20, 2017, assessing \$5,813 in administrative penalties with \$1,162 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Apodaca, Joel Sr., Docket No. 2017-0489-WOC-E on June 20, 2017, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ortiz, Ismael, Docket No. 2017-0490-WOC-E on June 20, 2017, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201702414
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2017



Notice of Hearing

GREGORY POWER PARTNERS LLC

SOAH Docket No. 582-17-4515

TCEQ Docket No. 2017-0840-IWD

Permit No. WQ0005219000

APPLICATION.

Gregory Power Partners LLC, 1000 Main Street, Houston, Texas 77002, which operates the Gregory Power Plant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005219000, to authorize the discharge of previously monitored effluent (cooling tower blowdown, low volume waste sources, and treated domestic wastewater) at a daily average flow not to exceed 918,000 gallons per day via Outfall 001. The TCEQ received this application on December 15, 2016.

The facility is located at 4633A State Highway 361, southeast of the City of Gregory, in San Patricio County, Texas 78359. The effluent will be discharged via Outfall 001 directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. The designated uses for Segment No. 2481 are primary contact recreation, oyster waters, and exceptional aquatic life use. In accordance with Title 30 Texas Administrative Code Section 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 Corpus Christi Bay, which has been identified as having exceptional 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 reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

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 the Bell Whittington Public Library, 2400 Memorial Parkway, Portland, 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=27.888888&lng=-97.259166&zoom=13&type=r>. For the exact location, refer to the application.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on March 16, 2017. On June 8, 2017, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

SOAH will conduct a formal contested case hearing on this application at:

10:00 a.m. - July 26, 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 be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26 of the Texas Water Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 305; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. At the hearing on July 26, 2017, jurisdiction must be established and written and oral public comment on the draft permit and application may be accepted.

To participate in the hearing as a party, you must attend the hearing and show you would be affected by the application in a way not common to members of the general public. See 30 Texas Administrative Code Section 55.256.

In accordance with 1 Texas Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

For information concerning the hearing process, contact the Public Interest Counsel, MC 103, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For additional information, the general public may contact the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from Gregory Power Partners LLC at the address stated above or by calling Mr. Mario DeLa Cruz, Plant Manager, at (361) 777-3061.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: June 14, 2017

TRD-201702407

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 21, 2017



Notice of Opportunity to Comment on a Default Order 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 Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 1, 2017**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 1, 2017**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: JAN ENTERPRISES INC. dba NIKU'S LUCKY LADY; DOCKET NUMBER: 2016-1447-PST-E; TCEQ ID NUM-

BER: RN100539717; LOCATION: 6728 North Davis Boulevard, North Richland Hills, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(a), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201702392

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 20, 2017



Notice of Opportunity to Comment on a Shutdown/Default Order 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 Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order 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. In accordance with 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 1, 2017**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/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 S/DO shall be sent to the attorney designated for the S/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 1, 2017**. Written comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone

number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Roha Enterprises, Inc. dba GK Mart Convenience Store; DOCKET NUMBER: 2016-0075-PST-E; TCEQ ID NUMBER: RN102277324; LOCATION: 1405 West Avenue M, Temple, Bell County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate 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 the petroleum USTs; PENALTY: \$6,766; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201702390

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 20, 2017



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 1, 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 1, 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: Amron Properties L.L.C.; DOCKET NUMBER: 2016-1963-PST-E; TCEQ ID NUMBER: RN102374907; LOCATION: 521 State Highway 124, Winnie, Chambers County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an UST system for which any applicable component

of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.602(a) and §334.606, by failing to identify and designate for each UST facility including unmanned facilities, at least one named individual for each class of operator, Class A, B, and C; PENALTY: \$5,250; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: AZEL H CORP. dba Moon Mart; DOCKET NUMBER: 2015-1336-PST-E; TCEQ ID NUMBER: RN101472918; LOCATION: 10010 La Port Freeway, Houston, Harris 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, §382.085(b) and 30 TAC §115.242(d)(3), 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; and 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); PENALTY: \$5,000; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: FOREST WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0089-PWS-E; TCEQ ID NUMBER: RN101183465; LOCATION: northwest of City of Wells 2.2 miles west of United States Highway 69 on the north side of Farm-to-Market Road 1911 near Forest, Cherokee County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c), 30 TAC §290.115(f)(1), and TCEQ AO Docket Number 2014-0885-PWS-E, Ordering Provision Number 2.e., by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §290.271(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(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account; PENALTY: \$1,062; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: MRUBEL ENTERPRISE INC dba Ruiz Market; DOCKET NUMBER: 2016-1734-PST-E; TCEQ ID NUMBER: RN101860583; LOCATION: 505 South Loop 1604 East, Suite 1, San Antonio, Bexar 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); PENALTY: \$3,000; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: SOUTH TEXAS ELECTRIC COOPERATIVE, INC.; DOCKET NUMBER: 2015-1685-IWD-E; TCEQ ID NUMBER: RN100222652; LOCATION: 2849 Farm-to-Market Road 447,

on the east bank of the Guadalupe River, approximately three miles southwest of the community of Nursery, Victoria 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 WQ0001521000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 301, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (9)(A); and TPDES Permit Number WQ0001521000, Monitoring and Reporting Requirements Number 7.c., by failing to report in writing any effluent violations which deviate from the permitted effluent limitation by more than 40% to the TCEQ Corpus Christi Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: \$49,200; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201702391

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 20, 2017



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment

Proposed Limited Scope Amendment to Permit No. 1972A.

APPLICATION. Greenwood Landfill TX, LP, P.O. Box 130249, Tyler, Smith County, Texas 75713, the operator of the Greenwood Farms Landfill, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Limited Scope Permit Major Amendment which requests authorization to revise the excavation and final contour grades without increasing the volumetric waste capacity of the facility. The facility is located at 12920 FM 2767, Tyler, Smith County, Texas 75708. The TCEQ received this application on May 3, 2017. The permit application is available for viewing and copying at the Tyler Public Library, 201 South College Street, Tyler, Smith County, Texas 75702, and may be viewed online at <http://www.ftwweaverboos.com>. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.371111&lng=-95.194444&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Greenwood Landfill TX, LP at the address stated above or by calling Mr. Adam Hart, Greenwood Landfill TX, LP, at (817) 317-2047.

TRD-201702406
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2017

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: Lobby Activities Report due March 10, 2017

Rachel Hammon, 3737 Executive Center Dr., Ste. 268, Austin, Texas 78731

Deadline: Lobby Activities Report due April 10, 2017

James Andrew Campbell, P.O. Box 195892, Dallas, Texas 75219

TRD-201702344
Seana Willing
Executive Director
Texas Ethics Commission
Filed: June 15, 2017

Texas Facilities Commission

Request for Proposals #303-8-20605

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-8-20605. TFC seeks a five (5) or ten (10) year lease of approximately 5,678 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is July 11, 2017, and the deadline for proposals is July 18, 2017, at 3:00 p.m. The award date is August 16, 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=141686.

TRD-201702379
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 19, 2017

Request for Proposals #303-8-20606

The Texas Facilities Commission (TFC), on behalf of the Railroad Commission (RRC), announces the issuance of Request for Proposals

als (RFP) #303-8-20606. TFC seeks a five (5) or ten (10) year lease of approximately 7,670 square feet of office space in Houston, Texas.

The deadline for questions is July 11, 2017, and the deadline for proposals is July 25, 2017, at 3:00 p.m. The award date is August 16, 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=141806.

TRD-201702402

Kay Molina

General Counsel

Texas Facilities Commission

Filed: June 20, 2017



Request for Proposals #303-8-20607

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Enforcement (CPA), announces the issuance of Request for Proposals (RFP) #303-8-20607. TFC seeks a five (5) or ten (10) year lease of approximately 5,553 square feet of office space in Fort Worth or North Richland Hills, Texas.

The deadline for questions is July 13, 2017, and the deadline for proposals is July 21, 2017, at 3:00 p.m. The award date is August 16, 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=141802.

TRD-201702403

Kay Molina

General Counsel

Texas Facilities Commission

Filed: June 20, 2017



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 7, 2017 through June 15, 2017. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from

the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 23, 2017. The public comment period for this project will close at 5:00 p.m. on Wednesday, July 19, 2017.

FEDERAL AGENCY ACTIVITY:

Applicant: National Oceanic and Atmospheric Administration (NOAA)

Location: Coastwide, Texas

Project Description: The Texas Trustee Implementation Group (TX TIG) is responsible for restoring the natural resources and services within the Texas Restoration Area that were injured by the Deepwater Horizon oil spill in 2010. The TX TIG is comprised of state and federal agencies. Thirteen (13) natural resource restoration projects are proposed by the TX TIG. These projects are located geographically from Orange county in southeast Texas to Cameron county in south Texas. Proposed projects include restoration (marsh, dune, beach, and oyster), erosion protection, hydrologic restoration, and habitat acquisition.

CMP Project No: 17-1231-F2

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201702386

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 19, 2017



Texas Health and Human Services Commission

Notice of Public Hearing

Notice of Public Hearing on Proposed Medicaid Payment Rates for Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health Agencies (HHA), and Independent Therapists.

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 19, 2017, from 9:00 a.m. to 12:00 noon, to receive comment on proposed Medicaid payment rates for Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health Agencies (HHA), and Independent Therapists.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Healy Building, located at 4900 North Lamar Blvd., Austin, Texas. Registration to speak will be open until 12:00 noon. If the time allotted for the hearing does not accommodate the number of persons registered, HHSC will extend the hearing to accommodate as many registrants as possible, however, that extension will only be until 5:00 p.m. on that date.

Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will broadcast the public hearing; the broadcast can be accessed at <http://legacy-hhsc.hhsc.state.tx.us/news/webcasting.asp>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code

§32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health Agencies (HHA), and Independent Therapists are proposed to be effective September 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.201(d)(1)(A) and (D), which authorize HHSC to adjust rates for medical assistance if state or federal law is enacted requiring a rate reduction or restricting the availability of appropriated funds;

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments rates will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after July 5, 2017. Interested parties may also obtain a copy of the briefing package on or after July 5, 2017, by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201702422

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 21, 2017



Notice of Public Hearing on Proposed Payment Rates

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing on July 17, 2017, at 9:00 a.m., to receive public comment on proposed payment rates for the 24-Hour Residential Child Care (24 RCC) program, Treatment Foster Family Care, Integrated Care Coordination, Temporary Emergency Placement, Case Management, Family-based Safety Services and payment rates for Single Source Continuum Contractors (SSCCs) under community-based foster care.

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC also will broadcast the public hearing; the broadcast can be accessed at <http://legacy-hhsc.hhsc.state.tx.us/news/webcasting.asp>. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Title 1 of Texas Administrative Code (1 TAC) §355.7103(a)(2), which requires public notice of and hearings on proposed 24 RCC reimbursements.

Proposal. HHSC proposes to increase payment rates for certain services for the 24 RCC program and to establish new payment rates for Treatment Foster Family Care, Integrated Care Coordination, Temporary Emergency Placement, Case Management, Family-based Safety Services and community-based foster care. The payment rates are proposed to be effective September 1, 2017, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.7103, which addresses the reimbursement methodology for the 24 RCC program, Treatment Foster Family Care, Integrated Care Coordination, Temporary Emergency Placement and community-based foster care; and

Proposed new §355.7109, which addresses the reimbursement methodology for Case Management and Family-based Safety Services.

Briefing package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after July 30, 2017. Interested parties may also obtain a copy of the briefing package before the hearing by contacting HHSC Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. Mail to Sarah Hambrick, Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas, 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Sarah Hambrick, Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751-2316.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201702408

Karen Ray

General Counsel

Texas Health and Human Services Commission

Filed: June 21, 2017



Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for

Medical Assistance under Title XIX of the Social Security Act. The proposed amendments are effective July 1, 2017.

The purpose of these amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for Physicians and Other Practitioners to include allergy tests, auditory system surgery, cardiovascular services, dialysis, gastroenterology, intravenous treatment, male genital system surgery, medicine other, noninvasive vascular diagnostic studies, pulmonary services and outpatient mental health.

The proposed amendments are estimated to result in an aggregate cost savings of \$21,288 for the remainder of federal fiscal year (FFY) 2017, consisting of \$11,960 in federal funds and \$9,328 in state general revenue. For FFY 2018, the estimated annual aggregate cost savings is \$83,445, consisting of \$47,464 in federal funds and \$35,981 in state general revenue. For FFY 2019, the estimated annual aggregate cost savings is \$87,665 consisting of \$50,302 in federal funds and \$37,363 in state general revenue.

Further detail on specific rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: <http://www.hhsc.state.tx.us/Rad/rate-packets.shtml>.

Rate Hearing. A rate hearing was held on May 18, 2017, at 1:30 p.m. in Austin, Texas. Information about the proposed rate changes and the hearing can be found in the April 14, 2017, issue of the *Texas Register* at pages (2024 - 2025) at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendments. Interested parties may obtain a free copy of the proposed amendments and/or additional information about the amendments by contacting Doneshia Ates, State Plan Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1963; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail:

Texas Health and Human Services Commission
Attention: Rate Analysis, Mail Code H-400
P.O. Box 149030
Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery:

Texas Health and Human Services Commission
Attention: Rate Analysis, Mail Code H-400
Brown-Heatly Building
4900 North Lamar Blvd.
Austin, Texas 78751
Phone number for package delivery: (512) 730-7401

Fax:

Attention: Rate Analysis at (512) 730-7475

Email:

RADAcuteCare@hhsc.state.tx.us

TRD-201702409

Karen Ray
General Counsel
Texas Health and Human Services Commission
Filed: June 21, 2017



Public Notice: Waiver Amendment of the Medically Dependent Children Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Medically Dependent Children Program (MDCP) waiver, which is implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2017. The proposed effective date for this amendment is August 31, 2017, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Appendix B will be updated to reflect the unduplicated count of individuals served (Factor C) and Point-In-Time (PIT) for waiver year 5 of the existing waiver.
2. Appendix J: The Cost Neutrality Demonstration information in appendix J will be updated for waiver year 5 of.

The MDCP waiver provides home and community-based services to persons under age 21 who are medically fragile and meet the requirements for nursing facility care. Services included respite, adaptive aids, minor home modifications, employment assistance, supported employment, financial management services, transition assistance services, and flexible family support services. Texas uses the MDCP waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, or a Child Protective Services foster care home which can meet the individual's complex medical needs.

An individual may obtain a free copy of the proposed waiver amendment, including the MDCP Home and Community Based Services (HCBS) transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the MDCP HCBS transition plan by contacting Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission
Attention: Jacqueline Pernell, Policy Development Support, Waiver Coordinator
P.O. Box 13247
Mail Code H-600
Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Program Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

TRD-201702417

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2017

Department of State Health Services
Licensing Actions for Radioactive Materials



During the first half of May, 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	Amendment Number	Date of Action
Throughout TX	HVJ South Central Texas – M&J Inc.	L06858	Austin	00	05/10/17
Throughout TX	Geo Cam Inc.	L06857	San Antonio	00	05/02/17

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	36	05/09/17
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	37	05/12/17
Arlington	Texas Oncology P.A.	L05116	Arlington	31	05/01/17
Austin	Austin Radiological Association	L00545	Austin	200	05/01/17
Austin	Austin Radiological Association	L00545	Austin	201	05/11/17
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	143	05/03/17
Austin	Austin Nuclear Pharmacy Inc.	L05591	Austin	24	05/11/17
Austin	ARA St. David's Imaging L.P.	L05862	Austin	77	05/11/17
Austin	Central Texas Medical Specialists P.L.L.C. dba Austin Cancer Centers	L06618	Austin	12	05/02/17
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	152	05/10/17
Bellaire	Shared Imaging L.L.C.	L06614	Bellaire	08	05/10/17
Bishop	BASF Corporation	L06855	Bishop	01	05/12/17
Corpus Christi	Christus Spohn Health System dba Christus Spohn Hospital Corpus Christi – Shoreline & South	L02495	Corpus Christi	131	05/11/17
Cuero	Dewitt Medical District dba Cuero Regional Hospital	L02448	Cuero	29	05/08/17
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	37	05/08/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Dallas Medical Center L.L.C.	L06584	Dallas	08	05/10/17
El Paso	BRK Brands Inc.	L03725	El Paso	20	05/09/17
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	154	05/05/17
Fort Worth	Oncology Hematology Consultants P.A. dba The Center for Cancer and Blood Disorders	L05919	Fort Worth	24	05/02/17
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	201	05/05/17
Houston	Harris County Hospital District dba Harris Health System	L01303	Houston	94	05/03/17
Houston	Harris County Hospital District dba Harris Health System	L01303	Houston	95	05/12/17
Houston	Digirad Imaging Solutions Inc.	L05414	Houston	41	05/10/17
Houston	Houston Cyclotron Partners L.P. dba Cyclotope	L05585	Houston	29	05/01/17
Houston	Radiomedix Inc. dba Radiomedix	L06044	Houston	20	05/12/17
Killeen	Lockheed Martin Corporation	L06653	Killeen	02	05/02/17
Kingwood	KPH Consolidation Inc. dba Kingwood Medical Center	L04482	Kingwood	31	05/01/17
Kingwood	Millennium Physicians Association P.L.L.C. dba Millennium PET/CT Center	L05901	Kingwood	09	05/09/17
Lubbock	Covenant Health System dba Joe Arrington Cancer Center	L04881	Lubbock	69	05/12/17
Lufkin	Memorial Health System of East Texas dba Chi St. Lukes Health Memorial	L01346	Lufkin	100	05/01/17
Plano	Baylor Regional Medical Center dba Baylor Scott & White Medical Center – Plano	L05844	Plano	21	05/03/17
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	103	05/11/17
Sherman	Sherman/Grayson Hospital L.L.C. dba Wilson N. Jones Medical Center	L06354	Sherman	14	05/02/17
Sweeny	Phillips 66 Company	L06524	Sweeny	08	05/15/17
Temple	Specialty Pharmacy Services Inc.	L04883	Temple	33	05/12/17
Throughout TX	ETTL Engineers & Consultants Inc.	L01423	Tyler	39	05/11/17
Throughout TX	Associated Testing Laboratories Inc.	L01553	Houston	33	05/10/17
Throughout TX	Lotus L.L.C.	L05147	Andrews	33	05/10/17
Throughout TX	Texas A&M University	L05683	College Station	33	05/15/17
Throughout TX	United States Environmental Services L.L.C.	L05801	Deer Park	13	05/05/17
Throughout TX	CQC Testing and Engineering L.L.C.	L05802	El Paso	11	05/11/17
Throughout TX	Techcorr USA Management L.L.C.	L05972	Pasadena	122	05/03/17
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	26	05/11/17
Throughout TX	The Lane Construction Corporation	L06218	Roanoke	06	05/12/17
Throughout TX	CMT Engineering Inc. dba Pavetex	L06407	Lubbock	05	05/04/17
Throughout TX	Fox NDE L.L.C.	L06411	Abilene	14	05/11/17
Throughout TX	Pro Inspection Inc.	L06666	Odessa	04	05/10/17
Throughout TX	Reliable Wireline L.L.C.	L06739	Houston	01	05/04/17
Throughout TX	FMC Technologies Inc.	L06765	Houston	05	05/10/17
Throughout TX	American Piping Inspection Inc.	L06835	Kilgore	02	05/02/17
Throughout TX	Crest Pumping Technologies L.L.C.	L06838	Fort Worth	02	05/03/17
Throughout TX	Crest Pumping Technologies L.L.C.	L06838	Fort Worth	03	05/09/17
Waco	Hillcrest Baptist Medical Center dba Baylor Scott & White Medical Center Hillcrest	L00845	Waco	117	05/02/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Waxahachie	Baylor Medical Center at Waxahachie dba Baylor Scott & White Medical Center – Waxahachie	L04536	Waxahachie	51	05/01/17
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RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Denton	Denton Cancer Center L.L.P.	L05945	Denton	09	05/09/17
Floresville	Wilson County Memorial Hospital District dba Connally Memorial Medical Center	L03471	Floresville	22	05/01/17
Throughout TX	Onesubsea Processing Inc.	L05867	Houston	12	05/03/17
Victoria	Victoria of Texas L.P. dba Detar Healthcare System	L03575	Victoria	24	05/08/17

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
El Paso	Desert Imaging Services L.P.	L06743	El Paso	03	05/04/17
Throughout TX	Baker Tank Company	L02599	Arp	29	05/03/17
Throughout TX	Fugro Inc.	L06216	Houston	01	05/09/17
Throughout TX	Multi Phase Meters Inc.	L06458	Houston	11	05/10/17

TRD-201702353
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 16, 2017



Texas Department of Insurance

Company Licensing

Application for EL PASO FIRST HEALTH PLANS, INC., a domestic health maintenance organization, DBA (doing business as) EL PASO HEALTH. The home office is in El Paso, Texas.

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-201702416
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: June 21, 2017



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 19, 2017, to amend a state-issued certificate of franchise authority, under Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Time Warner Cable Texas LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 47316.

The requested amendment is to expand the service area footprint to include the municipal boundaries, excluding any federal properties, of the City of Meadowlakes, Texas.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 47316.

TRD-201702401
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017



Notice of Application for Change in Ownership

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 15, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Hubert-Watson Subdivision Water Supply, Inc. For Approval of a Change in Ownership, Docket Number 47289.

The Application: Hubert-Watson Subdivision Water Supply, Inc. filed an application for approval of change in ownership. Specifically, Hubert Watson seeks approval to allow the Betty Hubert Wise Trust to transfer its ownership interest in Hubert-Watson to Randal Boenigk.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47289.

TRD-201702410
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2017



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 14, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Ranchland Property Owners' Association, Inc. and City of Kountze for Sale and Transfer of Certificate Rights in Hardin County, Docket No. 47283.

The Application: Ranchland Property Owners' Association, Inc. and City of Kountze filed an application for the sale and transfer of certificate rights in Hardin County. Kountze seeks to acquire all of the assets of Ranchland. The area being requested is approximately 220 acres and serves 15 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47283.

TRD-201702411
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2017



Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Kaufman County.

Docket Style and Number: Application of Gastonia Scurry Special Utility District to Amend a Certificate of Convenience and Necessity in Kaufman County, Docket Number 47280.

The Application: Gastonia Scurry Special Utility District filed an application to amend its water CCN No. 10837 in Kaufman County. Gastonia Scurry SUD requests that a portion of its CCN be decertified and 26 connections be transferred to West Cedar Creek SUD.

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 47280.

TRD-201702349
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2017



Notice of Application to Amend Certificates of Operating Authority

On June 13, 2017, Alpheus Communications, LLC, Alpheus Data Services, L.L.C., and LOGIX Acquisition Company, LLC filed a joint application with the Public Utility Commission of Texas (commission) to amend service provider certificates of operating authority Nos. 60112 and 60890, to reflect a change in ownership and control.

Docket Style and Number: Application of Alpheus Communications, LLC, Alpheus Date Services, L.L.C., and LOGIX Acquisition Company, LLC for an Amendment to Service Provider Certificates of Operating Authority, Docket Number 47281.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than July 7, 2017. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47281.

TRD-201702351
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2017



Notice of Application to Amend Service Provider Certificates of Operating Authority

On June 14, 2017, Application of West Corporation, West Safety Communications Inc., West Telecom Services, LLC and Olympus Holdings II, LLC filed a joint application with the Public Utility Commission of Texas (commission) to amend service provider certificates of operating authority Nos. 60317 and 60487, to reflect a change in ownership and control.

Docket Style and Number: Application of West Corporation, West Safety Communications Inc., West Telecom Services, LLC and Olympus Holdings II, LLC for an Amendment to Service Provider Certificates of Operating Authority, Docket Number 47286.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than July 7, 2017. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47286.

TRD-201702350
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2017



Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style And Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47295.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2) the City filed a notice of intent to provide water service to a 2.9-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47295.

TRD-201702394
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017



Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style And Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47296.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2) the City filed a notice of intent to provide water service to a .4-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47296.

TRD-201702395
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017



Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style And Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47297.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2) the City filed a notice of intent to provide water service to a 25.304-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47297.

TRD-201702396
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017



Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style And Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47298.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2) the City filed a notice of intent to provide water service to a 4.6-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47298.

TRD-201702397

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style and Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47299.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2), the City filed a notice of intent to provide water service to a 119.5-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47299.

TRD-201702398
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style and Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47300.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2), the City filed a notice of intent to provide water service to a 37.9-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47300.

TRD-201702399
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 15, 2017, the City of Austin's notice of intent to provide water service to area decertified from Creedmoor-Maha Water Supply Corporation's certificate of convenience number 11029 in Travis County.

Docket Style and Number: City of Austin's Notice of Intent to Provide Water Service to Area Decertified from Creedmoor-Maha Water Supply Corporation in Travis County, Docket Number 47301.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o)(2), the City filed a notice of intent to provide water service to a 5.657-acre tract of land decertified from Creedmoor-Maha Water Supply Corporation.

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 47301.

TRD-201702400
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017

◆ ◆ ◆
Notice of Petition for Rulemaking

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition for rulemaking filed on June 19, 2017.

Project Style and Number: Petition of Extenet Systems, Inc. to Amend 16 TAC §26.461 and §26.465 Relating to Access Lines and Methodology to Count Access Lines and Reporting Requirements for Certified Telecommunications Providers. Project Number 47332.

Summary of Petition: Extenet Systems, Inc. has filed a petition for rulemaking requesting that the commission amend 16 TAC §26.461 and §26.465 by amending the definition of "access line" and the methodology of counting access lines for purposes of calculating municipal access line fees to municipalities to count facilities supporting modern technology used by certificated telecommunication providers under Texas Local Government Code Chapter 283. Extenet Systems, Inc.'s proposed rule amendments are intended to address counting and reporting facilities in the rights-of-way, and, consequently, the compensation paid to municipalities.

A copy of the petition is available for review in the commission's Central Records. The deadline to file comments in this project is July 21, 2017. Comments shall be filed at the Public Utility Commission of Texas, Central Records, 1701 N. Congress, Austin, Texas 78701. Interested persons may contact the commission at (512) 936-7120 or (toll-free) (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission by dialing 7-1-1. All comments should reference Project Number 47332.

TRD-201702404

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017



Public Notice of Workshop

The Public Utility Commission of Texas will conduct a workshop regarding Project No. 47199, *Project to Assess Price-Formation Rules in ERCOT's Energy-Only Market*, on Thursday, August 10, 2017, at 9:30 a.m. The workshop will take place in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Commission Staff will publish an agenda in advance of the workshop.

Questions concerning the workshop or this notice should be referred to Julia Harvey at (512) 936-7371 or julia.harvey@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201702405
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2017



Texas Water Development Board

Applications for June 2017

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62738, a request from the Town of Buckholts, P.O. Box 117, Buckholts, Texas 76518-0117, received December 15, 2016, for

\$200,000 in principal forgiveness from the Drinking Water State Revolving Fund to finance planning, design, and construction of a water meter replacement project.

Project ID #73707, a request from the City of Castroville, 1209 Fiorella St., Castroville, Texas 78009, received February 1, 2017, for a \$1,500,000 loan from the Clean Water State Revolving Fund to finance construction of wastewater treatment plant improvements.

Project ID #62745, a request from the City of Gladewater, P.O. Box 1725, Gladewater, Texas 75647-1725, received March 10, 2017, for a \$1,600,000 loan from the Drinking Water State Revolving Fund to finance planning, design and construction of water system improvements.

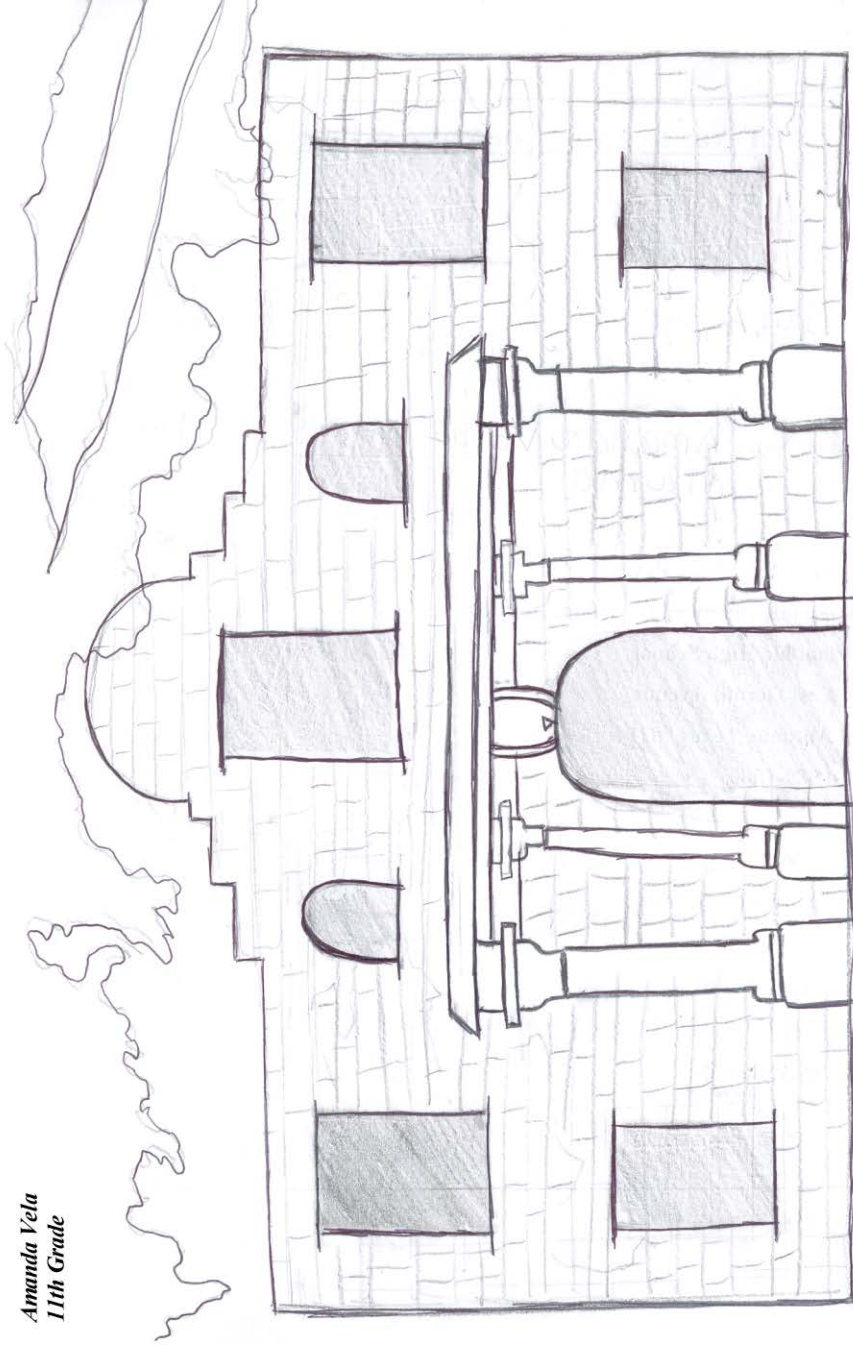
Project ID #73762, a request from the City of Gladewater, P.O. Box 1725, Gladewater, Texas 75647-1725, received March 23, 2017, for a loan in the amount of \$3,900,000 from the Clean Water State Revolving Fund to finance planning, design, and construction of wastewater treatment plant improvements.

Project ID #73758, a request from the Greater Texoma Utility Authority on behalf of the City of Ector, 5100 Airport Dr., Denison, Texas 75020-8448, received March 3, 2017, for a \$480,000 loan from the Clean Water State Revolving Fund to finance planning, design and construction of wastewater treatment plant improvements; and to transfer \$62,000 in remaining excess funds from a Texas Water Development Fund commitment to this project.

TRD-201702352
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: June 16, 2017



*Amanda Yela
11th Grade*



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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