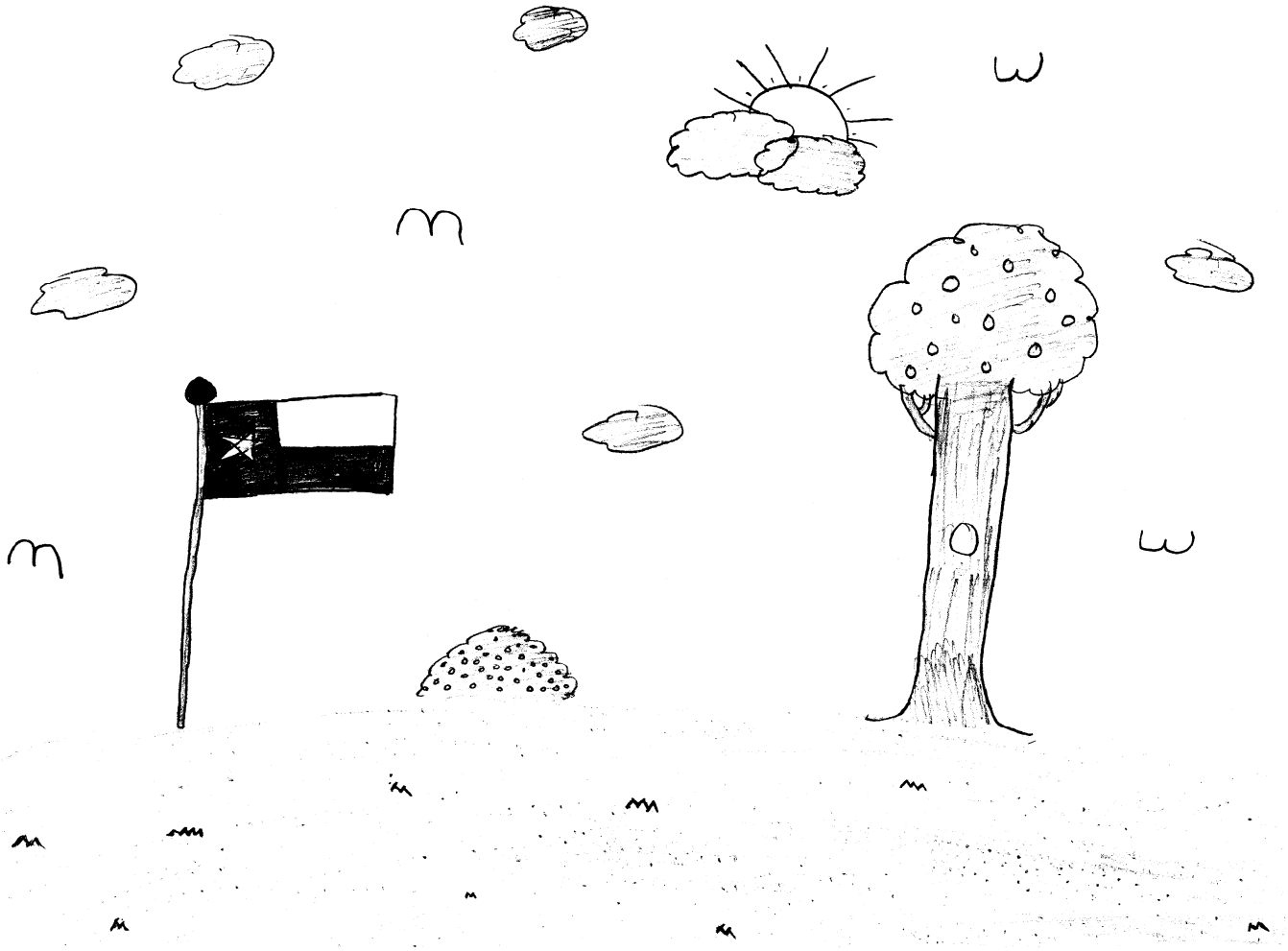
TEXAS REGISTER

Volume 42 Number 41 *October 13, 2017* *Pages 5591 - 5746*



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

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

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In This Issue

RULE REVIEW

Proposed Rule Reviews

Adopted Rule Reviews

TABLES AND GRAPHICS

IN ADDITION

Office of Consumer Credit Commissioner

Texas Commission on Environmental Quality

Texas Ethics Commission

Texas Facilities Commission

General Land Office

Texas Health and Human Services Commission

Texas Department of Insurance

Texas Lottery Commission

Public Utility Commission of Texas

Supreme Court of Texas

Texas Water Development Board

THE GOVERNOR

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

Appointments

Appointments for September 27, 2017

Appointed to the Evergreen Underground Water Conservation District, for a term to expire February 1, 2021, Jason B. Peeler of Floresville (Mr. Peeler is being reappointed).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2023, James W. LaFavers of Amarillo (Mr. LaFavers is being reappointed).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2023, Brian A. Long of Kilgore (replacing Michelle Marie Skyrme of Palestine whose term expired).

Greg Abbott, Governor

TRD-201703917

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Appointments

Appointments for September 28, 2017

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2020, Lauren H. Day, of Austin (replacing Joseph Martino of Marshall).

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2021, Charles P. Gilmore, III, Ph.D., of Amarillo (replacing Susan R. Rogers of Odessa whose term expired).

Appointed to the Texas Crime Stoppers Council, for a term to expire September 1, 2021, Carlo G. Hernandez, of Brownsville (replacing Jeffrey B. Smith of Lufkin whose term expired).

Appointed to the Texas Real Estate Commission, for a term to expire January 31, 2023, Jan Fite Miller, of Kemp (replacing Billy L. Jones of Belton whose term expired).

Appointed to the Texas Real Estate Commission, for a term to expire January 31, 2023, DeLora Wilkinson, of Cypress (replacing Troy C. Alley, Jr. of DeSoto whose term expired).

Appointed to the Texas Real Estate Commission, for a term to expire January 31, 2023, Michael Williams, of Colleyville (replacing Weston Martinez of San Antonio whose term expired).

Greg Abbott, Governor

TRD-201703925

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Appointments

Appointments for September 29, 2017

Appointed to the Gulf State Marine Fisheries Commission, for a term to expire March 17, 2020, Troy B. Williamson, II of Portland (Mr. Williamson is being reappointed).

Appointed to the Texas State Board of Public Accountancy, Manuel Cavazos, IV of Austin (replacing J. Coalter Baker of Austin whose term expired). Mr. Cavazos was also appointed Presiding Officer.

Appointed to the Texas State Board of Public Accountancy, Lisa A. Friel of San Antonio (replacing Rocky Lynn Duckworth of Houston whose term expired).

Appointed to the Texas State Board of Public Accountancy, Jamie D. Grant of Arlington (replacing Jonathan Ballenger Cluck of Fair Oaks Ranch whose term expired).

Appointed to the Texas State Board of Public Accountancy, James D. Ingram, IV of College Station (replacing John Richard Broaddus of El Paso whose term expired).

Appointed to the Texas State Board of Public Accountancy, Debra S. Sharp of Houston (replacing Phillip W. Worley of Hebbronville whose term expired).

Appointments for October 2, 2017

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2019, Michael A. White, D.V.M., of Conroe.

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2023, Carlos R. Chacon, of Houston.

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2023, Samantha J. Mixon, D.V.M., of Boerne.

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2023, Randall L. Skaggs, D.V.M., of Perryton.

Greg Abbott, Governor

TRD-201703980

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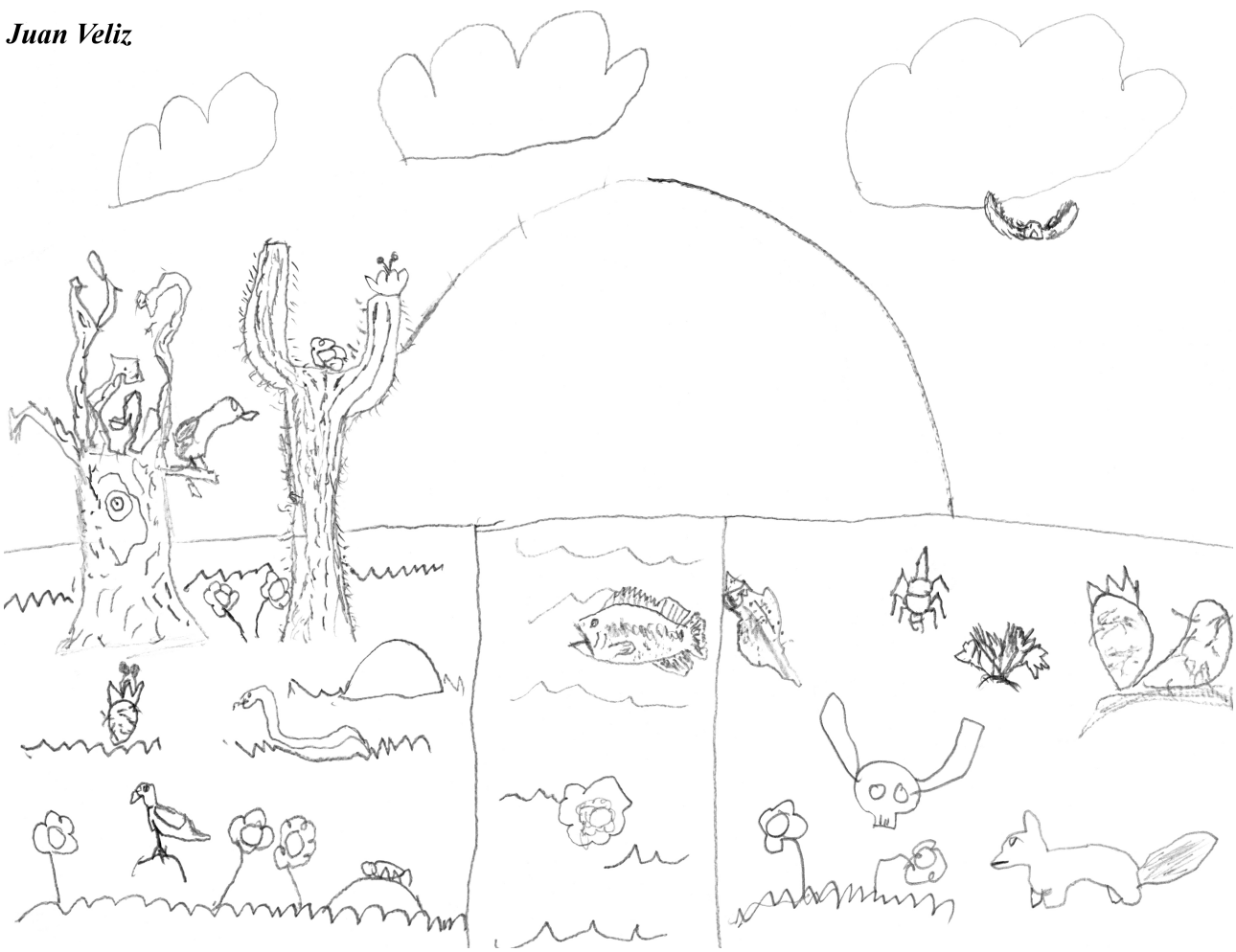
Juan Veliz



THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. KP-0166

The Honorable Dustin H. Boyd

Coryell County District Attorney

702 East Leon Street

Gatesville, Texas 76528

Re: Authority of a public school district to operate a transportation system outside of its geographical boundaries under section 34.007 of the Education Code (RQ-0156-KP)

S U M M A R Y

Section 34.007 of the Education Code does not authorize the Jonesboro Independent School District to operate a public school transportation system outside of its boundaries and within the boundaries of the Gatesville Independent School District to regularly transport students to and from school without an interlocal cooperation contract under Government Code chapter 791.

Opinion No. KP-0167

The Honorable Jim Murphy

Chair, Committee on Special Purpose Districts

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the board of trustees of a public junior college may allow licensed concealed handguns in open meetings of the board of trustees (RQ-0158-KP)

S U M M A R Y

A license holder who carries a concealed handgun into an open meeting of a junior college district board of trustees in which no Penal Code section 30.06 trespass notice was posted would have a defense to the prosecution of Penal Code subsection 46.035(c).

Though unnecessary within the context of Government Code subsection 411.2031(d-1), a junior college district board of trustees could adopt a rule authorizing concealed handguns in its open meetings to affirm or publicize a license holder's right to carry the concealed handgun into the open meeting held on the institution's campus.

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

TRD-201703992
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 4, 2017

♦ ♦ ♦

Opinions

Opinion No. KP-0168

Sherif Zaafran, M.D.

President

Texas Medical Board

Post Office Box 2018

Austin, Texas 78768-2018

Re: Whether section 483.102 of the Health and Safety Code authorizes an eligible prescriber to directly or by standing order prescribe an opioid antagonist to law enforcement agencies (RQ-0181-KP)

S U M M A R Y

Section 483.102 of the Health and Safety Code authorizes a prescriber to directly or by standing order prescribe an opioid antagonist to law enforcement agencies in a position to assist persons experiencing an opioid-related drug overdose.

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

TRD-201704005
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 4, 2017

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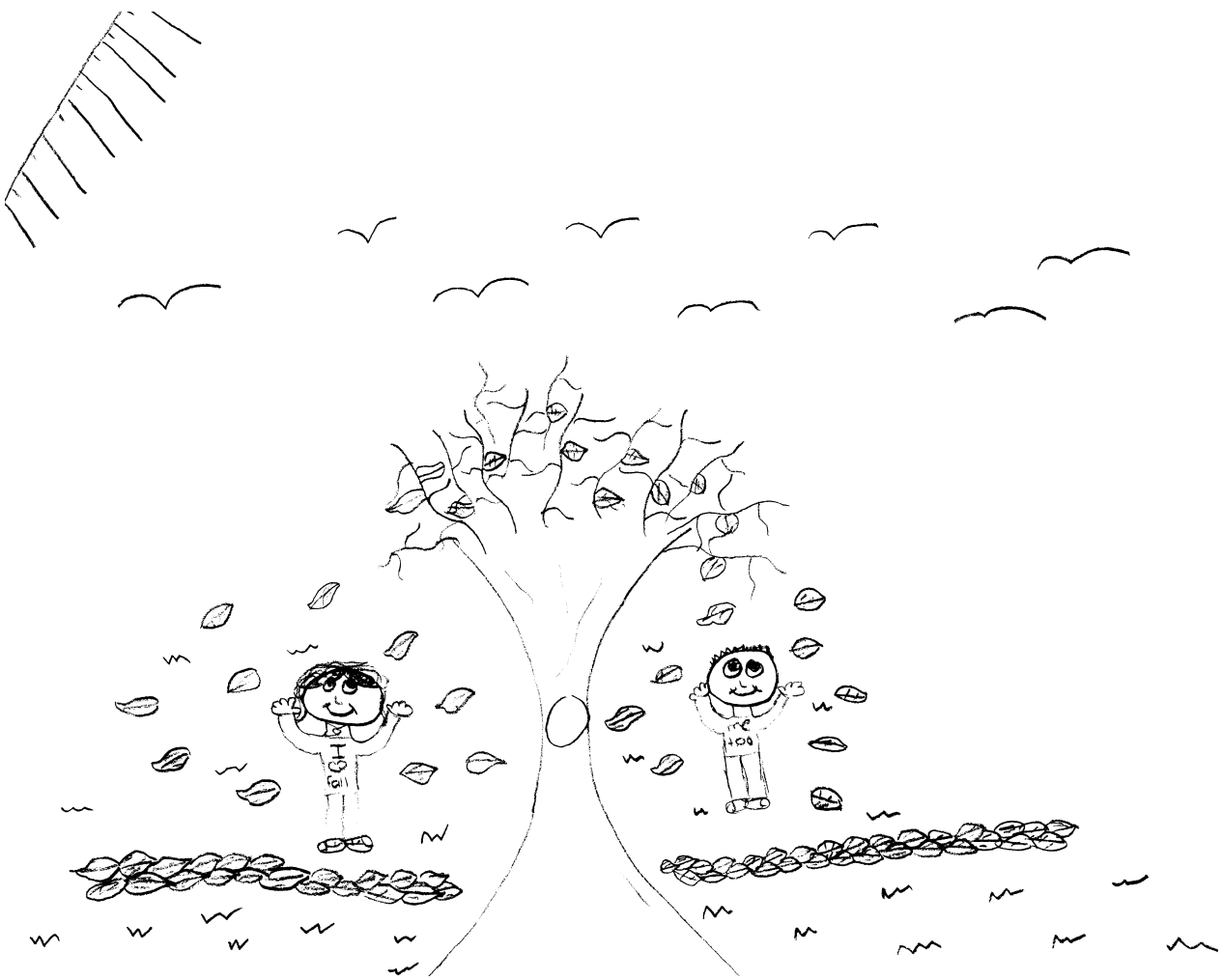

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-545 - Whether the revolving door law in section 572.069 of the Government Code would prohibit a former employee of a state agency from providing certain services. **(AOR-622)**

SUMMARY

Section 572.069 of the Government Code prohibits a former state employee from providing the services described before the second anniversary of the date on which the employee's service or employment with the state agency ceases.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201703935
Seana Willing
Executive Director
Texas Ethics Commission
Filed: September 29, 2017

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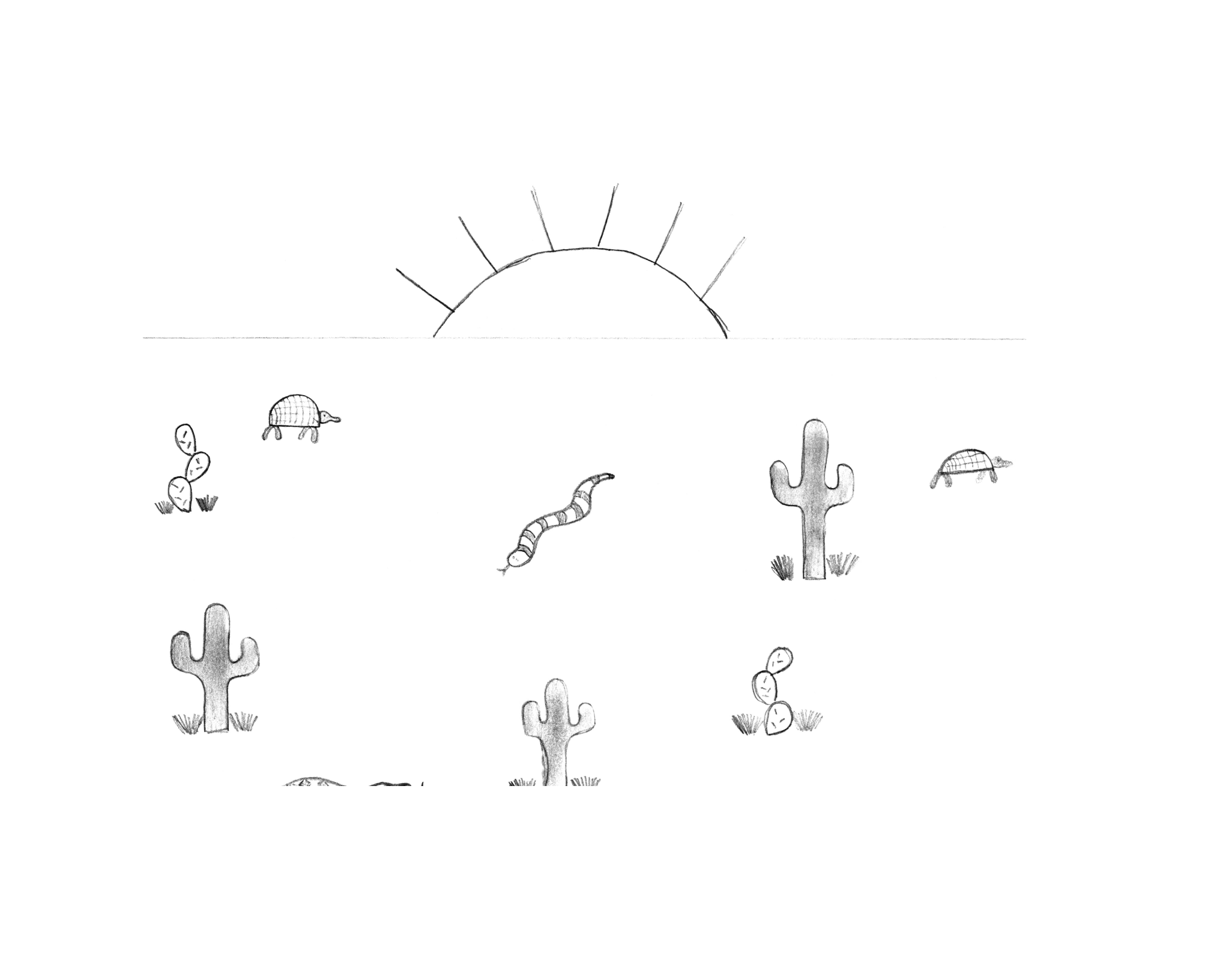

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, 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 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.81 - 851.83

The Texas Board of Professional Geoscientists (TBPG) adopts new emergency rules concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG adopts 22 TAC §851.81, Certain Fees Temporarily Suspended, 22 TAC §851.82, concerning Certain Expiration Dates Extended, and 22 TAC §851.83, concerning Certain Licensees Temporarily Exempt from Continuing Education Requirements, on an emergency basis, for those licensees residing in Governor-designated disaster affected counties.

A Proclamation by the Governor of the State of Texas dated September 20, 2017, declared a state of emergency for certain counties in Texas due to Hurricane Harvey. As a result of this proclamation, TBPG has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt these new rules on an emergency basis.

There is an urgent necessity to adopt these rules with less than 30-days' notice to allow licensees to continue practicing geoscience without interruption during the weeks and months immediately following the hurricane. Allowing licensees to continue to practice geoscience without interruption will allow them to assist in recovery, environmental damage assessment, post flood foundation stability assessment, environmental remediation and subsurface assessments related to structural rebuilding efforts in affected counties, thereby helping to preserve the public health, safety, and welfare in those areas, which are in imminent peril as a result of structures that have been damaged and otherwise become structurally unsound.

New rule, §851.81, entitled Certain Fees Temporarily Suspended, outlines the process and conditions the board will use to provide replacement license certificate and expiration cards at no cost to licensees residing in Governor-designated disaster affected counties, whose license certificate and/or license expiration cards were lost or damaged due to the disaster related to Hurricane Harvey. The suspension of the fee benefits the State as it allows licensees to obtain a current copy of their certificates without the undue burden that a replacement fee may pose during the time that licensees affected by Hurricane Harvey are attempting to recover and rebuild their practices. Thus the suspension of the fee facilitates compliance with statutes and will reduce costs to the agency associated with the unnecessary complaints TBPG would need to process.

New rule, §851.82, entitled Certain Expiration Dates Extended, outlines the process and conditions the board will use to extend the expiration dates of those Professional Geoscientists licenses, Geoscience Firm registrations, and Geoscientist-in-Training certifications for those license-holders residing in Governor-designated disaster affected counties, to ensure licensed individuals and firms are available to assist in recovery and rebuilding of areas affected by Hurricane Harvey, and to avoid the expiration of licenses that most likely would have been timely renewed, but for the difficulties the hurricane caused.

New rule, §851.83, entitled Certain Licensees Temporarily Exempt From Continuing Education Requirements, outlines the process and conditions the board will use to provide temporary exemption from the continuing education requirements for those licensees residing in Governor-designated disaster affected counties, thereby allowing those licensees to renew their license in a timely manner as long as the license, registration, or certification is renewed on or before August 31, 2018.

These new rules are adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, and Occupations Code §1002.154, which provides that the Board shall enforce the Act which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state.

§851.81. Certain Fees Temporarily Suspended.

The following applies between October 1, 2017 and December 31, 2017.

(1) TBPG staff are authorized to provide, upon request and at no cost to the licensee, a replacement Professional Geoscientist license certificate, Geoscientist-in-Training certification certificate, or a Geoscience Firm registration certificate to any licensee whose certificate was damaged or lost in or as a result of Hurricane Harvey.

(2) TBPG staff are authorized to provide, upon request and at no cost to the licensee, a replacement Professional Geoscientist license certificate expiration card, Geoscientist-in-Training certification certificate expiration card, or a Geoscience Firm registration expiration card to any licensee whose certificate expiration card was damaged or lost in or as a result of Hurricane Harvey.

(3) TBPG staff are authorized to provide, upon request and at no cost to the licensee, a replacement Professional Geoscientist wallet license expiration card or a Geoscientist-in-Training certification wallet expiration card to any licensee whose wallet expiration card was damaged or lost in or as a result of Hurricane Harvey.

§851.82. Certain Expiration Dates Extended.

(a) Each Professional Geoscientist license, Geoscientist-in-Training certification, and Geoscience Firm registration in a Governor-designated disaster county that was scheduled to expire between August 31, 2017 and November 30, 2017 shall expire on December 31, 2017.

(b) A list of the Professional Geoscientist licenses, Geoscientist-in-Training certifications, and Geoscience Firm registrations whose expiration dates are extended by this section shall be made available on the TBPG website in a searchable format.

(c) Upon the renewal of each Professional Geoscientist license, Geoscientist-in-Training certification, and Geoscience Firm registration described by subsection (a) of this section, the renewal fee shall be the annual renewal fee for the license, certification, or registration listed in §851.80 of this chapter.

(d) Late renewal fee. Licenses described in subsection (a) of this section that expire December 31, 2017 and that are renewed on or after March 1, 2018, will be subject to the 60-day late renewal fee.

§851.83. Certain Licensees Temporarily Exempt from Continuing Education Requirements.

(a) Continuing Education: A Professional Geoscientist or a Geoscientist-in-Training who resides in a Governor-designated disaster affected county is temporarily exempt from the continuing education requirement as long as the license or certification is renewed on or before August 31, 2018.

(b) A list of the Professional Geoscientists and Geoscientists-in-Training who are temporarily exempt from the continuing education requirements under this section shall be made available on the TBPG website in a searchable format for a period of time that the Executive Director determines is necessary.

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 September 28, 2017.

TRD-201703920
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Effective date: September 28, 2017
Expiration date: January 25, 2018
For further information, please call: (512) 936-4405

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §12.36

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rule §12.36, clarifying the facts that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process.

Section 571.173 of the Government Code authorizes the Commission to impose a civil penalty of not more than $5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for a violation of a law administered and enforced by the Commission. Section 571.177 of the Government Code lists the factors that the Commission shall consider when assessing a civil penalty, including the seriousness and circumstances of a violation, the history of previous violations, the violator's good faith, and "other matters that justice may require." The list of factors provides the Commission with significant discretion in imposing a civil penalty.

Proposed §12.36 would clarify that the factors identified in §571.177, Government Code, include whether a respondent timely responds to written questions or subpoenas in the enforcement process. This serves to notify a respondent that responses to discovery requests and subpoenas can be weighed by the Commission when determining the amount of a civil penalty.

Additionally, current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. The Commission intends to adopt in Title 1, Chapter 12 a new rule, §12.36, which would include a slightly revised §18.27. Chapter 12 is a more appropriate location containing other rules related to sworn complaints. Subsection (b) of §18.27 states that the Commission is not required to waive a fine when a respondent corrects a report, but the Commission may consider it a mitigating factor. That subsection would be amended slightly to state that filing a late report or making a corrective action could also be considered mitigating factors when assessing a fine.

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

Ms. Willing has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in what factors the Commission may consider when assessing a civil penalty during the sworn complaint process. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

The new rule §12.36 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule §12.36 affects Subchapters E and F of Chapter 571 of the Government Code.

§12.36. Assessment of Civil Penalty.

(a) The commission shall consider the factors listed in §571.177 of the Government Code when assessing a civil penalty against a respondent, including whether the respondent timely responds to written questions or subpoenas.

(b) The commission may consider the fine amounts established by chapter 18 of this title in determining the amount of a fine to be assessed in a sworn complaint proceeding.

(c) The commission is not required to waive the fine for a respondent who files a late or corrected report or makes a corrective action, but may consider the report or action to be a mitigating factor in determining the amount of any fine.

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 September 29, 2017.

TRD-201703960

Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-5800

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1 TAC §12.37

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rule §12.37, regarding dismissal of a complaint after public disclosure by a complainant.

Section 571.140 of the Government Code imposes a broad confidentiality on sworn complaints filed with the Commission and any information regarding complaint proceedings, including whether a complaint has actually been filed. The law provides criminal penalties for disclosure, but the Commission has stated in advisory opinions that, as required by the First Amendment of the United States Constitution, the law cannot prohibit a complainant or respondent from disclosing the fact that a complaint has been filed or from disclosing the resolution of the complaint. However, the dismissal of a complaint does not raise similar First Amendment concerns because a complainant is not a party to a complaint and a dismissal of a complaint is not a sanction, penalty, or enforcement action taken against a complainant.

The proposed new rule would further the Legislature's intent in enacting a broad confidentiality statute by authorizing the Commission to dismiss a sworn complaint, with prejudice, filed by a complainant who publicly discloses confidential information regarding the complaint. The new rule would not prohibit another individual from filing the same complaint or prohibit the Commission from voting to initiate a preliminary review of the same matter.

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

Ms. Willing has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity and fairness in the sworn complaint process, including a clear incentive to complainants to maintain the confidentiality of sworn complaints pending before the Commission. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

The new rule §12.37 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule §12.37 affects Subchapter E of Chapter 571 of the Government Code.

§12.37. Dismissal of Complaint After Public Disclosure.

If a complainant publicly discloses confidential information about a sworn complaint filed or to be filed by the complainant, the commission may dismiss the complaint with prejudice as to the complainant.

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 September 29, 2017.

TRD-201703961
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-5800

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.85

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §12.85, which sets procedures for preliminary review hearings.

Section 571.125 of the Government Code requires a preliminary review hearing if the Commission and a respondent cannot agree to the disposition of a complaint after a preliminary review, or if the respondent requests a hearing in writing. Rule §12.85 states that the executive director and respondent may present relevant evidence at a preliminary review hearing. The proposed amendment would change the rule to state that Commission staff may present such evidence as the executive director assists the Commission during hearings. The rule would also be amended to clarify that staff and a respondent may present an opening and closing statement at a preliminary review hearing.

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

Ms. Willing has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity and fairness in the procedures for preliminary review hearings. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

(512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §12.85 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendment to §12.85 affects Subchapter E of Chapter 571 of the Government Code.

§12.85. Preliminary Review Hearing.

(a) Commission staff [~~The executive director~~] and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

(b) Commission staff and the respondent may present an opening and closing statement at a preliminary review 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.

Filed with the Office of the Secretary of State on September 29, 2017.

TRD-201703962
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-5800

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1 TAC §12.87

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §12.87, which sets procedures for preliminary review hearings.

Section 571.125 of the Government Code requires a preliminary review hearing if the Commission and a respondent cannot agree to the disposition of a complaint after a preliminary review, or if the respondent requests a hearing in writing. Section 571.1244 requires the Commission to adopt procedures for the conduct of preliminary review hearings. Ethics Commission Rules §12.87 would be amended to codify the process after the Commission determines there is credible evidence of a violation following a preliminary review hearing.

The rule also clarifies that the Commission's authority to agree to the settlement of a complaint is not limited by the rule. This allows the Commission to send revised proposed orders to a respondent or reach an agreement with a respondent at any time.

Currently, §12.87 requires a complaint to be dismissed if the Commission does not "issue a decision under section 571.126 of the Government Code" within 180 days after a preliminary review hearing. The amendment would simply require dismissal if no formal hearing is ordered within 180 days after a preliminary review hearing concludes. The executive director could also extend that deadline under existing rules.

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

Ms. Willing has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity and fairness in the procedures for preliminary review hearings. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The amendment to §12.87 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendment to §12.87 affects Subchapter E of Chapter 571 of the Government Code.

§12.87. Resolution of Preliminary Review Hearing.

(a) At the conclusion of a preliminary review hearing in which the commission finds credible evidence of a violation:

(1) commission staff shall send to the respondent a proposed resolution within 10 days; and

(2) not later than 30 days after the respondent receives the proposed resolution, or by a later date determined by the commission, commission staff must receive from the respondent:

(A) the proposed resolution signed by the respondent;

(B) a written counter offer; or

(C) a written request that the matter be set for a formal hearing.

(b) If the respondent does not comply with subsection (a)(2) of this section, commission staff may request that the commission order a formal hearing.

(c) Commission staff shall report to the commission any written counter offer, staff's recommendation to accept or reject a counter offer, if any, or any written request that a matter be set for a formal hearing received from the respondent under subsection (a)(2) of this section.

(d) After a written counter offer or a written request that a matter be set for a formal hearing is reported to the commission, the commission by record vote of at least six commissioners shall:

(1) accept the respondent's counter offer, if any; or

(2) determine the complaint cannot be resolved and settled and order a formal hearing.

(e) The executive director shall dismiss a complaint if the commission does not order a formal hearing [~~fails to issue a decision under section 571.126 of the Government Code~~] within 180 days after the conclusion of a preliminary review hearing.

(f) This section may not be construed as limiting the commission's authority to agree to the settlement of a complaint under section 571.121 of the Government Code, including sending a revised proposed resolution to a respondent.

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 September 29, 2017.

TRD-201703963
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-5800

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.27

The Texas Ethics Commission (the Commission) proposes the repeal of Texas Ethics Commission Rule §18.27, which will be incorporated into a new rule clarifying the facts that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process.

Section 571.177 of the Government Code lists the factors that the Commission shall consider when assessing a civil penalty in the sworn complaint process. Current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. The Commission intends to adopt in Title 1, Chapter 12 a new rule, §12.36, which would include a slightly revised §18.27. Chapter 12 is a more appropriate location containing other rules related to sworn complaints.

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

Ms. Willing has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be clarity in what factors the Commission may consider when assessing a civil penalty during the sworn complaint process. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

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

The repeal of §18.27 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The repeal of §18.27 affects Subchapters E and F of Chapter 571 of the Government Code.

§18.27. Sworn Complaints.

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 September 29, 2017.

TRD-201703967
Seana Willing
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the Department) proposes the repeal of Title 4, Part 1, Chapter 18, Subchapter D, §18.300, pertaining to Adoption by Reference; Subchapter E, §18.400, pertaining to Adoption by Reference; Subchapter F, Division 2, §18.662, pertaining to Noncompliance Procedure for Certified Operations; Subchapter F, Division 3, §18.671 and §18.672, pertaining to Exclusion from Organic Sale, and Emergency Pest Disease or Treatment, respectively; and Subchapter F, Division 5, §18.704 and §18.706, pertaining to Transitional Certificates, and Transactional Certification Requirements and Logo, respectively. Additionally, the Department proposes amendments to Subchapter F, Division 3, §18.670, pertaining to Adoption by Reference; and Subchapter F, Division 5, §18.702, pertaining to Fee Schedule. The Department proposes new Subchapter D, §18.300, pertaining to Transitional Certification Requirements; new Subchapter E, §18.400, pertaining to Transfer of Certification; Subchapter F, Division 2, §18.662, pertaining to Noncompliance Procedure for Transitional Operations; and Subchapter F, Division 3, §18.671, pertaining to Unannounced Inspections.

The proposed changes are made to update regulations necessary for the operation of the organic and transitional certification programs, including compliance and inspection procedures. The changes also remove references to state or Federal regulations which are obsolete or conflict with current rule. The fee schedule is simplified for clarification and presentation in a more concise manner.

New §18.300, Subchapter D, defines land that is eligible to be certified as transitional by the Department. New §18.400, Subchapter E, is added to provide that organic certifications issued by the Department are non-transferable.

TDA is required to comply with 7 CFR Part 205 when issuing corrective action against organic operations. Subchapter F, Division 2, §18.662 is repealed and adopted as new. The proposed amendments to current §18.662 set forth notification standards and penalties in the event of non-compliance. The revisions are

made to establish uniform procedures for corrective action as a result of noncompliance with the provisions of Chapter 18 of the Administrative Code.

The amendments to §18.670 are proposed to adopt federal organic certification regulations by reference. New §18.671 removes conflicting state requirements to decrease confusion for organic businesses operating in Texas and residents of Texas who consume agricultural products that have an organic claim. Procedures are introduced in §18.671 to ensure full disclosure and understanding of protocols for unannounced inspections of organic and transitional operations.

Fees set forth in §18.702 are authorized by §18.006 of the Texas Agriculture Code, which requires the Department to recover the costs of administering the organic certification program. The proposed amendments to §18.702 do not increase the current program fees, but clarify charges by organizing them in a more concise manner to be inclusive of current and future trade partners, domestically or internationally. The changes permit the public and the industry to easily determine costs for trade certificates and documents.

The repeal of §18.704 is proposed to eliminate unnecessary language within the Chapter as the current content can easily be dispersed to the public through guidance and policy documentation.

Ms. Mary Ellen Holliman, Coordinator for the Organic Certification Program, has determined that for the first five-year period the proposed new rules and amendments are in effect, there will be no fiscal impact for state government. There is no fiscal impact for local governments.

Ms. Holliman has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be increased compliance and auditability among certified organic operations. The proposed amendments and new rules will not have a fiscal impact on applicants or operations certified by the Department as no fees have been raised.

Comments on the proposal may be submitted to Mary Ellen Holliman, Coordinator for Organic Certification Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments may be submitted by email at: *Organic@TexasAgriculture.gov.* Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register.*

SUBCHAPTER D. LABELS, LABELING, AND MARKET INFORMATION

4 TAC §18.300

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.300. Adoption by Reference.

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 September 26, 2017.

TRD-201703833
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-4075

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4 TAC §18.300

The new rule is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.300. Transitional Certification Requirements.

(a) Land that meets the requirements of 7 Code of Federal Regulations Part 205, §205.202(a) and (c) may be certified as transitional.

(b) Crops planted and harvested from transitional land after the last application of a prohibited substance or excluded method (as established in 7 CFR Part 205, §205.105) may be labeled as Certified Transitional.

(c) Crops harvested from land that has been certified transitional by the department may be sold, labeled, or otherwise represented as being "Certified transitional by the Texas Department of Agriculture". The operation shall not use, nor make any reference to, the word "organic" on the certified transitional product.

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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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER E. CERTIFICATION

4 TAC §18.400

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products;

§18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.400. Adoption by Reference.

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-201703834
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-4075

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4 TAC §18.400

The new rule is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.400. Transfer of Certification.

Any certification issued under this chapter is not transferable.

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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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER F. ADMINISTRATIVE DIVISION 2. COMPLIANCE

4 TAC §18.662

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.662. Noncompliance Procedure for Certified Operations.

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 September 26, 2017.

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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §18.662

The new rule is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.662. Noncompliance Procedure for Transitional Operations.

(a) Notification. When an inspection, review, or investigation of a certified transitional operation or an operation in transitional application status reveals any noncompliance with regulations in this chapter, a written notification of noncompliance shall be sent to the operation. Such notification shall provide:

(1) a description of each noncompliance;

(2) the facts upon which the notification of noncompliance is based; and

(3) the date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When an operation demonstrates that each noncompliance has been resolved, the department shall send the operation a written notification of noncompliance resolution.

(c) Denial of application for transitional certification. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the department shall send the applicant a written notification of denial of transitional certification of the entire operation or a portion of the operation, as applicable to the noncompliance.

(d) Suspension. If a certified transitional operation fails to correct the noncompliance or to resolve the issue through rebuttal, the department shall send the operation a written notification of suspension.

(e) Eligibility. A certified operation or a person responsibly connected with an operation whose transitional certification was previously suspended will be eligible to apply for transitional certification at any time but must provide documentation as evidence that all areas of noncompliance with 7 CFR Part 205 and the rules in this part have been resolved.

(f) Violations of this Chapter. Any operation that:

(1) knowingly sells or labels a product as being certified organic or certified transitional by the department, except in accordance with this chapter, shall be subject to a civil penalty not more than the amount specified in §18.009 of the Texas Agriculture Code.

(2) makes a false statement under this chapter to a certifying agent shall be subject to the provisions of the Texas Agriculture Code, §18.008.

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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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-4075

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DIVISION 3. INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

4 TAC §18.670, §18.671

The new rule and amendment are proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.670. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart G, Administrative, §§205.670 - 205.672 [~~§205.670~~].

§18.671. Unannounced Inspections.

All currently certified operations and all operations in application status for certification are subject to unannounced inspections. TDA will conduct unannounced inspections pursuant to 7 CFR Part 205, §205.403 and §205.670.

(1) Operations will not incur a fee when selected by TDA for an unannounced inspection. However, if an operation expressly requests an unannounced inspection in addition to their annual routine inspection, a re-inspection fee will be incurred by the operation and the only stipulation that can be made by the certified operation is selection of a 20 day time period in which the inspection will occur.

(2) An unannounced inspection will not include prior notification of the inspector's arrival. However, certain conditions, including but not limited to distance of travel by the TDA inspector, frequency of personnel at operation, and biosecurity issues, which may make it impossible to conduct an unannounced inspection of the operation without prior notification. In such cases, a TDA employee may contact the operation up to 4 hours prior to arriving onsite to ensure that appropriate representatives are present.

(3) The TDA inspector shall disclose to the operation the reason that the operation was chosen for the unannounced inspection prior to the start of the inspection.

(4) Criteria for conducting a risk-based unannounced inspection may include, but are not limited to:

(A) Random selection by the TDA;

(B) Previously identified and/or outstanding noncompliance issues;

(C) Investigations and/or responding to complaints;

(D) Organic and non-organic production or handling, to include visually indistinguishable varieties or processed products;

(E) Risk of an organic product coming into contact with a prohibited substance applied to adjoining land use;

(F) Risk of an organic product or ingredient coming into contact with a prohibited substance or commingling with a nonorganic product during handling; and

(G) Complexity of operation;

(5) Unannounced inspections may fulfill the requirements for annual on-site monitoring inspections of certified organic operations, required by 7 CFR Part 205, §205.403, only if the inspector is able to conduct a full inspection of the operation as required by that section.

(6) Unannounced inspections may be limited in scope, depth, and breadth, and may cover only certain aspects of the operation, such as fields/units/parcels, facilities, products, handling activities, etc.

(7) Inspectors may conduct sampling pursuant to §18.670 of this chapter and 7 CFR Part 205, §205.670 during an unannounced inspection. Operations will not incur a fee for any samples collected by a TDA Organic Inspector unless the collection of one or more samples is expressly requested by the operation.

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-201703843
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-4075

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4 TAC §18.671, §18.672

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.671. Exclusion from Organic Sale.
§18.672. Emergency Pest or Disease Treatment.

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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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 5. MISCELLANEOUS PROVISIONS

4 TAC §18.702

The amendment is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.702. Fee Schedule.

(a) The categories of fees that may be incurred by an operation applying for initial certification or annual update of certification are as follows: new application fee, certification fees, administrative fees, and additional service fees:

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

(4) Additional Service fees. The following fees are incurred at the time the service is requested and are cumulative. The purpose of the following service fees is to facilitate trade and satisfy document requirements by another certifying agent, organic operation, transitional operation, [~~state~~] or a foreign government [~~country~~].

(A) - (B) (No change.)

(C) Review of an operation's organic system plan for compliance with a trade agreement [~~the equivalency agreement~~] between the United States Department of Agriculture National Organic Program and a foreign trade partner [~~the Canadian Organic Regime (COR)~~]: $75.

(D) Trade documents: $50 per document requested. [~~Review of an operation's organic system plan for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): $75.~~]

(E) Transaction certificate: $100 per certificate. [~~Issuance of an attestation notice for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the Canadian Organic Regime (COR): $50.~~]

[~~(F) Completion of Certificate of Inspection (COI) for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): $50.~~]

[~~(G) Transaction certificate: $100 per certificate.~~]

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

(d) Scheduled date of annual update.

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

(5) If the department finds that the due date for annual update of certification occurs during or immediately preceding a period of 3 months or more where no harvestable crop will be in production or when no organic product will be handled, the department may assign, at its discretion, a due date for annual certification renewal from one of the following dates:

(A) January 31 of each year.

(B) March 31 of each year.

(C) May 31 of each year.

(D) June 31 of each year.

(E) July 31 of each year.

(F) October 31 of each year.

(e) (No change.)

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

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TRD-201703844
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-4075

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4 TAC §18.704, §18.706

The repeal is proposed pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable re-

covery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.704. Transaction Certificates.

§18.706. Transitional Certification Requirements and Logo.

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 September 26, 2017.

TRD-201703839
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.5

The Texas Alcoholic Beverage Commission proposes amendments to §33.5, relating to Food and Beverage Certificate.

House Bill No. 2101, 85th Regular Session of the Texas Legislature amended Alcoholic Beverage Code (Code) §§25.13, 28.18, 32.23 and 69.16 to provide more uniform treatment of food and beverage certificates regardless of their associated primary permit or license.

For purposes of rule §33.5, one of the significant changes was to eliminate the requirement that the permit or license holder was responsible for food preparation. For some permits or licenses, the premises formerly had to be primarily a food service establishment. Under the Code as amended, food has to be available at the location (the designated physical address of the permitted or licensed premises), but the food need not be provided by the permit or license holder. And although permanent food service facilities are required, the location need not be primarily a food service establishment. The proposed amendments to rule §33.5 are intended to conform the rule to the new Code requirements. In addition, stylistic and grammatical changes are made throughout.

In addition to amending the rule to reflect the recent legislative changes, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will accurately reflect the applicable provisions of the Alcoholic Beverage Code.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 26, 2017, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 25.13, 28.18, 32.23, and 69.16, and Government Code §2001.039.

§33.5. Food and Beverage Certificate.

(a) This rule relates to §§25.13, 28.18, 32.23 and 69.16 of the Texas Alcoholic Beverage Code.

(b) Each applicant for an original or renewal food and beverage certificate shall include all information required by the commission to insure compliance with all applicable statutes and rules [~~and regulations of the agency~~].

(c) Application for the certificate shall be upon forms prescribed by the commission.

(d) The biennial certificate fee for each location is $200.00 and must be submitted in the form of a cashier's check, U.S. postal money order, or company check made payable to the Texas Alcoholic Beverage Commission. A [~~The original~~] certificate expires [~~will expire~~] upon expiration or cancellation of the primary permit or license. No prorated certificate fees will be given and no refunds made for issuance of the food and beverage certificate for less than two years.

(e) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) Food service--cooking or assembling of food on the location [~~premise~~] primarily for [~~on-premise~~] consumption at the location. Commercially pre-packaged items purchased off of the location [~~off-premise~~] which require no cooking or assembly do not constitute food service under this section.

(2) entrée--main dish or course of a meal.

[~~(3) Multiple entrées at least eight different entrées per meal period must be available to customers.~~]

(3) [~~(4)~~] Food service facilities--a designated permanent portion of the licensed location, including commercial cooking equipment, [~~premises~~] where food is stored and prepared primarily for [~~on-premise~~] consumption at the location.

(4) [~~(5)~~] Premise--the designated area at a location that is licensed by the commission for the sale, service or delivery of alcoholic beverages [~~premise~~].

(5) [~~(6)~~] Location--the designated physical address of a premise, but also including all areas at that address where the permit or license holder may sell, serve or deliver alcoholic beverages for immediate consumption at the address, regardless of whether some of those areas are occupied by other businesses, as long as those businesses are contiguous [~~licensed premise~~].

(f) An applicant is qualified for a food and beverage certificate if the following conditions, in addition to other requirements, are satisfied:

(1) multiple entrées are available to customers; and

(2) permanent food service facilities are maintained at the location. [~~on the premises;~~]

[~~(3) with respect to retail dealer's on-premise licenses and wine and beer retailer's permits, the primary business on the premises is food service, as determined in accordance with subsection (q); and~~]

[~~(4) with respect to mixed beverage permits and private club registration permits, the applicant maintains food service on the premise.~~]

(g) The hours of operation for sale and service of food and of alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages.

[~~(h) An applicant may present evidence to the executive director or the executive director's designee which demonstrates substantial compliance with subsections (f)(1) and (g). Approval may be granted when the executive director or the executive director's designee is satisfied that the operation is a food service establishment.~~]

(h) [~~(i)~~] If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the designated licensed premises.

(i) [~~(j)~~] An applicant for an original food and beverage certificate shall furnish the following, as well as any other information requested by the commission to ensure compliance:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) sales data (including complimentary drinks, as recorded pursuant to subsection (n)(3)) or, if not available, a projection of sales. The sales data or projection of sales [~~or data~~] should include sufficient breakdown of revenues of food, alcoholic beverages and other major sales categories at the location;

(4) listing of commercial cooking equipment used in the preparation and service of food; and

(5) copies of floor plans of the location [~~licensed premises~~] indicating the licensed premise and permanent areas devoted primarily to the preparation and service of food.

(j) [~~(k)~~] Applicants for renewal of food and beverage certificates [~~whose primary permits are a wine and beer retailer's permit or a retail dealer's on-premise license~~] shall submit sales data described in subsection (n) [~~(o)~~]. The commission may request additional information or documentation to indicate that [~~the business at~~] the licensed location has permanent [~~is a food service establishment with~~] food service facilities for the preparation and service of multiple entrées.

(k) [~~(l)~~] The commission may review the operation at the location [~~licensed premises~~] to determine that [~~the applicant or holder of the food and beverage certificate has or is maintaining~~] food service with food service facilities for the preparation and service of multiple entrées is maintained. In doing so the commission may review such items as required in the original or renewal application as well as advertising, promotional items, changes in operations or hours, changes in floor plans, prominence of food items on the menu as compared to alcoholic beverages, name of the businesses at the location [~~business~~], number of transactions with food components, copies of city or county permits or certificates relating to the type of business operation, and any other item deemed necessary or applicable.

(l) [~~(m)~~] Failure to provide documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(m) [~~(n)~~] In verifying that [~~the certificate holder is maintaining~~] food service is being maintained at the location [~~as the primary business on the premises~~], the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(n) [~~(o)~~] The following recordkeeping requirements apply to certificate holders [~~who hold a wine and beer retailer's permit, including railway cars and excursion boats, or a retail dealer's on-premise license~~]:

(1) records must be maintained to reflect separate totals for alcoholic beverage sales or service, food sales and other major sales categories at the location;

(2) purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and other major purchase categories at the location;

(3) complimentary alcoholic beverages must be recorded and included in the total alcoholic beverage sales as if they were sold and clearly marked as being complimentary; and

(4) all records must be maintained for four years and made available to authorized representatives of the commission upon reasonable request.

(o) [~~(p)~~] In considering alcoholic beverage sales [~~for holders of mixed beverage permits, private club registration permits, private club exemption certificate permits and private club beer and wine permits~~], the dollar value of complimentary drinks shall be added to total sales or service of alcoholic beverages in determining the percentage of alcoholic beverage sales or service on the licensed premises.

(p) [~~(q)~~] In determining the permanent food service facilities requirement [~~primary business of retail dealer's on-premise licenses and wine and beer retailer's permits~~] under subsection (f)(2) [~~(3)~~], the gross receipts of all business entities sharing the location [~~premise~~] (as identified in the original or a supplemental application) will be considered. For audit purposes, it shall be the responsibility of the food and beverage certificate holder to provide financial and accounting records related to food, [~~and~~] alcohol, and other major sales categories of all business entities sharing the location. For audit purposes, if such information that is provided is deemed insufficient to determine if a permit or license holder qualifies for issuance of a food and beverage certificate at the location, the computation and determination of the percentage of alcohol sales or service fees to total gross receipts at the

licensed location may be based upon any available records or information. [licensed premise.]

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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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489

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CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.71

The Texas Alcoholic Beverage Commission proposes amendments to §45.71, relating to Definitions.

House Bill No. 2299, 85th Regular Session of the Texas Legislature amended Alcoholic Beverage Code §101.67 regarding testing of malt beverages to verify alcohol content. Prior to the House Bill No. 2299 amendments, such testing had to be conducted by an independent, reputable laboratory or by the commission. The amendments deleted the reference to the reputation of independent laboratories, and added another category of laboratories eligible to verify alcohol content, i.e., laboratories certified by the U.S. Alcohol and Tobacco Trade Bureau as qualified for the analysis of beer for export.

The proposed amendments to rule §45.71 would conform the rule to Alcoholic Beverage Code §101.67 by deleting the reference to reputation in the definition of an independent laboratory, and by adding a definition of qualified laboratory.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There is no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will accurately reflect the applicable provision of the Alcoholic Beverage Code.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 26, 2017, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31 and 101.67, and Government Code §2001.039.

§45.71. Definitions.

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

(1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight.

(2) Bottler--Any person who places malt beverages in containers.

(3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.

(4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.

(5) Domestic malt beverages--A malt beverage manufactured in the United States.

(6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

(7) Independent laboratory--A laboratory that [which has a good reputation in the industry and] is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

(8) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(9) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight. In this subchapter, "malt liquor and "ale" have the same meaning.

(10) Qualified laboratory--A laboratory referenced in Alcoholic Beverage Code §101.67(a)(1)(B) that is equipped to perform all analyses required by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB), or its successor agency, for beer to be certified for export and employs an individual who is certified by TTB to perform or supervise those required analyses.

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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16 TAC §45.85

The Texas Alcoholic Beverage Commission proposes amendments to §45.85, relating to Approval of Labels.

House Bill No. 2299, 85th Regular Session of the Texas Legislature amended Alcoholic Beverage Code §101.67, regarding testing of malt beverages to verify alcohol content. Prior to the House Bill No. 2299 amendments, such testing had to be conducted by an independent, reputable laboratory or by the commission. The amendments deleted the reference to the reputation of independent laboratories, and added another category of laboratories eligible to verify alcohol content, i.e., laboratories certified by the U.S. Alcohol and Tobacco Trade Bureau as qualified for the analysis of beer for export.

The proposed amendments to rule §45.85 would conform the rule to Alcoholic Beverage Code §101.67 by adding test results from qualified laboratories to those of independent laboratories which may be submitted in lieu of submitting a product sample in connection with an application for the approval of a label for a malt beverage.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There is no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will accurately reflect the applicable provision of the Alcoholic Beverage Code.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 26, 2017, at 1:30 p.m. in the commission meeting room on the first floor of the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

§45.85. Approval of Labels.

(a) No beer, ale or malt liquor may be shipped into the state, imported into the state, manufactured and offered for sale in the state, or distributed, sold or stored in the state until a sample of the beverage has been analyzed and the label approved by the commission.

(b) An applicant for label approval under this section must hold a brewer's or non-resident brewer's permit, a manufacturer's or non-resident manufacturer's license, or a brewpub license issued by the commission.

(c) An applicant must submit to the commission an application on the form prescribed by the commission and a $25 application fee for each size requested on the application. The application must be accompanied by:

(1) a legible copy of the certificate of label approval issued by the United States Department of the Treasury; and

(2) an actual label that is affixed to the product as shipped, sold, or marketed, or an exact color copy of the label.

(d) A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory or a qualified laboratory may be submitted in lieu of the actual sample. If an application is for a label revision, a sample of the beverage must be submitted to the commission for analysis to verify alcohol content if the analysis on file is older than 5 years. A product analysis provided by an independent laboratory or a qualified laboratory may be submitted in lieu of the actual sample if the analysis on file is older than 5 years.

(e) *Permissible Label Revisions.* An application for label approval is a permissible revision or amendment if it includes only the changes described in paragraphs (1) - (9). All mandatory label information must be legible and appear on a contrasting background. Any changes made under this section must not violate this subchapter of the Alcoholic Beverage Code, and must conform to the general requirements specified by this subchapter. Any changes in spelling must not change the meaning of the previously approved label

(1) Add or delete any non-mandatory label information, including text, illustrations, graphics, and ingredients.

(2) Reposition any label information, including text, illustrations, and graphics.

(3) Change the color of the background or text, the shape, or the proportionate size of labels.

(4) Change the type size or font or make appropriate changes to the spelling (including punctuation marks and abbreviations) of words.

(5) Change to the type of container or net contents statement.

(6) Add, delete, or change optional information referencing awards, medals or a rating or recognition provided by an organization

as long as the rating or recognition reflects simply the opinion of the organization and does not make a specific substantive claim about the product or its competitors.

(7) Add, delete, or change holiday or seasonal-themed graphics, artwork, or salutations.

(8) Add, delete, or change promotional sponsorship-themed graphics, logos, artwork, dates, event locations or other sponsorship-related information.

(9) Add, delete or change references to a year or date.

(f) This section implements Alcoholic Beverage Code §101.41 and §101.67, pursuant to the requirements of Alcoholic Beverage Code §5.38 and the authority of Alcoholic Beverage Code §5.31.

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 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 85, §§85.201, 85.204, 85.206, 85.450, 85.451, 85.650, 85.703, 85.704, 85.722, 85.800 and 85.1003; and proposes the repeal of §85.205 and §85.452, regarding the Vehicle Storage Facilities program.

The Texas Legislature enacted Senate Bill 1501, Senate Bill 2065, House Bill 1247 and House Bill 2615, 85th Legislature, Regular Session (2017). Collectively these bills remove fencing requirements; eliminate dual licensure and associated fees; eliminate periodic and risk-based inspections and associated fees; relax certain signage requirements; as well as clarify required notices and databases; and update the advisory board composition. The proposed amendments and repeals are necessary to implement the legislative changes.

The Towing and Storage Advisory Board met on September 22, 2017, to review a draft of these proposed rules and recommended publishing in the *Texas Register.*

The proposed amendments to §85.201 remove fencing requirements in the licensure process.

The proposed amendments to §85.204 eliminate dual licensure and allow a person to work at a VSF if they have meet one of 4 criteria.

The proposed repeal of §85.205 eliminates dual licensure requirements.

The proposed amendments to §85.206 eliminate dual licensure.

The proposed amendments to §85.450 remove risk based inspections from general inspection rules.

The proposed amendments to §85.451 remove periodic inspections.

The proposed repeal of §85.452 removes language relating to risk based inspections.

The proposed amendments to §85.650 change the composition of the advisory board.

The proposed amendments to §85.703 relate to notice requirements and databases that must be used to find vehicle owners, lien holders, etc.

The proposed amendments to §85.704 relate to the second notice requirement.

The proposed amendments to §85.722 clean up the language to bring it in line with other rules.

The proposed amendments to §85.800 eliminates fees related to dual licensure and risk-based inspections.

The proposed amendments to §85.1003 relax some of the signage requirements.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rules are in effect, the effect on state costs and revenue is as follows:

The elimination of providing fence height in §85.201 will not affect state costs and revenue. A Vehicle Storage Facility (VSF) is still required to have a fence, but the applicant does not need to include the dimensions of the fence as part of the application process.

There is no effect on local government costs and revenue.

The elimination of dual licensure in §§85.204 - 85.206 will not affect state costs and revenue. An anticipated decrease in revenue will occur in the TOW Program while the VSF Program remains unaffected.

There is no effect on local government costs and revenue.

The elimination of risk-based and periodic inspections in §§85.450 - 85.452 will not affect state costs and revenue. No risk-based inspections have ever been performed, or charged for, in the VSF Program.

There is no effect on local government costs and revenue.

The composition of the Advisory Board in §85.650; the relaxing of signage requirements in §85.1003; and the elimination of fees related to dual licensure and risk-based inspections in §85.800 will not affect state costs and revenue.

There is also no effect on local government costs and revenue.

Notice requirements and mandated use of particular databases to find vehicle owners and lien holders in §85.703 and §85.704, as well as the clean-up of rules relating to storage fees and other charges in §85.722 will not likely affect state or local costs and revenue.

There may be less revenue for local or state governmental entities if a VSF uses an authorized private entity to obtain information related to a vehicle owner or operator and if the private entity charges less than the governmental entity would have for the same service. However, there may not be any actual loss

if the authorized private entity charges an amount equal to or above the government entity. In that instance, there is no financial incentive to use a private entity.

Mr. Francis also has determined that for each year of the first five-year period the proposed rules are in effect, there is no direct benefit to the public. The proposed rules relate to the internal operation of licensed VSFs and the Advisory Board only. These rules do not present a direct benefit or loss to the public.

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect, there is no impact on small and micro-business or rural communities.

Proposed rules §85.703 and §85.704 may have an unknown fiscal impact on VSFs who do not timely send notices to vehicle owners and operators. VSFs in violation of the notice requirements will lose daily storage fee revenues until such time as a late notice is sent. However, loss of daily storage fee revenues can be minimized or entirely avoided by a VSFs timely compliance with notice requirements.

Additionally, the elimination of notice provided by VSFs to law enforcement in instances of abandoned vehicles may save VSFs a $10 notification fee per vehicle. However, it is noted that law enforcement agencies do not accept or actively enforce the payment of the fee. Therefore, an accurate assessment of how much money VSFs may save, if any, is unknown.

Since the agency has determined that the rule will have no adverse economic effect on small or micro businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Texas Government Code §2001.0045 requires state agencies to determine if a proposed rule has a fiscal impact that imposes a cost on regulated persons, including another state agency, a special district, or a local government.

Mr. Francis has determined that none of the proposed rules will impose costs on regulated persons, including another state agency, a special district, or a local government.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

16 TAC §§85.201, 85.204, 85.206, 85.450, 85.451, 85.650, 85.703, 85.704, 85.722, 85.800, 85.1003

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposal.

§85.201. License Requirements--Vehicle Storage Facility License.

To be eligible for a VSF license, an applicant must:

(1) - (9) (No change.)

(10) state the VSF's storage capacity;

~~[(11) state the height of any fence enclosing the VSF and the date it was installed;]~~

(11) [~~(12)~~] include a statement indicating whether the facility has an all weather surface, signs posted in the proper locations, and lighting, as required by these rules; and

(12) [~~(13)~~] adopt the model drug testing policy provided in these rules or file an alternate drug testing policy for approval under these rules.

§85.204. License Requirements--Vehicle Storage Facility Employee License.

(a) To be eligible for a VSF employee license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §85.800;

(3) successfully pass a criminal background check; and

(4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under §85.725, the applicant must submit a negative drug test to the department.

(b) A person may not work at a VSF unless the individual holds: [~~a license issued under this chapter. A VSF may not employ a person unless the person holds a license issued by the department.~~]

(1) a license issued under this chapter;

(2) an incident management towing operator's license under §2308.153;

(3) a private property towing operator's license under §2308.154; or

(4) a consent towing operator's license under §2308.155.

(c) A VSF may not employ a person to work at the VSF unless the person holds a license issued under this chapter or under Chapter 86.

(d) [~~(c)~~] For purposes of this chapter, persons operating or managing a VSF as a sole proprietor or other unincorporated business organization are employees of the VSF and required to obtain a VSF employee license or otherwise be licensed under this chapter or under Chapter 86.

§85.206. License Requirements--Vehicle Storage Facility Employee License Renewal[~~; Dual Vehicle Storage Facility Employee and Towing Operator License~~].

(a) To renew a VSF employee license [~~or dual VSF employee and towing operator license,~~] an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the applicable fee required under §85.800;

(3) successfully pass a criminal background check; and

(4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under §85.725, the applicant must submit a negative drug test to the department.

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

§85.450. Inspections--General.

(a) All VSFs shall be inspected periodically[~~, according to a risk-based schedule,~~] or as a result of a complaint. These inspections

will be performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to VSF owners and managers on best practices for risk-reduction techniques.

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

§85.451. Periodic Inspections.

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

~~[(e) Based on the results of the periodic inspection, a VSF may be moved to a risk-based schedule of inspections. The department will notify the owner of the VSF, in writing, if the facility becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.]~~

§85.650. Towing and[~~,~~] Storage[~~, and Booting~~] Advisory Board.

(a) The advisory board consists of the nine [~~ten~~] members appointed by the chairman of the commission with the approval of the commission. The nine [~~ten~~] members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one representative [~~owner~~] of a vehicle storage facility located in a county with a population of less than one-million;

(4) one representative [~~owner~~] of a vehicle storage facility located in a county with a population of one-million or more;

(5) one peace [~~law enforcement~~] officer from a county with a population of less than one-million;

(6) one peace [~~law enforcement~~] officer from a county with a population of one-million or more;

(7) one parking facility representative [~~owner~~];

(8) one representative of a member insurer, as defined by §462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes [~~property and casualty insurers who write~~] automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility. [~~one member of a booting company; and~~]

~~[(10) one public member.]~~

(b) - (g) (No change.)

§85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.

(a) [~~Applicability.~~] If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the VSF receives the vehicle, notification as described in subsections (b) - (j) [~~(i)~~] does not apply.

(b) The registered [~~Notification to owners of registered vehicles. Registered~~] owners and lien holders of a vehicle accepted at a VSF [~~towed vehicles~~] shall be notified in the following manner.

(1) If [~~Vehicles registered in Texas. After accepting for storage~~] a vehicle is registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified mail, return receipt requested, registered, or electronic certified mail, within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) If [~~Vehicles not registered in Texas. After accepting for storage~~] a vehicle is not registered in Texas, the VSF shall notify the vehicle's [~~current~~] registered owner and all recorded lien holders within 14 days, but [~~in~~] no [~~event~~] sooner than within 24 hours of receipt of the vehicle.

(c) The operator of a VSF shall send the notice required by subsection (b)(1) and (2) to an address obtained by mail or electronically from:

(1) The governmental entity responsible for maintaining the motor vehicle title and registration database for the state in which the vehicle is registered or

(2) A private entity authorized by the governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number search obtained through a secure access portal to the government entity's motor vehicle records.

~~[(c) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered by requesting the names and addresses of registered owners and lien holders based on the license plate number and vehicle identification number.]~~

(d) [~~Date of notification.~~] Notification has [~~will be considered to have~~] occurred when the United States Postal Service places its postmark on the return receipt and is [~~to be~~] timely [~~filed~~] if:

(1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b); or

(2) the notice was published as provided for by subsection (f) [~~(e)~~].

(e) If a VSF sends a notice required under this section after the time mandated by subsection (b)(1) or (2):

(1) The deadline for sending any subsequent notice is based on the date that notice was actually sent to the vehicle owner and any lien holders;

(2) A VSF may not charge the daily storage fee permissible under Tex. Occ. Code §2303.155(b)(3) until 24 hours after it has sent the notice required under this section.

(f) [~~(e)~~] [~~Notice by publication.~~] Notice required under this section [~~to the registered owner and the primary lienholder of a vehicle towed to a VSF~~] may be completed [~~provided~~] by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle is registered in another state;

(2) the VSF [~~operator of the storage facility~~] submits to the governmental entity that is responsible for maintaining the motor vehicle title and registration database for the state in which the vehicle is registered, or to a private entity that is authorized by the governmental entity to access title, registration, or lienholder information, [~~with which the vehicle is registered~~] a written or electronic request for information relating to the identity of the registered owner and any lienholder of record.

(3) If mailed, such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.

(4) [~~(3)~~] the identity of the registered owner cannot be determined;

(5) [~~(4)~~] the registration does not contain an address for the registered owner; or

(6) [~~(5)~~] the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(g) [~~(f)~~] Notice by publication is not required if each notice sent in accordance with this section [~~subsection (b)~~] is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(h) [~~(g)~~] Only one notice is required to be published for an abandoned nuisance vehicle.

(i) [~~(h)~~] [~~Form of notifications.~~] All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested, registered, or electronic certified mail.

(1) All mailed notifications shall state:

(A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";

(C) the first date for which a storage fee is assessed;

(D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;

(E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";

(G) a notice of the towed vehicle owner's right under the Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

(H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.

(2) All published notifications shall state:

(A) the full name, street address, telephone number, and VSF license number [~~of the VSF~~], and the Department's internet address;

(B) a description of the vehicle; and

(C) the total amount of charges assessed against the vehicle.

(3) Notices published in a newspaper may contain information for more than one towed vehicle.

(j) [~~(i)~~] If authorized, a notification fee may not be charged unless actual notice has been given as required under this section. [~~the notification is actually sent or performed before the vehicle is released.~~]

§85.704. Responsibilities of licensee--Second Notice; Consent to Sale.

[~~(a) If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683, Transportation Code, before the 15th day after the date notice is mailed or published under §85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.~~]

(a) [~~(b)~~] If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under §85.703, the operator of the VSF shall consider the vehicle to be abandoned and, if required by the law enforcement agency with jurisdiction where the vehicle is located, must report the [~~send notice of~~] abandonment to the [~~a~~] law enforcement agency. If the law enforcement agency notifies the VSF that the agency will send notices and dispose of the abandoned vehicle under Subchapter B, Chapter 683, Transportation Code, the VSF shall pay the fee required under §683.031, Transportation Code.

(b) If the vehicle is not claimed, the second notice shall be sent no earlier than the 15th day, and no later than the 21st day, after the date the first notice is mailed or published under §85.703. The operator of a VSF shall send a second notice to the registered owner and each recorded lienholder of the vehicle if the facility:

(1) was not required to make a report under subsection (a); or

(2) has made a required report under subsection (a) and the law enforcement agency:

(A) has notified the facility that the law enforcement agency will take custody of the vehicle;

(B) has not taken custody of the vehicle; or

(C) has not responded to the report.

(c) If the VSF sends a second notice after the 21st day on which the first notice was mailed or published, it may not charge a daily storage fee authorized under §85.722(d) until 24 hours after the second notice is mailed or published.

(d) [~~(c)~~] Notice under this section must include:

(1) the information listed in §85.703(h)(1)(A) - (H);

(2) a statement of the right of the facility to dispose of the vehicle under subsections (a) and (b);

(3) a statement that the failure of the owner or lienholder to claim the vehicle and personal property before the 30th day after the date the notice if provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle and personal property; and

(B) a consent to the sale of the vehicle at a public sale.

(e) [~~(d)~~] Notwithstanding subsection (a) [~~(b)~~], if publication is required for notice under this section, the notice must include:

(1) the information listed in §85.703(h)(2); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of the sale is:

(A) a waiver of all right, title, and interest in the vehicle;

(B) and a consent to the sale of the vehicle at a public sale.

(f) [~~(e)~~] The operator shall pay any excess proceeds to the person entitled to those proceeds.

§85.722. Responsibilities of Licensee--Storage Fees and Other Charges.

(a) For the purposes of this section, "VSF [~~operator~~]" includes a garage, parking lot, or other facility that is:

(1) owned by a governmental entity; and

(2) used to store or park at least 10 vehicles each year.

(b) (No change.)

(c) Notification fee.

(1) A VSF may not charge a vehicle owner or authorized representative more than $50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF [~~operator~~] may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.

(2) If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.

(3) If a vehicle is removed by the vehicle owner or authorized representative before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF [~~operator~~] may not charge a notification fee to the vehicle owner.

(d) Daily storage fee. A VSF [~~operator~~] may not charge less than $5.00 or more than $20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length. A VSF [~~operator~~] shall charge a fee of $35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length.

(1) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(2) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.

(3) A VSF [~~operator~~] that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days of storage before the date the request for owner information is sent to the appropriate governmental entity or to the private entity authorized by that governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number inquiry. [~~Such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.~~]

(4) A VSF [~~operator~~] shall charge a daily storage fee after notice, as prescribed in §85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF [~~operator~~] may charge a vehicle owner or authorized representative an impoundment [~~Impoundment~~] fee not to exceed $20. [~~if Impoundment is performed in accordance with these rules. The Impoundment fee may not exceed $20.~~] If the VSF [~~operator~~] charges a fee for impoundment [~~Impoundment~~], the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF [~~operator~~] may collect from a vehicle owner or authorized representative any fee that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(g) Environmental hazard fee. A VSF [~~operator~~] may collect from a vehicle owner or authorized representative a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(h) Additional fees. A VSF [~~operator~~] may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, §2308.2065.

§85.800. Fees.

(a) Application fees.

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

[~~(3) Dual Vehicle Storage Facility and Tow Operator License~~]

[~~(A) Original Application--$150~~]

[~~(B) Expedited Dual License--$75~~]

[~~(C) Renewal--$150~~]

(b) (No change.)

[~~(c) Risk-based Inspections--$150~~]

(c) [~~(d)~~] Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) [~~(e)~~] All fees are nonrefundable [~~except as provided for by commission rules or statute~~].

§85.1003. Technical Requirements--Storage Lot Signs.

(a) Facility information. All VSFs shall have a clearly visible and readable sign located at the [~~its~~] main entrance. The [~~Such~~] sign shall have letters at least 2 inches in height, with a contrasting background, [~~shall~~] be readable [~~visible~~] at 10 feet, and [~~shall~~] contain the following information:

(1) the registered name of the storage lot, as it appears on the VSF license;

(2) street address;

(3) the telephone number for the owner to contact in order to obtain release of the vehicle;

(4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(5) the storage lot's state license number preceded by the phrase "VSF License Number."

(b) (No change.)

(c) Nonconsent towing fees schedule. All VSFs shall [~~conspicuously~~] place a clearly visible and readable sign where payment to the VSF is made[~~, at the place of payment,~~] which states [~~in 1-inch letters that~~]:

(1) "Nonconsent tow fees schedules available on request." The VSF shall provide a copy of a nonconsent towing fees schedule on request; and

(2) The nonconsent towing fees provided for viewing and to the vehicle owner or representative must match the nonconsent towing fees authorized by this chapter or Texas Occupations Code §2308.2065.

(d) - (f) (No change.)

[(g) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fee schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fee schedules on request.]

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

Filed with the Office of the Secretary of State on October 2, 2017.

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Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3306

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16 TAC §85.205, §85.452

The repeals are proposed under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposal.

§85.205. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.

§85.452. Risk-based Inspections.

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. VEHICLE TOWING AND BOOTING

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 86, §§86.10, 86.450, 86.451, 86.650, 86.705 and 86.800; and proposes the repeal of §§86.212, 86.213, and 86.452, regarding the Vehicle Towing and Booting program.

The Texas Legislature enacted Senate Bill 1501, Senate Bill 2065, and House Bill 2615 during the 85th Legislature, Regular Session (2017). Collectively, these bills eliminate dual licensure and the towing operator training license, as well as the associated fees. They also eliminate risk-based inspections; establish guidelines for towing in an apartment complex; and update the advisory board composition. The proposed amendments and repeals are necessary to implement the legislative changes mandated by these statutes.

The Towing and Storage Advisory Board met on September 22, 2017, to review a draft of these proposed rules and recommended publishing in the *Texas Register.*

The proposed amendments to §86.10 update the name of the advisory board, removes the definition of Property Owner's Association, and renumber the section accordingly.

The proposed repeal of §86.212 eliminates dual licensure and its associated requirements.

The proposed repeal of §86.213 eliminates the towing operator training license and its associated requirements.

The proposed amendments to §86.450 remove references to the risk-based inspection schedule.

The proposed amendments to §86.451 remove reference to risk-based inspections.

The proposed repeal of §86.452 eliminates risk-based inspections.

The proposed amendments to §86.650 update the composition of the advisory board.

The proposed amendments to §86.705 create rules relating to towing in an apartment complex for repairs or renovations to the parking facility.

The proposed amendments to §86.800 remove dual licensure and tow operator training license fees.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed new rules are in effect, the financial impact will be as follows:

Repeal of dual licensure pursuant to §§86.212, 86.213, and 86.800 will result in a net loss to the State in revenue of $191,350 in the first year; $208,550 in the second year; $227,300 in the third year; $2476, 800 in the fourth year; and $270,100 in the fifth year.

There is no anticipated fiscal impact on local government costs and revenue.

Repeal of risk-based inspections and associated requirements pursuant to §§86.450, 86.451, and 86.452 will have no effect on state or local government costs and revenue.

The remaining rule amendments relating to §§86.10, 86.650, and 86.705 will have no effect on state or local government costs and revenue.

Mr. Francis also has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit by the creation of rules in §86.705 relating to an apartment complex's ability to tow cars to another location within the complex's parking facility in the event that the facility requires repairs or renovations.

The public will benefit because vehicle owners and operators will no longer have to travel to an off-site Vehicle Storage Facility (VSF) to obtain vehicles towed because of repairs or renovations to the parking facility; will no longer have to pay VSF fees; will have tow fees capped at $50; and cannot be charged for tows necessitated by emergency repairs to the parking facility.

The remaining rules have no effect on the public.

Mr. Francis has determined that for each year of the first five-year period the proposed new rules are in effect, the elimination of dual licensure in §86.212 and the tow operator training license in §86.213 will allow each operator who previously obtained a dual license to save $50 a year on licensing fees.

He has also determined that there may be minimal costs to parking facility owners by the implementation of notice requirements to vehicle owners and operators in §86.705 and through possible off-sets to towing companies/operators who may only collect a limited tow fee directly from consumers. The tow fee is limited to an amount which cannot exceed 75 percent of the established private property tow fee for these types of tows.

Additionally, although §86.705 does not impose any costs on tow companies or operators, they could experience decreased revenue because of the above-mentioned cap on towing fees. VSFs may also see decreased revenue because they will no longer receive vehicles towed under this rule.

The effect on small and micro-business is unknown. A decrease in revenue to VSF's will depend on how many cars, if any, a VSF currently receives after tows from apartment complexes that are performed in furtherance of improvements and repairs.

Additionally, any decrease in revenue to tow companies or operators will depend on whether the tow companies or operators receive any off-sets from apartment complexes to compensate them for costs above 75 percent of the established private property tow fee. It also depends on whether there are contractual agreements between apartment complexes and tow companies/operators to tow within an apartment complex parking facility for a flat fee that does not exceed the cap.

Accordingly, although there might be some decreases in revenues to both VSFs and tow companies/operators, the decrease is speculative and an estimated dollar amount cannot be provided.

Mr. Francis has also determined that there will not be an adverse economic impact on rural communities. Rural communities do not regulate towing or vehicle storage.

Since the agency has determined that the rule will have an unknown and speculative adverse economic effect on small and micro business, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Texas Government Code §2001.0045 requires state agencies to determine if a proposed rule has a fiscal impact that imposes a cost on regulated persons, including another state agency, a special district, or a local government.

Mr. Francis has determined that there is no cost on regulated persons, including another state agency, a special district or a local government by any of the proposed rules amendments and additions.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

16 TAC §§86.10, 86.450, 86.451, 86.650, 86.705, 86.800

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

§86.10. Definitions.

The following words and terms, when used in this chapter will have the following meanings, unless the context clearly shows otherwise:

(1) Advisory board--The Towing and [~~,~~] Storage[~~, and Booting~~] Advisory Board.

(2) - (18) (No change.)

[~~(19) Property owners' association--Has the meaning assigned by §202.001, Property Code.~~]

(19) [~~(20)~~] Public roadway--A public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(20) [~~(21)~~] Tow truck--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(21) [~~(22)~~] Towing company--An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(22) [~~(23)~~] Towing operator--The person to which the department issued a towing operator license.

(23) [~~(24)~~] Unauthorized vehicle--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(24) [~~(25)~~] Vehicle--A device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(25) [~~(26)~~] Vehicle owner--A person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(26) [~~(27)~~] Vehicle storage facility--A vehicle storage facility, as defined by Texas Occupations Code, §2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

§86.450. Inspections--General.

(a) A towing company shall be inspected periodically[~~,~~ ~~according to a risk-based schedule,~~] or as a result of a complaint. These inspections are performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to licensees and managers on best practices for risk-reduction techniques.

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

§86.451. Periodic Inspections.

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

[~~(e) Based on the results of the periodic inspection, a towing company may be moved to a risk-based schedule of inspections. The department will notify the owner of the towing company, in writing, if the company becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.~~]

§86.650. Towing [~~,~~] and Storage [~~, and Booting~~] Advisory Board.

(a) The advisory board consists of the nine [~~ten~~] members appointed by the chairman of the commission with the approval of the commission. The nine [~~ten~~] members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one representative [~~owner~~] of a vehicle storage facility located in a county with a population of less than one-million;

(4) one representative [~~owner~~] of a vehicle storage facility located in a county with a population of one-million or more;

(5) one peace [~~law enforcement~~] officer from a county with a population of less than one-million;

(6) one peace [~~law enforcement~~] officer from a county with a population of one-million or more;

(7) one parking facility representative [~~owner~~];

(8) one representative of a member insurer, as defined by §462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes [~~property and casualty insurers who write~~] automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility. [~~one member of a booting company; and~~]

[~~(10) one public member.~~]

(b) - (g) (No change.)

§86.705. Responsibilities of Towing Company--Standards of Conduct.

(a) - (m) (No change.)

(n) A vehicle owner or operator may request that the vehicle be taken to another location.

(o) if a parking facility serves an apartment complex or other residential housing for which parking is restricted to residents and guests, the owner or authorized agent of the parking facility may authorize vehicles to be towed from one location on the parking facility to another location on the same parking facility under the following rules:

(1) A vehicle may only be towed from one location on a parking facility to another location on the same parking facility to permit the parking facility owner to make repairs or improvements upon the parking facility or property served by the parking facility.

(2) Prior to a vehicle being towed and relocated by a towing company under this section, the parking facility shall provide written notice to all residents that repairs or improvements are planned. The notice shall be in conformity with Texas Property Code §92.0131(d). These rules do not affect any rights or obligations created by Texas Property Code §92.0131, nor allow possession of the vehicle to be withheld or impaired.

(3) The notice shall be provided at least 10 calendar days in advance and at a minimum state:

(A) the areas of the parking facility where parking is prohibited for the duration of repairs or improvements;

(B) the date and time after which vehicles may no longer be parked in the specified areas;

(C) the date and time when the areas will be available for parking in the future, or if not known, how residents will be notified that the areas are again available for parking after completion of repairs or improvements;

(D) that vehicles will be towed without the consent of the vehicle owner or operator and at their expense, if vehicles are parked in the designated areas at any time after notice is given and work is completed;

(E) the location at the same parking facility to which the vehicle will be moved;

(F) if the vehicle is towed from the designated area after the date and time provided in the notice and prior to the areas being reopened for parking, the tow fee charged to the vehicle owner or operator shall not exceed 75 percent of the private property tow fee established under Texas Occupations Code, Section 2308.0575;

(G) a telephone number for contacting the parking facility owner or authorized agent to enable a person to recover a vehicle which has been relocated under this section.

(4) Except when repairs or improvements are immediate and unforeseeable, or as authorized by a peace officer, a vehicle may not be towed and relocated within a parking facility or on parking facility property without actual written notice to every affected resident as mandated in this section.

(5) If, due to an immediate and unforeseeable need to make repairs or improvements, it is not possible to give 10 calendar days

written notice, each affected resident shall receive written notice as soon as the need for repairs or improvements is known.

(6) The owner or operator of any authorized vehicle which is towed from one location on a parking facility to another location on the same parking facility without 10 days written notice may not be charged for the tow.

(7) The towing company and tow truck operator performing the relocation of vehicles within a parking facility are responsible for creating and maintaining a tow ticket for each vehicle relocated under this section as required by law. In addition to §86.705(g) and §86.709, the tow ticket shall state the name of the individual who authorized the vehicles relocation and the date when the parking facility or authorized agent gave notice to the owner or operator of each vehicle relocated.

(8) A peace officer is authorized to direct the relocation of a vehicle from one location within a parking facility to another location within the parking facility to further public safety.

§86.800. Fees.

(a) Application Fees

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

(3) Operator License

(A) Original Application--$100

(B) Renewal--$100

(C) Duplicate License--$25

(D) Operator License Amendment--$25

~~[(E) Training License--$25]~~

~~[(4) Dual Vehicle Storage Facility License and Towing Operator]~~

~~[(A) Original Application--$150]~~

~~[(B) Expedited Dual License--$75]~~

~~[(C) Renewal--$150]~~

~~[(b) Risk-based inspections--$150]~~

(b) [~~(c)~~] Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(c) [~~(d)~~] All fees are nonrefundable except as provided for by commission rules or statute.

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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16 TAC §§86.212, 86.213, 86.452

The repeals are proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

§86.212. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.

§86.213. Licensing Requirements--Towing Operator Training License.

§86.452. Risk-based Inspections.

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

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.3

The State Board of Dental Examiners (Board) proposes an amendment to §100.3, concerning the Board's Organization and Structure. This rule amendment will define the Board's structure to comply with changes made in SB313.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to establish Board membership in compliance with the legislature's modifications to the Dental Practice Act. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§100.3. Organization and Structure.

(a) General. The board shall consist of eleven [~~15~~] members appointed by the governor with the advice and consent of the senate, as follows:

(1) six [~~eight~~] reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) three [~~two~~] reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and,

(3) two [~~five~~] members who represent the public.

(b) Privileges of office. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

(c) Terms of office. Members of the board serve staggered six-year terms. The terms of one-third of the members shall expire on February 1 of each odd-numbered year. A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

(d) Eligibility. Refer to Occupations Code §252.002.

(e) Membership and employee restrictions. Refer to Occupations Code §252.003.

(f) Compensation. Each member of the board is entitled to receive a per diem set by legislative appropriation for each day the member engages in board business, and may receive reimbursement for travel expenses in accordance with the travel policies of the state of Texas and the Board of Dental Examiners.

(g) Professional Conduct. A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(2) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(3) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(4) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

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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22 TAC §100.9

The State Board of Dental Examiners (Board) proposes an amendment to §100.9, concerning the Advisory Committees and Workgroups Established by the Board. This proposed amendment will eliminate the Dental Hygiene Advisory Committee and the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety and provide for the establishment of the Advisory Committee on Dental Anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to eliminate the Dental Hygiene Advisory Committee and the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety committees and establish the Advisory Committee on Dental Anesthesia in compliance with SB 313. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§100.9. Advisory Committees and Workgroups Established by the Board.

(a) In addition to any specific statutory authority to establish particular advisory committees, the board may authorize advisory committees from outside the board's membership to advise the board on rulemaking, pursuant to §2001.031 of the Texas Government Code and subject to chapter 2110 of the Texas Government Code, State Agency Advisory Committees.

(b) Creation and dissolution. The board, in a regularly scheduled meeting, may vote to establish advisory committees and workgroups from outside the board's membership to address specific subjects, purposes, or ends. Unless continued by a vote of the board, advisory committees and workgroups outside the board's membership are abolished the sooner of one year from the date of creation or when the specific subject, purpose, or end for which the advisory committee or workgroup was established, have been served.

(c) Chair. Each advisory committee or workgroup shall select from among its members a chairperson who shall preside over the ad-

visory committee or workgroup and shall report to the board or agency as needed.

(d) Membership. The presiding officer shall determine the method by which members are designated to the advisory committee or workgroup. The membership of an advisory committee must provide a balanced representation between members of the dental industry and consumers of the dental industry. Advisory committee and workgroup members shall serve terms as determined by the board.

(e) Board member liaisons. The presiding officer may appoint board member or board members to serve as a liaison(s) to an advisory committee or workgroup and report to the board the recommendations of the advisory committee or workgroup for consideration by the board. The role of a board member liaison is limited to clarifying the board's charge and intent to the advisory committee or workgroup.

(f) Agency staff liaisons. The executive director of the agency may assign agency staff to assist the advisory committee and workgroup.

(g) Meetings and participation. All meetings shall be open to the public and noticed on the Secretary of State's website to allow the public an opportunity to participate.

(h) Purpose. The board rule establishing the advisory committee or workgroup shall state the purpose and tasks of the committee and describe the manner in which the committee will report to the board.

(i) Committee actions. The actions of advisory committees are recommendations only.

(j) The following are advisory committees and workgroups established by the board or established by statute: Advisory Committee on Dental Anesthesia, established by Subchapter E of Chapter 258 of the Texas Occupations Code.

~~[(1) Dental Hygiene Advisory Committee, established by Subchapter B of Chapter 262 of the Texas Occupations Code; and]~~

~~[(2) Advisory Committee- Blue Ribbon Panel on Dental Sedation/Anesthesia Safety, established by board rule 100.12.]~~

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 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) proposes an amendment to §104.1, concerning continuing education requirements. This rule amendment will provide for continuing education credits for examiners for Central Regional Dental Testing Services, Inc.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated is to provide more fairness to examiners as well as more incentive to serve as an examiner. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§104.1. Requirement.

As a prerequisite to the annual renewal of a dental or dental hygiene license, proof of completion of 12 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the annual period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2008, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 8 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Up to 4 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics.

(C) Up to 6 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(D) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 12-hour requirement.

(E) Hours of coursework in practice finance may not be considered in the 12-hour requirement.

(3) Each licensee shall complete [~~either~~] the jurisprudence assessment every three (3) years. This requirement is in addition to the twelve (12) hours of continuing education required annually for the renewal of a license.

(4) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 12-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the three years immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(5) Examiners for the Western Regional Examining Board (WREB) and for Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 6 hours annually, obtained from [~~WREB's~~] calibration and standardization exercises associated with the examinations [~~exercise~~].

(6) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(7) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(8) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 6 hours of continuing education credit annually to apply towards the annual renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

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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Kelly Parker
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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §107.104

The State Board of Dental Examiners (Board) proposes an amendment to §107.104, concerning the Official Investigation of a Complaint. This amendment will modify the Board's complaint investigation process in accordance with changes made in SB 313.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to comply with changes made in SB 313. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§107.104. Official Investigation of a Complaint.

(a) Once an official investigation commences, board staff shall notify the complainant and respondent of the filing of the complaint and the commencing of the official investigation. The complainant and the respondent shall receive notice of the complaint's status, at least quarterly, until final disposition of the complaint, unless such notice would jeopardize an investigation.

(b) The official investigation of a complaint may include referral to a panel of experts for review.

(c) As of September 1, 2016, board staff shall classify each filed complaint into one or more of the following allegation categories:

(1) Standard of Care: failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(2) Sanitation: failure to maintain the dental office in a sanitary condition.

(3) Dishonorable Conduct: unprofessional or dishonorable conduct, including conduct identified in §108.9 of this title (related to Dishonorable Conduct).

(4) Administrative: failure to comply with administrative requirements of the Act or board rules.

(5) Business Promotion: failure to comply with the requirements of the Act or board rules relating to advertising and referral schemes.

(6) Practicing Dentistry without a License.

(7) Non-compliance: failure to comply or timely comply with an Order or Remedial Plan issued by the board.

(d) Board staff shall assign each filed complaint a priority classification, as follows:

(1) Priority 1 includes allegations that [~~of dental treatment causing serious patient harm, impairment, serious criminal activity, inappropriate contact with a patient, and other allegations determined by the Director of Investigations to~~] require an expedited investigation or consideration of temporary suspension of license or permits. [~~pursuant to §263.004 of the Act.~~]

(2) Priority 2 includes [~~record-keeping violations, administrative violations, allegations of practicing dentistry without a license that do not allege serious patient harm, and other~~] allegations that require an expedited investigation. [~~do not allege serious patient harm.~~]

(3) Priority 3 includes investigations that require a standard investigation.

(4) [~~(3)~~] A complaint's priority classification may be changed when appropriate. [~~following approval of the Director of Investigation or the Dental Director.~~]

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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Kelly Parker
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CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.7

The State Board of Dental Examiners (Board) proposes an amendment to §110.7, concerning Portability. The proposed amendment will eliminate the requirement for a portability permit and will require portable dentists to provide the physical addresses of the locations they practice at.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to gather more data on portability and to comply with the requirements of SB313. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§110.7. Portability.

(a) A dentist who applies for the issuance or renewal of a sedation/anesthesia permit must include in the application a statement indicating whether the dentist provides or will provide a permitted sedation/anesthesia service in more than one location and the physical address of each location at which the dentist provides or will provide permitted sedation/anesthesia services.

[~~(a) A sedation/anesthesia permit is valid for the dentist's facility, if any, as well as any satellite facility.~~]

[~~(b) A Texas licensed dentist who holds the Board-issued privilege of portability on or before June 1, 2011 will automatically continue to hold that privilege provided the dentist complies with the renewal requirements of this section.~~]

[~~(c) Portability of a sedation/anesthesia permit will be granted to a dentist who, after June 1, 2011, applies for portability, if the dentist:~~]

[~~(1) holds a Level 4 Deep Sedation/General Anesthesia permit;~~]

[~~(2) holds a Level 3 Moderate Parenteral Sedation permit and the permit was granted based on education received in conjunction with the completion of a oral and maxillofacial specialty education program or a dental anesthesia program; or~~]

[~~(3) holds a Level 3 Moderate Parenteral Sedation permit and if:~~]

[~~(A) the training for the permit was obtained on the basis of completion of any of the following American Dental Association (ADA) Commission on Dental Accreditation (CODA) recognized or approved programs:~~]

~~(i)~~ ~~a specialty program;~~]

~~(ii)~~ ~~a general practice residency;~~]

~~(iii)~~ ~~an advanced education in general dentistry program; or~~]

[(iv) a ~~continuing education program. Dentists seeking a portability privilege designation based on this method of education shall also successfully complete no less than sixty (60) hours of didactic instruction and manage no less than twenty (20) dental patients by the intravenous route of administration; and]~~

~~[(B) the applicant provides proof of administration of no less than thirty (30) cases of personal administration of Level 3 sedation on patients in a primary or satellite practice location within the six (6) month period preceding the application for portability, but following the issuance of the sedation permit. Acceptable documentation shall include, but not be limited to, patient records demonstrating the applicant's anesthetic technique, as well as provision of services by the applicant within the minimum standard of care.]~~

(b) [~~(d)~~] A dentist providing sedation/anesthesia services in more than one location [~~utilizing a portability permit~~] remains responsible for providing these services in strict compliance with all applicable laws and rules. The dentist shall ascertain that the location is supplied, equipped, staffed, and maintained in a condition to support provision of sedation/anesthesia services that meet the standard of care.

~~[(e) Any applicant whose request for portability status is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, Chapter 2001 et seq.]~~

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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22 TAC §110.8

The State Board of Dental Examiners (Board) proposes the repeal of §110.8, concerning Provisional Anesthesia and Portability Permits. This rule repeal will eliminate the provisional anesthesia and portable anesthesia permits.

Kelly Parker, Executive Director, has determined that for the first five-year period the repeal is in effect, there will not be any fiscal implications for state or local government as a result of repealing the rule.

Ms. Parker has also determined that for the first five-year period the rule is repealed, the public benefit anticipated as a result of administering this section will be to reduce the burden on Board staff and to comply with the requirements of SB313. Ms. Parker has determined that for the first five-year period the rule is repealed, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed rule repeal may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

This rule repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule repeal.

§110.8. Provisional Anesthesia and Portability Permits.

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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22 TAC §110.13

The State Board of Dental Examiners (Board) proposes new §110.13, concerning Sedation and Anesthesia checklist. This new rule will establish the requirements of a preoperative checklist for all levels of sedation/anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to increase safety to patients receiving sedation/anesthesia. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§110.13. Required Preoperative Checklist for Administration of Levels 1, 2, 3, and 4 Sedation/Anesthesia.

(a) A dentist administering level 1, 2, 3, or 4 sedation/anesthesia must create and maintain in the patient's dental records required by rule §108.8, a document titled "preoperative sedation/anesthesia checklist" that is completed by the dentist prior to commencing a procedure for which the dentist will administer Level 1, 2, 3, or 4 sedation/anesthesia.

(b) A dentist delegating the administration of sedation/anesthesia to another provider in accordance with §258.001(4) of the Act, must maintain in the patient's dental records required by rule §108.8, a document titled "preoperative sedation/anesthesia checklist" that is completed by the sedation/anesthesia provider prior to commencing a procedure for which the dentist has delegated another provider to administer the Level 1, 2, 3, or 4 sedation/anesthesia.

(c) The checklist must include, at a minimum, documentation of the following, or documentation of why the item was not recorded, for each level of sedation/anesthesia:

(1) Medical history, including documentation of the following:

(A) review of patient medical history;

(B) review of patient allergies;

(C) review of patient surgical and/or anesthesia history;

(D) review of family surgical and/or anesthesia history; and

(E) review of patient medications and date and time last taken

(2) Confirmation that written and verbal preoperative and post-operative instructions were delivered to the patient, parent, legal guardian, or care-giver;

(3) Medical consults, as needed;

(4) Physical examination, including documentation of the following:

(A) Body mass index;

(B) American Society of Anesthesiologists Physical Status Classification (ASA) classification;

(C) NPO status; and

(D) Preoperative vitals, including height, weight, blood pressure, pulse rate, and respiration rate;

(5) Anesthesia-specific physical examination including documentation of the following:

(A) Airway assessment, including Mallampati score and/or Brodsky score; and

(B) Auscultation;

(6) Confirmation of pre-procedure equipment readiness check;

(7) Confirmation of pre-procedure treatment review;

(8) Special preoperative considerations as indicated for sedation/anesthesia administered to pediatric or high risk patients; and

(9) Documentation of reason for omission of any item required by 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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22 TAC §110.14

The State Board of Dental Examiners (Board) proposes new §110.14, concerning Sedation and Anesthesia Emergency Preparedness. This new rule will establish the requirements of emergency preparedness policies and procedures related to sedation/anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to increase safety in the administration of dental sedation/anesthesia. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§110.14. Emergency Preparedness Policies and Procedures.

(a) Pursuant to §258.1557 of the Act, a permit holder must develop written emergency preparedness policies and procedures, specific to the permit holder's practice setting, that establish a plan for the management of medical emergencies in each practice setting in which the dentist administers anesthesia.

(b) The emergency preparedness policies and procedures must include written protocols, policies, procedures, and training requirements, specific to the permit holder's equipment and drugs, for responding to emergency situations involving anesthesia, including information specific to respiratory emergencies.

(c) The permit holder must annually review the emergency preparedness policies and procedures to determine whether an update is necessary. The permit holder must maintain documentation of the dates of the emergency preparedness policies and procedures' creation, the most recent update, and the most recent annual review.

(d) Policies and procedures developed by all permit holders must include basic life support protocols, advanced cardiac life support rescue protocols, and/or pediatric advanced cardiac life support rescue protocols, consistent with the requirements of §§110.3, 110.4, 110.5 and 110.6, as applied to the permit holder.

(e) Policies and procedures developed by all permit holders must include, at a minimum, the following documents:

(1) Specific protocols for response to a sedation/anesthesia emergency, including specific protocols for response to a respiratory emergency and advanced airway management techniques;

(2) Staff training log, documenting staff training in emergency prevention, recognition, and response on at least an annual basis;

(3) Emergency drug log documenting monthly reviews for assurance of unexpired supply;

(4) Equipment readiness log indicating annual reviews for assurance of function of the equipment required by §110.15; and

(5) Individual office staff roles and responsibilities in response to an emergency, including roles and responsibilities specific to a response to a respiratory emergency.

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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State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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22 TAC §110.15

The State Board of Dental Examiners (Board) proposes new rule §110.15, concerning Sedation and Anesthesia Emergency Prevention and Response. This new rule will establish the requirements of emergency preparedness equipment and inspections related to sedation/anesthesia.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to increase safety to patients receiving sedation/anesthesia. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§110.15. Sedation and Anesthesia Emergency Prevention and Response.

(a) Pursuant to §258.1556 of the Act, the Board establishes minimum emergency preparedness standards and requirements for the administration of sedation/anesthesia.

(b) At any time a permit holder administers sedation/anesthesia, the permit holder must have immediately available:

(1) an adequate and unexpired supply of drugs and anesthetic agents, including, but not limited to:

(A) pharmacologic antagonists appropriate for sedation/anesthesia drugs used;

(B) vasopressors;

(C) corticosteroids;

(D) bronchodilators;

(E) antihistamines;

(F) antihypertensives;

(G) and anticonvulsants.

(2) an automated external defibrillator, as defined by §779.001 of the Texas Health and Safety Code;

(3) a positive pressure ventilation device;

(4) supplemental oxygen; and

(5) appropriate monitors and equipment, including, but not limited to:

(A) stethoscope;

(B) sphygmomanometer or automatic blood pressure monitor;

(C) pulse oximeter;

(D) an oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(E) suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(F) a lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; and

(G) precordial/pretracheal stethoscope, size-and-shape appropriate advanced airway device, intravenous fluid administration equipment, and /or electrocardiogram, consistent with the requirements of §§110.3, 110.4, 110.5. and 110.6, as applied to the permit holder.

(c) A permit holder who is administering sedation/anesthesia for which a Level 4 permit must use capnography during the administration of the sedation/anesthesia, as required by §258.1555 of the Act.

(d) Each permit holder must conduct an emergency drug inspection for assurance of unexpired supply at least monthly. Documentation of emergency drug inspections must be maintained in the permit holder's emergency drug log, required by §110.14.

(e) Each permit holder must conduct an equipment inspection for assurance of function at least annually. Documentation of equipment inspections must be maintained in the permit holder's equipment readiness log, required by §110.14.

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 September 29, 2017.

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Kelly Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.3

The State Board of Dental Examiners (Board) proposes new §111.3, concerning Prescription Monitoring by the Dentist. The proposed rule will require dentists to review a patient's prescription history prior to prescribing certain drugs.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to reduce prescription drug abuse and to comply with the requirements of the Texas Health and Safety Code. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§111.3. Prescription Monitoring by the Dentist.

(a) Beginning September 1, 2019, in accordance with Section 481.0764 of the Texas Health and Safety Code, a dentist shall access, review, and document the dentist's review of a patient's prescription drug history report through the Texas State Board of Pharmacy's Prescription Monitoring Program (PMP) Clearinghouse prior to prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol to the dental patient, on or after September 1, 2019. Failure to access, review, and document the dentist's review is grounds for investigation by the Board.

(b) The act described above in subsection (a) of this section may be performed by an employee or other agent of the dentist acting at the direction of the dentist so long as that employee or agent acts in compliance with HIPAA and the employee or agent only accesses information related to a particular patient of the dentist. The dentist is responsible for any unauthorized access by an employee or other agent.

(c) Exceptions: the act described above in subsection (a) of this section is not required if the patient has been diagnosed with cancer or is receiving hospice care and that status is clearly noted in the patient's dental record.

(d) A dentist has complied with subsection (a) of this section if the dentist makes a good faith attempt to comply with subsection (a) of this section but is unable to do so due to circumstances outside the dentist's control, and those circumstances are clearly noted in the patient's dental record.

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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Kelly Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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22 TAC §111.4

The State Board of Dental Examiners (Board) proposes new §111.4, concerning Prescription Monitoring by the Board. The proposed rule will require the Board to review dentists' prescription history.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to reduce prescription drug abuse and diversion and to comply with the requirements of the Texas Health and Safety Code. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§111.4. Prescription Monitoring by the Board.

(a) The Board shall promulgate specific guidelines for dentists for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

(b) The Board shall periodically access a dentist's prescription information through the Texas State Board of Pharmacy's Prescription Monitoring Program to determine whether the dentist is engaging in potentially harmful prescribing patterns or practices. This determination will be based on:

(1) the number of times a dentist prescribes opioids, benzodiazepines, barbiturates, or carisoprodol; and

(2) patterns of prescribing combinations of those drugs and other dangerous combinations identified by the Texas State Board of Pharmacy.

(c) The Board shall notify a dentist if the agency discovers that the dentist may be engaging in potentially harmful prescribing patterns or practices.

(d) The Board may initiate an investigation of a dentist if the agency finds evidence during a periodic check that the dentist is engaging in conduct that violates any laws or rules related to the practice of dentistry.

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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Kelly Parker
Executive Director
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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.1

The State Board of Dental Examiners (Board) proposes an amendment to §114.1, concerning the Permitted Duties of dental assistants. The proposed amendment establishes the requirements for a dental assistant to perform certain acts and will establish a deadline for scheduling a patient appointment following the interim care of a minor emergency condition.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to require training requirements for certain acts by dental assistants and to clarify the requirements associated with interim treatment of a minor emergency by a dental assistant. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§114.1. Permitted Duties.

(a) A dentist may delegate to a dental assistant the authority to perform only acts or procedures that are reversible. An act or procedure that is reversible is capable of being reversed or corrected.

(b) A dentist may not delegate or otherwise authorize a dental assistant to perform any task for which a certificate or additional training is required under this section, unless the dental assistant holds the required certificate or has obtained the additional training.

(c) A dental assistant may perform tasks under a dentist's general or direct supervision. For the purposes of this section:

(1) "General supervision" means that the dentist employs or is in charge of the dental assistant and is responsible for supervising the services to be performed by the dental assistant. The dentist may or may not be present on the premises when the dental assistant performs the procedures.

(2) "Direct supervision" means that the dentist employs or is in charge of the dental assistant and is physically present in the office when the task is performed. Physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.

(d) The dentist shall remain responsible for any delegated act.

(e) The clinical tasks that a dental assistant can perform under general supervision are limited to:

(1) the making of dental x-rays in compliance with the Occupations Code, §265.005; and

(2) the provision of interim treatment of a minor emergency dental condition to an existing patient of the treating dentist in accordance with the Occupations Code, §265.003(a-1). For purposes of this paragraph only, "existing patient" means a patient that the supervising dentist has examined in the twelve (12) months prior to the interim treatment. A treating dentist who delegates the provision of interim treatment of a minor emergency condition to a dental assistant shall schedule a follow-up appointment with the patient within 30 days. It is not a violation if the dentist makes a good faith attempt to schedule a follow-up appoint with the patient within 30 days but is unable to because circumstances outside the dentist's control and those circumstances are clearly noted in the patient's record.

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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Kelly Parker
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22 TAC §114.3

The State Board of Dental Examiners (Board) proposes an amendment to §114.3, concerning Pit and Fissure Sealants. This proposed amendment will eliminate the requirement that dental assistants be certified to perform pit and fissure sealants, but will maintain the education and training requirements.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to free Board staff from having to issue pit and fissure sealant certificates, in accordance with the recommendations of the Sunset Advisory Commission. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§114.3. Pit and Fissure Sealant [~~Certificate~~].

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

(1) "Didactic education" requires the presentation and instruction of theory and scientific principles.

(2) "Clinical education" requires providing care to patient(s) under the direct supervision of a dentist or dental hygienist instructor.

(3) "Direct Supervision" requires that the instructor responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well-being.

[~~(b) This subsection applies only to applications for certification received by the Board before September 1, 2009. A Texas-licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies, or who practices in an area determined to be underserved by the Department of State Health Services, may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant:~~]

[~~(1) is employed by and works under the direct supervision of the licensed dentist; and~~]

[~~(2) is certified pursuant to subsection (f) of this section.~~]

[~~(c) This subsection applies only to applications for certification received by the Board on or after September 1, 2009. A Texas-licensed dentist may delegate the application of pit and fissure sealant to a dental assistant, if the dental assistant is certified pursuant to subsection (f) of this section.~~]

(b) [~~(d)~~] In addition to application of pit and fissure sealants a dental assistant who meets the requirements [~~certified~~] in this section may use a rubber prophylaxis cup and appropriate polishing materials to cleanse the occlusal and smooth surfaces of teeth that will be sealed or to prepare teeth for application of orthodontic bonding resins. Cleansing is intended only to prepare the teeth for the application of sealants or bonding resins and should not exceed the amount needed to do so.

(c) [~~(e)~~] The dentist may not bill for a cleansing provided hereunder as a prophylaxis.

(d) A Texas-licensed dentist may delegate the application of pit and fissure sealants to a dental assistant if the dental assist has:

(1) at least two years of experience as a dental assistant;

(2) successfully completed a current course in basic life support; and

(3) completed a minimum of 8 hours of education that includes clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental, dental hygiene, or dental assistant program approved by the Board whose course of instruction includes:

(A) infection control;

(B) cardiopulmonary resuscitation;

(C) treatment of medical emergencies;

(D) microbiology;

(E) chemistry;

(F) dental anatomy;

(G) ethics related to pit and fissure sealants;

(H) jurisprudence related to pit and fissure sealants; and

(I) the correct application of sealants, including the actual clinical application of sealants.

(e) Application of pit and fissure sealants must be in accordance with the minimum standard of care and limited to the dental assistant's scope of practice.

(f) The dental assistant must comply with the Dental Practice Act and Board Rules in the application of pit and fissure sealants. Pursuant to §258.003 of the Dental Practice Act, the delegating dentist is responsible for all dental acts delegated to a dental assistant, including application of pit and fissure sealant.

[~~(f) A dental assistant wishing to obtain certification under this section must:~~]

[~~(1) Pay an application fee set by board rule;~~]

[~~(2) And on a form prescribed by the Board provide proof that the applicant has:~~]

[~~(A) At least two years of experience as a dental assistant;~~]

[(B) Successfully completed a current course in basic life support; and]

[(C) Complete a minimum of 16 hours of education for certificates issued under applications received by the Board before September 1, 2009 or complete a minimum of 8 hours of education for certificates issued under applications received by the Board on or after September 1, 2009. To fulfill this requirement, the education must include clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental hygiene or dental assisting program approved by the Board whose course of instruction includes:]

[(i) infection control;]

[(ii) cardiopulmonary resuscitation;]

[(iii) treatment of medical emergencies;]

[(iv) microbiology;]

[(v) chemistry;]

[(vi) dental anatomy;]

[(vii) ethics related to pit and fissure sealants;]

[(viii) jurisprudence related to pit and fissure sealants; and]

[(ix) the correct application of sealants, including the actual clinical application of sealants.]

[(g) Before January 1 of each year, a dental assistant registered under this section who wishes to renew that registration must:]

[(1) Pay a renewal fee set by board rule; and]

[(2) Submit proof that the applicant has successfully completed a current course in basic life support; and either]

[(3) For certificates issued under applications filed before September 1, 2009, the dental assistant must complete at least six (6) hours of continuing education in technical and scientific coursework in the previous calendar year.]

[(A) The terms "technical" and "scientific", as applied to continuing education, shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.]

[(B) Dental assistants shall select and participate in continuing education courses offered by or endorsed by:]

[(i) dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or,]

[(ii) nationally recognized dental, dental hygiene or dental assisting organizations.]

[(C) No more than three (3) hours of the required continuing education coursework may be in self-study; or]

[(4) For certificates issued under applications filed on or after September 1, 2009, the dental assistant must complete continuing education requirements in accordance with §114.12 of this chapter.]

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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22 TAC §114.5

The State Board of Dental Examiners (Board) proposes an amendment to §114.5, concerning Coronal Polishing by Dental Assistants. The proposed amendment will eliminate the requirement that dental assistants be certified to perform coronal polishing, but will maintain all other training requirements.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to free Board staff from having to issue coronal polishing certificates in accordance with the recommendations of the Sunset Advisory Commission. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposal.

§114.5. Coronal Polishing [Certificate].

(a) [The following term, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:] "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent. This includes the use of a toothbrush.

(b) A Texas-licensed dentist may delegate coronal polishing to a dental assistant if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and

(2) has at least two years experience as a dental assistant; and either [is certified pursuant to subsection (d) of this section.]

(A) has completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board. The education must include courses on:

(i) oral anatomy and tooth morphology relating to retention of plaque and stain;

(ii) indications, contraindications, and complications of coronal polishing;

(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(iv) infection control procedures;

(v) polishing coronal surfaces of teeth; and

(vi) jurisprudence relating to coronal polishing; or

(B) has either:

(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or

(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.

(c) The delegated duty of polishing by a dental assistant may not be billed as a prophylaxis.

(d) Coronal polishing must be in accordance with the minimum standard of care and limited to the dental assistant's scope of practice.

(e) The dental assistant must comply with the Dental Practice Act and Board Rules in the act of coronal polishing. Pursuant to §258.003 of the Dental Practice Act, the delegating dentist is responsible for all dental acts delegated to a dental assistant, including coronal polishing.

~~[(d) A dental assistant seeking certification under this section must:]~~

~~[(1) pay an application fee set by board rule; and]~~

~~[(2) on a form prescribed by the Board, provide proof that the applicant has:]~~

~~[(A) at least two years experience as a dental assistant; and either]~~

~~[(B) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board. The education must include courses on:]~~

~~*[(i)* oral anatomy and tooth morphology relating to retention of plaque and stain;]~~

~~*[(ii)* indications, contraindications, and complications of coronal polishing;]~~

~~*[(iii)* principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;]~~

~~*[(iv)* infection control procedures;]~~

~~*[(v)* polishing coronal surfaces of teeth; and]~~

~~*[(vi)* jurisprudence relating to coronal polishing; or]~~

~~[(C) present proof to the Board that the assistant has either:]~~

~~*[(i)* graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or]~~

~~*[(ii)* received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.]~~

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 September 29, 2017.

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Kelly Parker
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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.30

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.30, Licensing for Military Service Members, Veterans and Spouses. The proposed amendment is necessary because the agency no longer has the resources needed to administer the oral examination. Without these changes, doctoral level applicants otherwise qualified for independent practice would be unable to achieve licensure as a psychologist.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule as amended. Additionally, Mr. Spinks has determined that enforcing or administering the rule as amended, does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed amendment is in effect, the amended rule will not carry a economic cost to small businesses or local economies.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS. The proposed amendment will not have an adverse effect on small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposed amendment will not affect a local economy, thus a local employment impact statement is not required.

Comments on the proposed amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Texas Government Code.

STATUTORY AUTHORITY. The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.30. Licensing for Military Service Members, Veterans and Spouses.

(a) Military Service Members, Veterans and Spouses.

(1) A license may be issued to a military service member, military veteran, or military spouse, as those terms are defined by Chapter 55, Occupations Code, provided that the following documentation is provided to the Board:

(A) if the applicant is a military spouse, proof of marriage to a military service member; and

(B) proof that the applicant holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(C) proof that within the five years preceding the application date, the spouse held the license in Texas.

(2) An applicant applying for licensure under paragraph (1) of this subsection must provide documentation from all other jurisdictions in which the applicant is licensed that indicate that the applicant has received no disciplinary action from those jurisdictions regarding a mental health license.

(3) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license under this rule, other than paragraph (1)(B) and (C) of this subsection and the jurisprudence examination, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the Board's Applications Committee and consider the committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the Applications Committee, he or she must submit a written explanation to the Applications Committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has an unacceptable criminal history.

(4) Alternative demonstrations of competency to meet the requirements for licensure. The following provisions provide alternative demonstrations of competency to the Board's licensing standards.

(A) Licensed Specialist in School Psychology. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: submission of an official transcript, and evidence of the required coursework or National Association of School Psychologists certification, and passage of the National School Psychology Examination. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: submission of an official transcript, 450 internship hours, and passage of the Examination for Professional Practice in Psychology (EPPP) at the Texas cut-off. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: submission of an official transcript, and passage of the EPPP at the Texas cut-off. All other requirements for licensure are still required.

(D) Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: two years of supervised experience. All other requirements for licensure, including the requirements of this paragraph, are still required.

(5) Determination of substantial equivalency for licensing requirements in another state. The applicant must provide to the Board proof that the state in which the applicant is licensed has standards for licensure that are substantially equivalent to the requirements of this Board for the applicable license type:

(A) Licensed Specialist in School Psychology.

(i) The completion of a training program in school psychology approved/accredited by the American Psychological Association or the National Association of School Psychologists or a master's degree in psychology with specific course work as set forth in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology); and

(ii) Passage of the National School Psychology Examination.

(B) Licensed Psychological Associate.

(i) Graduate degree that is primarily psychological in nature and consisting of at least 42 semester credit hours in total with at least 27 semester credit hours in psychology courses;

(ii) Passage of the EPPP at the Texas cut-off score; and

(iii) A minimum of 6 semester credit hours of practicum, internship, or experience in psychology, under the supervision of a licensed psychologist.

(C) Provisionally Licensed Psychologist.

(i) Doctoral degree in psychology; and

(ii) Passage of the EPPP at the Texas cut-off score.

(D) Licensed Psychologist.

(i) Doctoral degree in psychology;

(ii) Passage of the EPPP at the Texas cut-off score; and

(iii) Two years or a minimum of 3,000 hours of supervised experience under a licensed psychologist.[; ~~and~~]

[(iv) ~~Passage of an oral examination.~~]

(6) Renewal of License Issued to Military Service Members, Veterans, and Spouses. A license issued pursuant to this rule shall remain active until the last day of the licensee's birth month following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: a practicum and 600 internship hours. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: 1,750 hours of supervised experience. All other requirements for licensure are still required.

(C) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year or a minimum of 1,750 hours of supervised experience. All other requirements for licensure are still required.

(2) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

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 September 26, 2017.

TRD-201703830

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 305-7706

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.83

The Texas Board of Professional Geoscientists (TBPG) proposes a new rule concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes 22 TAC §851.83, concerning Certain Licensees Temporarily Exempt from Continuing Education Requirements, for those licensees residing in Governor-designated disaster affected counties.

BACKGROUND AND PURPOSE

A Proclamation by the Governor of the State of Texas dated September 20, 2017, declared a state of emergency for certain counties in Texas due to Hurricane Harvey. This proposed rule allows licensees to continue practicing geoscience without interruption during the weeks and months immediately following the hurricane. Allowing licensees to continue to practice geoscience without interruption will allow them to assist in recovery, environmental damage assessment, post-flood foundation-stability assessment, environmental remediation and subsurface assessments related to structural rebuilding efforts in affected counties, thereby helping to preserve the public health, safety, and welfare in those areas, which are in imminent peril as a result of structures that have been damaged and otherwise become structurally unsound.

SECTION SUMMARY

Proposed new rule, §851.83, entitled Certain Licensees Temporarily Exempt From Continuing Education Requirements, outlines the process and conditions the board will use to provide temporary exemption from the continuing education requirements for those licensees residing in Governor-designated disaster affected counties, thereby allowing those licensees to renew their license in a timely manner and remain in compliance with continuing education requirements as long as the license, registration, or certification is renewed on or before August 31, 2018. This rule is intended as a temporary rule that may not remain in effect for five years, notwithstanding the preparation of five-year fiscal note and analyses.

FISCAL NOTE

Charles Horton, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the section is in effect there is no cost to the state as a result of enforcing or administering the section as proposed.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, or rural communities. Consequently, an economic impact statement or regulatory flexibility analysis is not required. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections. There is no anticipated negative impact on state or local government.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is the uninterrupted availability of licensees to carry out public geoscience throughout the state, including areas impacted by Hurricane Harvey, and continuing the ability of the Board to effectively regulate the public practice of geoscience in Texas.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed new rule may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to chorton@tbpg.state.tx.us. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

This new rule is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that Board shall enforce the Act.

The proposed new rule implements the Texas Occupations Code, §1002.151 and §1002.154.

§851.83. Certain Licensees Temporarily Exempt From Continuing Education Requirements.

(a) Continuing Education: A Professional Geoscientist or a Geoscientist-in-Training who resides in a Governor-designated disaster affected county is temporarily exempt from the continuing education requirement as long as the license or certification is renewed on or before August 31, 2018.

(b) A list of the Professional Geoscientists and Geoscientists-in-Training who are temporarily exempt from the continuing education requirements under this section shall be made available on the TBPG website in a searchable format for a period of time that the executive director determines is necessary.

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 September 29, 2017.

TRD-201703933
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 936-4401

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

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

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving requirements. Section 3.9901 implements SB 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. It is necessary to amend §3.9901 to implement the requirements of Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the National Association of Insurance Commissioners (NAIC). The NAIC Valuation Manual may be viewed through the following link: http://www.naic.org/documents/cmte_a_latf_related_val_2018_edition_adopted_170808.pdf

TDI originally adopted the NAIC Valuation Manual through §3.9901 on January 13, 2017, in compliance with Insurance Code §425.073, which required the commissioner to adopt a valuation manual substantially similar to the valuation manual approved by the NAIC.

Under Insurance Code §425.073(c), after the commissioner adopts the manual by rule, changes to the manual must be adopted by rule and the changes must be substantially similar to changes adopted by the NAIC. The changes must be adopted with an effective date of no earlier than January 1 of the year

immediately following a determination by the commissioner that changes to the valuation manual have been adopted by the NAIC. The NAIC's changes must be approved by an affirmative vote representing at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership, and by NAIC members representing jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

On August 9, 2017, the NAIC adopted changes to the NAIC Valuation Manual with a vote meeting the requirements set out in Insurance Code §425.073(c). On September 19, 2017, the commissioner issued Commissioner's Order No. 2017-5219, making the determination that the §423.073(c) threshold requirements regarding the NAIC vote had been met.

The NAIC Valuation Manual amendments proposed to be adopted by the commissioner provide updated reserving and reporting requirements for the valuation manual, in order to make it substantially similar to changes adopted by the NAIC. The proposed amendments would be applicable January 1, 2018.

This proposal includes provisions related to National Association of Insurance Commissioner rules, regulations, directives, or standards, and under Insurance Code §36.004 and §36.007, TDI must consider whether authority exists to enforce or adopt it. TDI has determined that Insurance Code §36.004 and §36.007 do not prohibit the proposed rule, because Insurance Code §425.073 requires TDI to adopt a valuation manual and subsection (b) of the section expressly authorizes TDI to adopt changes to the Valuation Manual that are substantially similar to changes adopted by the NAIC.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Doug Slape, deputy commissioner of the Financial Regulation Division, has determined that for each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. Slape does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mr. Slape expects that administering the proposed amendment will have the public benefits of ensuring that TDI's rules conform to Insurance Code §425.073 and the adoption of the amendments to the valuation manual, which increase the uniformity of reserving requirements amongst the states and simplify insurers' compliance with these requirements.

Mr. Slape expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that standard prescribed by the valuation manual is the minimum standard of valuation required under Insurance Code §425.0535. Insurance Code §425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with the actions the rule requires does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Insurance Code §425.077 provides the commissioner with authority to grant exemptions for specific products or product lines of a domestic company that is only doing business in Texas if certain conditions are met. TDI cannot consider other regulatory methods because the requirement to adopt the valuation manual and the requirement to use the valuation manual reserving methods are set out in the statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons.

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

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on November 13, 2017. TDI requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to fin-gm@tdi.texas.gov, or to Doug Slape, Deputy Commissioner, Financial Regulation Division, Mail Code 112-1F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2803 at 10:30 a.m., Central time, on November 7, 2017, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the commissioner of insurance 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.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073, enacted by SB 1654, 84th Legislature, Regular Session (2015).

§3.9901. Adoption of Valuation Manual [~~Purpose~~] and Operative Date.

(a) The commissioner adopts [~~purpose of this subchapter is to adopt~~] by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that

were adopted by the NAIC through August 9, 2017, as required by Insurance Code §425.073[~~, and to implement Insurance Code §425.077~~].

~~[(b) The commissioner adopts by reference the NAIC Valuation Manual.]~~

(b) [~~(c)~~] The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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 October 2, 2017.

TRD-201703972
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 676-6584

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 21, Subchapter PP, §§21.5001 - 21.5003, 21.5010 - 21.5013, 21.5020, 21.5030, and 21.5031 relating to Out-of-Network Claim Dispute Resolution. The amendments are necessary because of changes made to Insurance Code Chapter 1467 by Senate Bill 507, 85th Legislature, Regular Session (2017).

EXPLANATION. SB 507 amended Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution) and, as a result, the department must make conforming changes to 28 TAC Chapter 21, Subchapter PP.

As amended, Chapter 1467 provides for mediation of certain claims for services provided to enrollees of preferred provider benefit plans issued under Insurance Code Chapter 1301, and to enrollees of health benefit plans-other than health maintenance organization plans-provided under Insurance Code Chapters 1551 (the Texas Employees Group Benefits Act), 1575 (the Texas Public School Employees Group Benefits Program), and 1579 (the Texas School Employees Uniform Group Health Coverage).

Chapter 1467 also expands the types of covered providers and authorizes an enrollee to request mediation of an out-of-network health benefit claim if the claim is for emergency care or health care or medical service or supply provided by a facility-based provider in a facility that is a covered plan's preferred provider or that has a contract with the plan's administrator, for services provided on or after January 1, 2018. Amending §§21.5001-21.5031 is necessary to include these changes and adopt a new mediation request form.

A description of changes to specific sections follows.

DIVISION 1

Section 21.5001. The proposal makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

Section 21.5002. The proposal conforms §21.5002 to amendments made by SB 507, which expand the scope of mediation to cover claims made for emergency care or health care or medical services or supplies provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator, provided on or after January 1, 2018, and to apply to health benefit plans under Insurance Code Chapters 1575 (concerning Texas Public School Employees Group Benefits Program) and 1579 (concerning Texas School Employees Uniform Group Health Coverage). The proposal removes the phrase "provided the claim is filed on or after November 1, 2010," from the section because the time limitation is no longer required, since there should be no claims still pending that were filed before that date. The proposal adds a savings clause for claims for health care or medical services or supplies provided before January 1, 2018, consistent with Section 18 of SB 507. The proposal also corrects a reference and makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

Section 21.5003. The proposal conforms the definitions in §21.5003 to amendments made by SB 507. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

DIVISION 2

Section 21.5010. The proposal conforms §21.5010 to amendments made by SB 507 that expand the scope of mediation. The proposal also removes the limitations and applicable dates to conform to amended §21.5002 and the savings clause added there. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

Section 21.5011. The proposal conforms §21.5011 to amendments made by SB 507 that expand the scope of mediation. The proposal adds a requirement to provide financial information about claims to aid the department and the parties in assessing and resolving issues for mediation. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

Section 21.5012. The proposal conforms §21.5012 to amendments made by SB 507 that expand the scope of mediation. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

Section 21.5013. The proposal makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

DIVISION 3

The proposal amends the name of the division to reflect amendments by SB 507, which require notices to be sent by facility-based providers, emergency care providers, insurers, as well as plan administrators.

Section 21.5020. The proposal amends §21.5020 to comply with new Insurance Code §1467.0511, as added by SB 507, and the notice it now requires in bills and explanations of benefits. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

DIVISION 4

Section 21.5030. The proposal conforms §21.5030 to amendments made by SB 507 that expand the scope of mediation. The proposal also makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

Section 21.5031. The proposal makes nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Patricia Brewer, team lead for the Life and Health Regulatory Initiatives Team, has determined that during each year of the first five years that the proposed amendments are in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Brewer does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Brewer expects that administering the proposed sections will have the public benefits of: (i) ensuring that the department's rules comply with Insurance Code Chapter 1467; (ii) adopting a revised mediation request form that will incorporate an authorization to disclose protected health information; (iii) clarifying changes made to Insurance Code Chapter 1467 by SB 507 for affected plans, administrators, and enrollees; and (iv) possibly reducing balance billing of patients for some out-of-network services.

Ms. Brewer expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 1467 because they do not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that these proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities, because to the extent they contain requirements, they simply implement statutory requirements or contain minor revisions to existing forms. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a cost on regulated persons.

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

REQUEST FOR PUBLIC COMMENT. The department welcomes public comment on this proposal. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on November 13, 2017. The department requires two copies of your comments. Send one copy to chiefclerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to LHLComments@tdi.texas.gov or to Patricia Brewer, Regulatory Initiatives, Life and Health Lines Office, Regulatory Policy Division, MC 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period to chiefclerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

DIVISION 1. GENERAL PROVISIONS

28 TAC §§21.5001 - 21.5003

STATUTORY AUTHORITY. The department proposes amendments to §§21.5001, 21.5002, and 21.5003 under Section 18 of SB 507, 85th Legislature, Regular Session (2017), and Insurance Code §§1467.001, 1467.002, 1467.003, 1467.051, 1467.0511, 1467.054, and 36.001.

Section 18 of SB 507 provides that changes in law made by the bill apply to claims for health care or medical services or supplies provided on or after January 1, 2018, and includes a savings clause for claims for health care or medical services or supplies provided before that date.

Section 1467.001 contains definitions for Chapter 1467.

Section 1467.002 sets out the applicability of the chapter.

Section 1467.003 requires the commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notices to enrollees of the mediation process by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide information if contacted by enrollees about bills that may be eligible for mediation under Chapter 1467.

Section 1467.054 sets out the procedure for requesting mediation and preliminary procedures for that mediation, and it provides that a request for mandatory mediation must be provided to the department on a form prescribed by the commissioner.

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

CROSS REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5001 implement Insurance Code Chapter 1467. The proposed amendments to 28 TAC §21.5002 implement Section 18 of SB 507, 85th Legislature, Regular Session (2017), and Insurance Code §1467.001 and §1467.051. The proposed amendments to 28 TAC §21.5003 implement Section 18 of SB 507, 85th Legislature, Regular Session (2017), and Insurance Code §§1467.001, 1467.002, and 1467.051.

§21.5001. Purpose.

As authorized by Insurance Code §1467.003 (concerning Rules), the purpose of this subchapter is to:

(1) prescribe the process for requesting, [~~and~~] initiating, and conducting preliminary procedures for the mandatory mediation of claims as authorized in Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution); and

(2) facilitate the process for the investigation and review of a complaint filed with the department that relates to the settlement of an out-of-network claim under Insurance Code Chapter 1467.

§21.5002. Scope.

(a) This subchapter applies to a qualified claim filed under health benefit plan coverage:

(1) issued by an insurer as a preferred provider benefit plan under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans), provided the claim is filed on or after November 1, 2010; or

(2) administered by an administrator of a health benefit plan, other than a health maintenance organization (HMO) plan, under Insurance Code Chapters [~~Chapter~~] 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage), provided the claim is for emergency care or health care or medical services or supplies provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator, provided on or after January 1, 2018 [~~filed on or after November 1, 2010~~].

(b) This subchapter does not apply to a claim for health benefits, including emergency care or health care or medical services or supplies [~~medical and health care services or supplies or both~~], that is not a covered claim under the terms of the health benefit plan coverage.

(c) This subchapter applies only to a claim for emergency care or health care or medical services or supplies, provided on or after January 1, 2018. A claim for health care or medical services or supplies provided before January 1, 2018, is governed by the rules in effect immediately before the effective date of this subsection, and those rules are continued in effect for that purpose.

§21.5003. Definitions.

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

(1) Administrator--An administering firm or a claims administrator for a health benefit plan, other than a health maintenance organization (HMO) plan, providing coverage under Insurance Code Chapters [~~Chapter~~] 1551, (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage).

(2) Chief administrative law judge--The chief administrative law judge of the State Office of Administrative Hearings.

(3) Claim--A request to a health benefit plan for payment for health benefits under the terms of the health benefit plan's coverage, including emergency care, or a health care or medical service or supply, or any combination of emergency care and health care or medical services and supplies [~~medical and health care services or supplies or both~~], provided that the care, services, or supplies [~~or both~~]:

(A) are furnished for a single date of service; or

(B) if furnished for more than one date of service, are provided as a continuing or related course of treatment over a period of time for a specific medical problem or condition, or in response to the same initial patient complaint.

(4) Emergency care--Has the meaning assigned by Insurance Code §1301.155 (concerning Emergency Care).

(5) Emergency care provider--A physician, health care practitioner, facility, or other health care provider who provides and bills an enrollee, administrator, or health benefit plan for emergency care.

(6) [~~(4)~~] Enrollee--An individual who is eligible to receive benefits through a preferred provider benefit plan or a health benefit plan under Insurance Code Chapters 1551, 1575, or 1579.

(7) Facility--Has the meaning assigned by Health and Safety Code §324.001 (concerning Definitions).

(8) [~~(5)~~] Health benefit plan--A plan that provides coverage under:

(A) a preferred provider benefit plan offered by an insurer under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans); or

(B) a plan, other than an HMO plan, under Insurance Code Chapters [~~Chapter~~] 1551, 1575, or 1579.

(9) Facility-based provider--A physician, health care practitioner, or other health care provider who provides health care or medical services to patients of a facility.

(10) Health care practitioner--An individual who is licensed to provide health care services.

[~~(6) Hospital-based physician--A radiologist, an anesthesiologist, a pathologist, an emergency department physician, a neonatologist, or an assistant surgeon if the assistant surgeon's services are provided on or after September 1, 2015.~~]

[~~(A) to whom the hospital has granted clinical privileges; and~~]

[~~(B) who provides services to patients of the hospital under those clinical privileges.~~]

(11) [~~(7)~~] Insurer--A life, health, and accident insurance company; health insurance company; or other company operating under: Insurance Code Chapters 841 (concerning Life, Health, or Accident Insurance Companies); 842 (concerning Group Hospital Service Corporations); 884 (concerning Stipulated Premium Insurance Companies); 885 (concerning Fraternal Benefit Societies); 982 (concerning Foreign and Alien Insurance Companies); or 1501 (concerning Health Insurance Portability and Availability Act), that is authorized to issue, deliver, or issue for delivery in this state a preferred provider benefit plan under Insurance Code Chapter 1301.

(12) [~~(8)~~] Mediation--A process in which an impartial mediator facilitates and promotes agreement between the insurer offering a preferred provider benefit plan, or the administrator, and a facility-based provider or emergency care provider [~~hospital-based physician~~] or the provider's [~~physician's~~] representative to settle a qualified claim of an enrollee.

(13) [~~(9)~~] Mediator--An impartial person who is appointed to conduct mediation under Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution).

(14) [~~(10)~~] Out-of-network claim--A claim for payment for medical or health care services or supplies or both furnished by a facility-based provider or emergency care provider [~~hospital-based physician~~] that is not contracted as a preferred provider with a preferred provider benefit plan or contracted with an administrator.

(15) [~~(11)~~] Preferred provider--A facility, facility-based provider, or emergency care provider [~~hospital or hospital-based physician~~] that contracts on a preferred-benefit basis with an insurer issuing a preferred provider benefit plan under Insurance Code Chapter 1301 to provide medical care or health care to enrollees covered by a health insurance policy.

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DIVISION 2. MEDIATION PROCESS

28 TAC §§21.5010 - 21.5013

STATUTORY AUTHORITY. The department proposes amendments to §§21.5010 - 21.5013 under Insurance Code §§1467.001, 1467.002, 1467.003, 1467.051, 1467.0511, 1467.054, and 36.001.

Section 1467.001 contains definitions for Chapter 1467.

Section 1467.002 sets out the applicability of the chapter.

Section 1467.003 requires the commissioner, the Texas Medical Board, the chief administrative law judge, and any other appropriate regulatory agency to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notices to enrollees of the mediation process by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide information if contacted by enrollees about bills that may be eligible for mediation under Chapter 1467.

Section 1467.054 sets out the procedure for requesting mediation and preliminary procedures for that mediation, and it provides that a request for mandatory mediation must be provided to the department on a form prescribed by the commissioner.

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

CROSS REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5010 implement Insurance Code §1467.001 and §1467.051. The proposed amendments to 28 TAC §21.5011 and §21.5012 implement Insurance Code §1467.051 and §1467.054. The proposed amendments to 28 TAC §21.5013 implement Insurance Code §1467.003 and §1467.054.

§21.5010. Qualified Claim Criteria.

(a) Required criteria. An enrollee may request mandatory mediation of an out-of-network claim under §21.5011 of this title (relating to Mediation Request Form and Procedure) if the claim complies with the criteria specified in this subsection. An out-of-network claim that complies with those criteria is referred to as a "qualified claim" in this subchapter.

(1) The out-of-network claim must be for:

(A) emergency care; or

(B) a health care or medical service [~~services~~] or supply [~~supplies, or both~~], provided by a facility-based provider [~~a hospital-based physician~~] in a facility [~~hospital~~] that is a preferred provider with the insurer or that has a contract with the administrator.

[~~(2) For services provided before September 1, 2015, the aggregate amount for which the enrollee is responsible to the hospital-based physician for the out-of-network claim, not including copayments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee, must be greater than $1,000.~~]

(2) [~~(3)~~] The [~~For services provided on or after September 1, 2015, the~~] aggregate amount for which the enrollee is responsible to the facility-based provider or emergency care provider [~~hospital-based physician~~] for the out-of-network claim, not including copayments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee, must be greater than $500.

(b) Submission of multiple claim forms. The use of more than one form in the submission of a claim, as defined in §21.5003 [~~§21.5003(3)~~] of this title (relating to Definitions), does not prevent eligibility of a claim for mandatory mediation under this subchapter if the claim otherwise meets the requirements of this section.

(c) Ineligible claims.

(1) An out-of-network claim is not eligible for mandatory mediation under this subchapter if:

(A) the facility-based provider [~~hospital-based physician~~] has provided a complete disclosure to an enrollee under Insurance Code §1467.051(c) [~~§1467.051~~] (concerning Availability of Mandatory Mediation; Exception), and this subsection before providing the medical service or supply or both and has obtained the enrollee's written acknowledgment of that disclosure; and

(B) the amount billed by the facility-based provider [~~hospital-based physician~~] is less than or equal to the maximum amount specified in the disclosure.

(2) A complete disclosure under paragraph (1) of this subsection must:

(A) explain that the facility-based provider [~~hospital-based physician~~] does not have, as applicable, either a contract with the enrollee's health benefit plan as a preferred provider or a contract with the administrator of the plan, other than an HMO plan, provided under Insurance Code Chapters [~~Chapter~~] 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), or 1579 (concerning Texas School Employees Uniform Group Health Coverage);

(B) disclose projected amounts for which the enrollee may be responsible; and

(C) disclose the circumstances under which the enrollee would be responsible for those amounts.

(d) Qualification continues. A claim that meets the criteria to be [~~for~~] a qualified claim after claim adjudication by the insurer or administrator does not lose that status by virtue of the aggregate amount for which the enrollee is responsible being reduced below the thresholds set out in this section without the consent of the enrollee.

§21.5011. Mediation Request Form and Procedure.

(a) Mediation request form. The commissioner adopts by reference Form No. CP029 (Health Insurance Mediation Request Form), which is available at www.tdi.texas.gov/consumer/cpmmediation.html. Form No. CP029 (Health Insurance Mediation Request

Form) requires information necessary for the department to properly identify the qualified claim, including:

(1) the name and contact information, including a telephone number, of the enrollee requesting mediation;

(2) a brief description of the qualified claim to be mediated, including the amount sought from the enrollee, not including copayments, deductibles, coinsurance, or amounts paid by an insurer or administrator directly to the enrollee;

(3) the name and contact information, including a telephone number, of the requesting enrollee's counsel, if the enrollee retains counsel;

(4) the name of the facility-based provider or emergency care provider [~~hospital-based physician~~];

(5) the name of the insurer or administrator;

(6) the name and address of the facility [~~hospital~~] where services were rendered; and

(7) an authorization allowing the department to disclose the enrollee's protected health information or other confidential information to the facility-based provider or emergency care provider [~~hospital-based physician and the hospital-based physician's representative~~], the enrollee's health benefit plan's insurer or administrator, the benefit plan's representative or representatives, the insurer or administrator's representative or representatives, the appointed mediator, and the State Office of Administrative Hearings.

(b) Submission of request. An enrollee may submit a request for mediation by completing and submitting Form No. CP029 (Health Insurance Mediation Request Form) as provided in [~~paragraphs (1) - (4) of~~] this subsection. The request may be submitted:

(1) by mail to the Texas Department of Insurance, Consumer Protection Section, MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091;

(2) by fax to 512-490-1007;

(3) by email to ConsumerProtection@tdi.texas.gov; or

(4) online, when the department makes Form No. CP029 (Health Insurance Mediation Request Form) available to be completed and submitted online.

(c) Assistance. Assistance with submitting a request for mediation is available at the department's toll-free telephone number, [~~1-~~]800-252-3439.

§21.5012. Informal Settlement Teleconference.

An insurer or administrator subject to mandatory mediation requested by an enrollee under this subchapter [~~§21.5011 of this title (relating to Mediation Request Form and Procedure)~~] must use best efforts to coordinate the informal settlement teleconference required by Insurance Code §1467.054 (concerning Request and Preliminary Procedures for Mandatory Mediation) by:

(1) arranging a date and time when the insurer or administrator; the enrollee or the enrollee's representative, if the enrollee or the enrollee's representative[~~,~~] chooses to participate; and the facility-based provider or emergency care provider [~~hospital-based physician~~] or the facility-based provider's or emergency care provider's [~~hospital-based physician's~~] representative can participate in the informal settlement teleconference, which must occur not later than the 30th day after the date on which the enrollee submitted a request for mediation; and

(2) providing a toll-free telephone number for participation in the informal settlement teleconference.

§21.5013. Mediation Participation.

(a) An insurer or administrator subject to mediation under this subchapter must participate in mediation in good faith and is subject to any rules adopted by the chief administrative law judge under [~~in accordance with~~] Insurance Code §1467.003 (concerning Rules).

(b) Under Insurance Code §1467.101 (concerning Bad Faith), conduct that constitutes bad faith mediation includes failing to:

(1) participate in the mediation;

(2) provide information that the mediator believes is necessary to facilitate an agreement; or

(3) designate a representative participating in the mediation with full authority to enter into any mediated agreement.

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

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DIVISION 3. REQUIRED NOTICE OF CLAIMS DISPUTE RESOLUTION

28 TAC §21.5020

STATUTORY AUTHORITY. The department proposes amendments to §21.5020 under Insurance Code §§1467.003, 1467.051, 1467.0511, and 36.001.

Section 1467.003 requires the commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notice and information to be sent to enrollees by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide certain information to enrollees.

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

CROSS REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5020 implement Insurance Code §1467.051 and §1467.0511 and SB 507, 85th Legislature, Regular Session (2017), which amends Insurance Code Chapter 1467.

§21.5020. Required Notice of Claims Dispute Resolution.

(a) A bill sent to an enrollee by a facility-based provider or emergency care provider or an explanation of benefits sent to an en-

rollee by an insurer or administrator for an out-of-network health benefit claim eligible for mediation under Insurance Code Chapter 1467 must contain, in not less than 10-point boldface type, a conspicuous, plain-language explanation of the mediation process available under this chapter, including information on how to request mediation and a statement that is substantially similar to the following: "You may be able to reduce some of your out-of-pocket costs for an out-of-network medical or health care claim that is eligible for mediation by contacting the Texas Department of Insurance at www.tdi.texas.gov/consumer/cpmmediation.html or by calling 800-252-3439."

(b) If an enrollee contacts an insurer, administrator, or facility-based provider or emergency care provider about a bill that may be eligible for mediation under this chapter, the insurer, administrator, or facility-based provider or emergency care provider is encouraged to:

(1) inform the enrollee about mediation under this chapter; and

(2) provide the enrollee with the department's toll-free telephone number and web address.

[~~An administrator of a plan under Insurance Code Chapter 1551 (concerning Texas Employees Group Benefits Act), must include a notice of the availability of mandatory mediation under this subchapter with each explanation of benefits sent to an enrollee for an out-of-network claim for services, supplies, or both, furnished in a hospital that has a contract with the administrator.~~]

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

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DIVISION 4. COMPLAINT RESOLUTION AND OUTREACH

28 TAC §21.5030, §21.5031

STATUTORY AUTHORITY. The department proposes amendments to §21.5030 and §21.5031 under Insurance Code §§1467.003, 1467.051, 1467.0511, 1467.054, and 36.001.

Section 1467.003 requires the commissioner, the Texas Medical Board, any other appropriate regulatory agency, and the chief administrative law judge to adopt rules as necessary to implement their respective powers and duties under Chapter 1467.

Section 1467.051 sets out the availability of mandatory mediation under Chapter 1467.

Section 1467.0511 provides for notices to enrollees of the mediation process by facility-based providers, emergency care providers, insurers, and administrators, and encourages them to provide information if contacted by enrollees about bills that may be eligible for mediation under Chapter 1467.

Section 1467.054 sets out the procedure for requesting mediation and preliminary procedures for that mediation, and it provides that a request for mandatory mediation must be provided to the department on a form prescribed by the commissioner.

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

CROSS REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.5030 and §21.5031 implement Insurance Code §1467.051 and §1467.054. The proposed amendments to 28 TAC implement Insurance Code §1467.051 and §1467.054.

§21.5030. Complaint Resolution.

(a) Written complaint.

(1) An individual may submit a written complaint to the department regarding a qualified claim or a mediation [~~that has been~~] requested under §21.5010 of this title (relating to Qualified Claim Criteria). A recommended form for filing a complaint under this subsection is available online at www.tdi.texas.gov/consumer/cpmmediation.html. The complaint may be submitted by:

(A) mail to the Texas Department of Insurance, Consumer Protection Section, MC 111-1A, P.O. Box 149091, Austin, Texas 78714-9091;

(B) fax to 512-490-1007;

(C) email to ConsumerProtection@tdi.texas.gov; or

(D) online submission.

(2) Assistance with filing a complaint is available at the department's toll-free telephone number, [~~1-~~] 800-252-3439.

(b) Complaint form. The recommended form for filing a complaint under subsection (a) of this section requests information concerning the complaint, including:

(1) whether the complaint is within the scope of Insurance Code Chapter 1467 (concerning Out-of-Network Claim Dispute Resolution);

(2) whether emergency care, health care, or a medical service have [~~medical care has~~] been delayed or have [~~has~~] not been given;

(3) whether the health care, medical service, or supply, or a combination of health care, medical service, or supply, [~~thereof~~] that is the subject of the complaint was for emergency care; and

(4) specific information about the qualified claim, including:

(A) the name, type, and specialty of the facility-based provider or emergency care provider [~~hospital-based physician~~];

(B) the type of service performed or supplies provided;

(C) the city and county where the service was performed; and

(D) the dollar amount of the disputed claim.

(c) Department processing [~~Processing~~]. The department will maintain procedures to ensure that a written complaint made under this section is not dismissed without appropriate consideration, including:

(1) review of all of the information submitted in the written complaint;

(2) contact with the parties that are the subject of the complaint;

(3) review of the responses received from the subjects of the complaint to determine if and what further action is required, as appropriate; and

(4) notification to the enrollee of the mediation process, as described in Insurance Code Chapter 1467, Subchapter B (concerning Mandatory Mediation).

§21.5031. Department Outreach.

In addition to the notice provided to consumers regarding the availability of mandatory mediation described in §21.5030 [~~§21.5030(e)~~] of this title (relating to Complaint Resolution), the department will provide outreach as required by Insurance Code §1467.151(a)(2) (concerning Consumer Protection; Rules), by making information concerning the availability of this mandatory mediation process available:

(1) on the department's website; and

(2) in consumer publications.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 10. TRANSPARENCY
SUBCHAPTER A. ANNUAL REPORT OF FINANCIAL INFORMATION BY POLITICAL SUBDIVISION

34 TAC §§10.1 - 10.6

The Comptroller of Public Accounts proposes new §§10.1 - 10.6 concerning definitions; annual local debt report; annual local debt report form; reporting requirements; water district alternative; and comptroller procedures. The new rules will be under Title 34, Part 1, new Chapter 10, Transparency, Subchapter A, Annual Report of Financial Information by Political Subdivision. This new chapter implements the requirements of House Bill 1378, 84th Legislature, 2015, codified under Local Government Code, §140.008. The new rules establish guidelines for the format, submission and web posting and/or web linking of reporting of political subdivisions' required annual debt information, including that of water districts described in Water Code, Chapter 49. The comptroller made a draft version of these proposed new rules available for informal comment on its Internet website in January of 2017, but has not received any informal comments or questions regarding the draft as of the date of this publication.

New §10.1 defines phrases, words and terms describing annual debt reporting for political subdivisions. New §10.2 describes the financial information required in the Annual Local Debt Report to be compiled and reported by political subdivisions in accordance with Local Government Code, §140.008. New §10.3 describes the optional reporting form to be provided by the comptroller and explains how political subdivisions may obtain the form. New §10.4 explains annual debt reporting requirements and report submission options available to political subdivisions. New §10.5 identifies requirements for annual debt reporting applicable to water districts as defined in Water Code, Chapter 49. New §10.6 sets forth the comptroller's duties under this subchapter, including requirements that the comptroller receive and post Annual Local Debt Reports and other documents on the comptroller's website and make this information easily searchable by the public.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules 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 are in effect, the public benefit anticipated as a result of enforcing the rules will be by making available to the public local government debt information. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Will Counihan, Director, Data Analysis and Transparency Division, Comptroller of Public Accounts, at Will.Counihan@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.* For further information, please call Mr. Counihan at (512) 936-0758

The new subchapter is proposed under Local Government Code, §140.008, Subsections (d), (e), and (h), which authorize the comptroller to adopt rules necessary for the implementation of Local Government Code, §140.008, Subsections (d), (e), (g), and (h).

The proposed new subchapter implements Local Government Code, §140.008.

§10.1. Definitions.

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

(1) Affidavit of financial dormancy--The affidavit described by Water Code, Chapter 49, Subchapter G, that may be submitted by a water district under §10.5 of this title (relating to Water District Alternative) and which states that the district is financially dormant and has less than $500 in receipts or disbursements, no bonds or liabilities, and no cash investments exceeding $5,000 in a calendar year.

(2) Authorized--With respect to a public security, authorized means allowed or directed by a resolution, order, or ordinance that is approved or adopted in a proceeding by the governing body of an issuer in authorizing the issuance of a public security.

(3) Combined principal and interest required to pay all outstanding debt obligations on time and in full--Total amount borrowed (par) that has yet to be repaid plus the cost of interest.

(4) Combined principal and interest required to pay all outstanding debt obligations secured by ad valorem taxation on time and in full--Total amount borrowed (par) of all property tax-secured obligations that has yet to be repaid plus the cost of interest.

(5) Combined principal and interest required to pay all outstanding debt obligations secured by ad valorem taxation on time and in full as a per capita amount--Total debt obligations secured by a pledge of property taxes plus the cost of debt service on these obligations divided by the population of the political subdivision.

(6) Combined principal and interest required to pay each outstanding debt obligations on time and in full--Total amount borrowed (par) plus the cost of interest for each individual debt obligation or bond series.

(7) Current credit rating--Existing rating given by any nationally recognized credit rating organization to debt obligations.

(8) Final maturity date--Final payment date of individual debt obligation at which point all principal and interest will be paid off.

(9) Issuance or issued--The process of authorizing, selling, and delivering public debt.

(10) Official stated purpose for which a debt obligation was authorized--The reason for the debt issuance as described in ballot language if applicable or the official statement.

(11) Outstanding debt obligation--An issued public security that has yet to be repaid.

(12) Outstanding principal--Total amount borrowed that has yet to be repaid.

(13) Political subdivision--A county, municipality, school district, junior college district, other special district, or other subdivision of state government subject to the reporting requirements set forth under Local Government Code, §140.008. This definition includes a municipality with a population of less than 15,000 and a county with a population of less than 35,000.

(14) Principal issued--The total amount borrowed.

(15) Proceeds spent--The portion of total proceeds received that have been spent.

(16) Proceeds unspent--The portion of total proceeds received that are remaining to be spent.

(17) Secured in any way by ad valorem taxes--Indicates which individual debt obligations are in part or entirely pledged with property taxes.

(18) Total authorized debt obligations--Debt obligations are defined as public securities which are instruments, including bonds, certificates, notes, or other types of obligations authorized to be issued by an issuer under a statute, a municipal home-rule charter, or the constitution of this state.

(19) Total authorized debt obligations secured by ad valorem taxation--Total debt obligations secured by a pledge of property taxes.

(20) Total authorized debt obligations secured by ad valorem taxation expressed as a per capita amount--Total authorized debt obligations secured by a pledge of property taxes divided by the population of the political subdivision.

(21) Total principal of all outstanding debt obligations--Total amount borrowed (par) of all obligations that have yet to be repaid.

(22) Total principal of all outstanding debt obligations secured by ad valorem taxation--Total amount borrowed (par) of obligations secured by a pledge of property taxes that have yet to be repaid.

(23) Total principal of outstanding debt obligations secured by ad valorem taxation as a per capita amount--Total amount borrowed (par) secured by a pledge of property taxes divided by the population of the political subdivision.

(24) Total proceeds received--Total assets received from the sale of a new issue of public securities.

§10.2. Annual Local Debt Report.

(a) A political subdivision shall annually compile and report certain financial information ("Annual Local Debt Report") in the manner prescribed by this subchapter.

(b) The Annual Local Debt Report to be compiled and reported by a political subdivision must include the following financial information:

(1) Regarding total authorized debt obligations:

(A) the amount of all authorized debt obligations;

(B) the principal of all outstanding debt obligations;

(C) the combined principal and interest required to pay all outstanding debt obligations on time and in full;

(D) the amount of all authorized debt obligations secured by property taxes;

(E) the principal of all outstanding debt obligations secured by property taxes;

(F) the combined principal and interest required to pay all outstanding debt obligations secured by property taxes on time and in full;

(G) the amount of all authorized debt obligations secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;

(H) the principal of all outstanding debt obligations secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;

(I) the combined principal and interest required to pay all outstanding debt obligations on time and in full for all obligations secured by property taxes expressed as a per capita amount; and

(J) the current credit rating on total debt obligations given by any nationally recognized credit rating organization.

(2) Regarding each authorized debt obligation:

(A) the principal of each outstanding debt;

(B) the principal of each outstanding debt obligation secured by property taxes for municipalities, counties or school districts expressed as a per capita amount;

(C) the combined principal and interest required to pay each outstanding debt obligation on time and in full;

(D) the combined principal and interest required to pay each outstanding debt obligation on time and in full for municipalities, counties or school districts expressed as a per capita amount;

(E) the issued and unissued amounts, the spent and unspent amounts, the maturity date and the stated purpose for which each debt obligation was authorized; and

(F) the current credit rating on each debt obligation given by any nationally recognized credit rating organization.

(3) Any other information considered relevant or necessary to explain the above required data elements, such as explanations of payment sources for different kinds of debt or projections of per capita amounts of ad valorem taxation-secured obligations as of the last day of the maximum term of the most recent debt obligation issued by the political subdivision.

§10.3. Annual Local Debt Report Form.

(a) The comptroller shall provide an Annual Local Debt Report Form for use by a political subdivision under this subchapter. Copies of the form may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The form may be viewed or downloaded from the comptroller's website at https://comptroller.texas.gov/transparency/local/hb1378/apply.php. Copies may also be requested by calling our toll-free number, (844) 519-5676, or by e-mailing staff at transparency@cpa.texas.gov.

(b) The comptroller may update the Annual Local Debt Report Form as needed.

§10.4. Reporting Requirements.

(a) In order to comply with §10.2 of this title (relating to Annual Local Debt Report), on an annual basis, and within 180 days of the end of the most recently completed fiscal year, a political subdivision shall either:

(1) submit via upload to the comptroller's Internet web site the completed Annual Local Debt Report Form provided by the comptroller and, if the political subdivision maintains an Internet website, continually maintain a link from its website to the location on the comptroller's website where the political subdivision's financial information may be viewed; or

(2) post the information required in an Annual Local Debt Report on the political subdivision's own Internet website.

(b) The governing body of a political subdivision that elects to post its annual debt information on its own Internet website as described in subsection (a)(2) of this section shall take action to ensure that:

(1) this information is made available for inspection by any person and posted continuously on the political subdivision's website until the political subdivision posts the next year's annual debt information; and

(2) the contact information for the political subdivision's main office is posted continuously on the website and such information includes a physical address, mailing address, main telephone number, and an e-mail address.

(c) For Fiscal Year 2016 and Fiscal Year 2017, a political subdivision shall submit to the comptroller or post the annual debt information described in subsection (a) of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule.

§10.5. Water District Alternative.

(a) A water district as defined under Water Code, §49.001, complies with the requirements of this subchapter if the district submits to the comptroller via web upload on an annual basis and within 180 days of the end of the most recently completed fiscal year one of the following:

(1) an annual financial report as described by Water Code, Chapter 49, Subchapter G;

(2) an audit report as described by Water Code, Chapter 49, Subchapter G; or

(3) an affidavit of financial dormancy as described by Water Code, Chapter 49, Subchapter G.

(b) For Fiscal Year 2016 and Fiscal Year 2017, a water district shall submit the information described in subsection (a) of this section by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of this rule.

§10.6. Comptroller Procedures.

(a) The comptroller shall receive the Annual Local Debt Report from political subdivisions (to include municipalities with a population of less than 15,000 and counties with a population of less than 35,000) electing to provide such information under §10.4(a)(1) of this title (relating to Reporting Requirements).

(b) The comptroller shall post each Annual Local Debt Report on the annual local debt reporting section of the comptroller's Internet website, making each political subdivision's report easily located via a search function.

(c) The comptroller shall receive and post on the annual local debt reporting section of its Internet website one of the following for each water district as defined under Water Code, §49.001: an annual financial report, an affidavit of financial dormancy, or an audit report.

(d) The comptroller is committed to making its website and all electronic and information resources accessible to persons with disabilities by applying principles of accessibility and usability design to its information collection and publication practices. Accordingly, the comptroller may require documents submitted to it under this section to comply with the accessibility standards and specifications described in 1 TAC Chapters 206 and 213.

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 September 28, 2017.

TRD-201703918
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 6. PAROLE PLACEMENT AND DISCHARGE

37 TAC §380.8581, §380.8583

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8581, concerning Supervision Levels in Parole Home Placement, and §380.8583, concerning Subsidized Living Support Program.

Amended §380.8581 will remove the requirement for a youth to be placed on intensive parole supervision for the entire time he/she receives a housing rent subsidy. The amended rule will also add that the executive director or designee may waive the requirement for a youth to initially be placed on intensive supervision upon release to parole.

Amended §380.8583 will: (1) change the purpose and title of the rule to focus on promotion of successful community reentry rather than on self-sufficiency; (2) add that youth in halfway houses (in addition to youth on parole status) may receive financial support; (3) remove the eligibility criteria relating to completing a certain amount of community service, employment, or school for youth to receive financial support other than a housing rent subsidy; (4) remove the requirement for a youth to sign an agreement with TJJD to receive financial support other than a housing rent subsidy; (5) add *structured leisure time activity* to the list of allowable expenses; (6) add that expenses other than those listed in the rule may be eligible for financial reentry support; (7) add a requirement that, to receive financial reentry support, the youth must complete a request form that shows how the financial need is directly related to his or her community reintegration plan; (8) remove the requirement for a youth to be placed on the highest level of parole supervision for the entire time he/she receives a housing rent subsidy; (9) remove the prohibition on youth who are required to register as sex offenders from being eligible to receive financial reentry support for on-campus college housing; (10) add that the division director over parole services or his/her designee is the approval authority for requests for financial reentry support; (11) clarify that financial reentry support may not be *expended* (rather than used for expenses that are incurred) after a youth's discharge from TJJD; and (12) add that the *executive director or designee* (rather than the division director over the subsidized living support program) may make exceptions to this rule on a case-by-case basis.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for local governments as a result of enforcing or administering the sections. To the extent the financial reentry support program is enhanced under the amended sections, there may be a cost savings for state government over that same time frame. It is expected that an enhanced program would have a positive impact on youths' transition to the community and contribute to lower parole revocation rates. However, any resulting cost savings cannot be reliably estimated at this time.

PUBLIC BENEFITS/COSTS

Rebecca Walters, Senior Director for Youth Placement, Reentry, and Program Development, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be promoting successful outcomes for youth upon community reentry, thereby enhancing public safety.

Mr. Meyer has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs; Section 242.059, Human Resources Code, which authorizes TJJD to establish active parole supervision to aid children given conditional release to find homes and employment and to become reestablished in the community; and Section 245.001, Human Resources Code, which authorizes TJJD to employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with TJJD's rules.

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

§380.8581. Supervision Levels in Parole Home Placement.

(a) Purpose. This rule provides [~~The purpose of this rule is to provide~~] for varying intensity levels of supervision for youth on parole status in a home placement or home substitute placement.

(b) Definitions. For definitions of certain terms used in this rule, see §380.8501 of this title.

(c) General Provisions.

(1) Levels of supervision intensity are based on each youth's needs and the degree of risk presented to the public. The three levels of parole supervision are minimum, moderate, and intensive.

(2) Upon release, all youth are initially placed on intensive supervision unless waived by the executive director or designee on a case-by-case basis.

~~[(3) Youth who receive a housing rent subsidy under §380.8583 of this title remain on intensive supervision for the duration of the subsidy.]~~

(3) [~~(4)~~] The level [~~Levels~~] of supervision is [~~are~~] reassessed at least once every [~~on a scheduled basis not to exceed~~] 90 days or [~~and any time~~] sooner, as deemed appropriate by the parole officer. This reassessment may result in an increase, a decrease, or no change in the level of [~~parole~~] supervision.

§380.8583. Financial Support for Reentry [~~Subsidized Living Support Program~~].

(a) Purpose. This rule promotes successful community reentry by providing limited, targeted financial support to eligible youth. [~~The purpose of this rule is to establish a program to provide eligible youth with financially subsidized living support for a limited time as necessary to attain self-sufficiency.~~]

(b) Definitions. For definitions of certain terms used in this rule, see §380.8501 of this title.

(c) Eligibility Criteria.

(1) To qualify for financial reentry [~~subsidized living~~] support, the youth must:

[(A) complete an independent living preparation curriculum approved by TJJD;]

(A) [(B)] be assigned to parole status or be placed in a halfway house; and

(B) have an identified financial need that:

(i) cannot be met using the youth's student trust fund or other resources available to the youth; and

(ii) is directly related to the youth's community reintegration plan.

[(C) complete a specified number of hours of community service as established by TJJD;]

[(D) complete a specified number of months of employment or school attendance as established by TJJD; and]

[(E) sign a subsidized living support agreement.]

(2) To qualify for a housing rent subsidy, a youth must meet the following criteria in [In] addition to the criteria in paragraph (1) of this subsection[, a youth must meet the following criteria to qualify for a housing rent subsidy]:

(A) be assigned to parole status;

(B) complete an independent living preparation curriculum approved by TJJD;

(C) complete the number of hours of community service specified by TJJD;

(D) complete the number of months of employment or school attendance specified by TJJD;

(E) sign a subsidized living support agreement;

(F) [(A)] be [the youth is] at least 18 years of age; and

(G) [(B)] have [the youth has] enough personal savings to pay all necessary deposits and the first month's rent. [, and]

(3) [(C)] A housing rent subsidy may be provided only if TJJD has determined it is in the youth's best interest to be placed in an unsupervised home location.

(d) Requests and Approvals. To receive financial reentry support, a youth must:

(1) complete and submit the appropriate request form, which must show how the financial need is directly related to the youth's community reintegration plan; and

(2) receive approval from the division director over parole services or designee.

(e) [(d)] [Subsidy] Limitations.

(1) The provision of financial reentry support [subsidies] is contingent on the availability of funds.

(2) TJJD may terminate a youth's financial reentry support [subsidy] due to a youth's failure to abide by:

(A) his/her conditions of parole or conditions of placement; or

(B) the terms of the subsidized living support agreement, if applicable.

(3) A housing rent subsidy may not be provided for longer than six months.

(4) Financial reentry support [A subsidy] may not be expended [used for expenses that are incurred] after a youth is discharged from TJJD's jurisdiction.

(5) Financial reentry support [A subsidy] may be provided [only] for [the following] expenses including, but not limited to:

(A) rent;

(B) electric service;

(C) household goods;

(D) food;

(E) public transportation passes;

(F) employment-related clothing;

(G) college expenses, such as tuition, books, and room and board; [and]

(H) technical school or training expenses, such as tuition and tools; and[.]

(I) structured leisure time activities.

[(6) Youth required to register as sex offenders are not eligible to receive a subsidy for on-campus college housing expenses.]

(f) [(e)] Program Requirements for Youth Receiving a Housing Rent Subsidy.

[(1) The youth is placed on the highest level of parole supervision for the entire time he/she receives a housing rent subsidy.]

(1) [(2)] A [The] youth's parole officer has [will have] access to the [a] youth's living quarters in accordance with the terms of the subsidized living support agreement.

(2) [(3)] The youth's personal property will be disposed of in accordance with the terms of the subsidized living support agreement if the youth's parole is revoked or if the property is lost, damaged, or abandoned.

(g) [(f)] Individual Exceptions. The executive director or designee [division director over the subsidized living support program] may make exceptions to provisions of this rule on a case-by-case basis, taking into consideration a youth's reintegration needs and public safety.

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-201703846
Jill Mata
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: November 12, 2017
For further information, please call: (512) 490-7014

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT
SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §§1.82, 1.84 - 1.88

The Texas Department of Transportation (department) proposes amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.84, Statutory Advisory Committees, §1.85, Department Advisory Committees, §1.86, Corridor Advisory Committees, and §1.87, Corridor Segment Advisory Committees; and new §1.88, Interim Report.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments are the result of statutory changes made by the legislature during the 85th Regular Session, 2017 and the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees.

Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, change "office" to "division" in subsections (c), (f), and (h) and change "Office of General Counsel" to "General Counsel Division" in subsections (c)(1) to reflect name changes recently made to the department's organizational structure. The amendments also revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2017. This sunset date was established under Government Code, §2110.008, which authorizes a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees is necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2019.

Amendments to §1.84, Statutory Advisory Committees, subsection (c)(2) specify that the members of the port authority advisory committee shall be appointed pursuant to Transportation Code, §55.006. Senate Bill 28, 85th Legislature, Regular Session, amended §55.006, to increase the number of members of the port authority advisory committee from seven to nine, and to provide that the lieutenant governor and the speaker of the House of Representatives will each appoint one member in addition to the members appointed by the commission. Members appointed by the commission will continue to serve staggered three-year terms. Also, amendments to subsection (b)(4) change "office" to "division" to reflect name changes recently made to the department's organizational structure.

Amendments to §1.85, Department Advisory Committees, change the date that advisory committees created under that section are abolished. Section 1.85 provides for the creation of advisory committees by the commission and provides the operating procedures for those committees. Section 1.85(c) currently provides a December 31, 2017 sunset date, which was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §1.85 is necessary for improved communication between the department and the public. Therefore, amendments to §1.85(c) extend the sunset date to December 31, 2019. Also, amendments to subsection (b) change "office" to "division" to reflect name changes recently made to the department's organizational structure.

Amendments to §1.86, Corridor Advisory Committees, change the date that corridor advisory committees created under that section are abolished. Section 1.86(e) currently provides that each advisory committee created under that section is abolished December 31, 2017. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.86(e) change the sunset date to December 31, 2019.

Amendments to §1.87, Corridor Segment Advisory Committees, change the date that corridor segment advisory committees created under that section are abolished. Section 1.87(e) currently provides that each corridor segment advisory committee is abolished December 31, 2017. This sunset date was established in accordance with Government Code, §2110.008. Amendments to §1.87(e) extend the sunset date for any newly created corridor segment advisory committee to December 31, 2019.

Amendments add new §1.88, Interim Report, which requires each advisory committee to file with the division of the department that is responsible for providing administrative support to that advisory committee an interim report relating to the committee's membership, structure, duties, objectives and goals, accomplishments, and scheduled activities. The executive director, or the executive director's designee, in turn will deliver a copy of the report to each commissioner. This report will assist in the commission's oversight of the work and necessity of each advisory committee.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Marc Williams, Deputy Executive Director, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Williams has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy of the rules and improved communication between the department and the public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefor, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.82 and §§1.84 - 1.87 and new §1.88 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Advisory Committees." The deadline for receipt of comments is 5:00 p.m. on November 13, 2017. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments and new rule are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction; Transportation Code, §55.006, which requires the commission to appoint members to the port authority advisory committee; Government Code, §2110.005, which requires a state agency that establishes an advisory committee to describe by rule the manner in which the committee will report to the agency; and Government Code, §2110.008, which provides that, if a state agency committee designates the date on which an advisory committee will automatically be abolished or changes such a date, the designation or change must be by rule.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, §55.006 and §201.117.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superseded by a specific provision in §1.84 of this subchapter (relating to Statutory Advisory Committees).

(b) Election of officers and terms of members.

(1) Unless otherwise specified with regard to a particular committee, each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The chair and vice-chair shall each be elected for a term of not less than one year and not more than two years. Once elected, the chair and vice-chair may stand for reelection, without limit on the number of consecutive terms.

(2) Members shall serve on an advisory committee until new members are appointed.

(c) Meetings.

(1) Meeting requirements. The division [~~office~~] designated for an advisory committee under subsection (f) of this section shall submit to the Office of the Secretary of State notice of a meeting of the advisory committee at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Office of the Secretary of State shall be coordinated through the department's [~~Office of~~] General Counsel Division.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the division [~~office~~] designated under subsection (f) of this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The division [~~office~~] designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Quorum. A majority of the membership of an advisory committee, including the chairman, constitutes a quorum. The committee may act only by majority vote of the members present at the meeting.

(4) Removal. A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person's or entity's successor.

(5) Parliamentary procedure. Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Robert's Rules of Order, except that the chair may vote on any action as any other member of the committee, and except to the extent that Robert's Rules of Order are inconsistent with any statute or this subchapter.

(6) Record. Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) Public information. All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(e) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) Administrative support. For each advisory committee, the executive director will designate a division [~~an office~~] of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) Advisory committee recommendations. In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) Manner of reporting.

(1) The division [~~office~~] designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or the chair's designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2019 [~~2017~~], unless the commission amends its rules to provide for a different date.

§1.84. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have

that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Membership. The commission will appoint the members of the Aviation Advisory Committee to staggered terms of three years with two members' terms expiring August 31 of each year. A committee member must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator.

(3) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission;

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

(D) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the division [~~office~~] designated under §1.82(f) of this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the maritime port industry in Texas and others who have an interest in maritime ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding maritime ports and transportation-related matters to be considered in formulating department policies concerning the Texas maritime port system.

(2) Membership. Members shall be appointed pursuant to Transportation Code, §55.006. Members appointed by the commission serve staggered three-year terms unless removed sooner at the discretion of the commission.

[~~(A) The commission will appoint seven members to staggered three-year terms unless removed sooner at the discretion of the commission.~~]

[~~(B) The commission will appoint:~~]

~~(i)~~ ~~one member from the Port of Houston Authority of Harris County;~~]

~~(ii)~~ ~~(ii) three members from maritime ports located on the upper Texas coast; and~~]

~~(iii)~~ ~~three members from maritime ports located on the lower Texas coast.~~]

(3) Duties. The committee shall:

(A) prepare a maritime port mission plan;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department;

(C) advise the commission and the department on matters relating to port authorities; and

(D) not later than December 1 of each even-numbered year:

(i) prepare and submit a report on Texas maritime ports, in accordance with Transportation Code, §55.007, subsections (a)(3) and (b);

(ii) prepare and submit a port capital program, in accordance with Transportation Code, §55.008.

(4) Meeting. The committee shall meet at least semiannually and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee's advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint members to staggered three-year terms expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Sections 1.82(i) and 1.83 of this subchapter do not apply to the Border Trade Advisory Committee.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

(ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(2) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(3) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues and matters related to the Safe Routes to School Program. By involving representatives of the public, including bicyclists and other interested parties, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use, including the design, construction and maintenance of highways. The committee will also provide recommendations to the department on the Safe Routes to School Program.

(B) Duties. The committee shall:

(i) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails;

(ii) provide recommendations on the selection of projects under Chapter 25, Subchapter I of this title (relating to Safe Routes to School Program); and

(iii) review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Safe Routes to School Program. Under the Safe Routes to School Program the committee shall reports its recommendations to the director of the division responsible for administering the program.

(4) Freight Advisory Committee.

(A) Purpose. The purpose of the Freight Advisory Committee is to serve as a forum for discussion regarding transportation decisions affecting freight mobility and promote the sharing of information between the private and public sectors on freight issues. The committee's advice and recommendations will provide the department with a broad perspective regarding freight transportation matters and assist in identifying potential freight transportation facilities that are critical to the state's economic growth and global competitiveness.

(B) Duties. The committee shall:

(i) provide advice regarding freight-related priorities, issues, projects and funding needs;

(ii) make recommendations regarding the creation of statewide freight transportation policies and performance measures;

(iii) make recommendations regarding the development of a comprehensive and multimodal statewide freight transportation plan; and

(iv) communicate and coordinate regional priorities with other organizations as requested by the department.

(C) Manner of reporting. The committee shall report its advice and recommendations to the executive director or a department employee designated by the executive director and shall make reports to the commission as requested.

(b) Operating procedures.

(1) Membership. Except as otherwise specified in this section, an advisory committee shall be composed of not more than 24 members to be appointed by the division [~~office~~] or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and at such other times as requested by the division [~~office~~] to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2019 [~~2017~~], unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

§1.86. Corridor Advisory Committees.

(a) Purpose. The commission by order may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the corridor for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. An advisory committee may be composed of members of the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the corridor for which it is created, including facilities to be included in a development plan for that corridor and upgrades and other improvements to be made to existing facilities located in that corridor, and on other corridor level planning and development matters as requested by the department. The corridor advisory committee may also provide information to, coordinate with, or request information relating to the planning and development of a segment of the corridor from a corridor segment advisory committee established under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees). In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. An advisory committee is subject to the requirements for operating procedures and reimbursement of expenses applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. An advisory committee created under this section is abolished December 31, 2019 [~~2017~~], unless the commission amends its rules to provide for a different date.

§1.87. Corridor Segment Advisory Committees.

(a) Purpose. The commission by order may create a corridor segment advisory committee to assist the department in the transportation planning process for any highway corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. A corridor segment advisory committee consists of the following members:

(1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county;

(2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization;

(3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; and

(4) additional members, each of whom:

(A) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment may be located and that is designated by the commission to appoint a member of the committee; or

(B) is an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department. A corridor segment advisory committee may provide information to, coordinate with, or request information from a corridor advisory committee created under §1.86 of this subchapter (relating to Corridor Advisory Committees). In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. A corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. A corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2019 [~~2017~~], unless the commission amends its rules to provide for a different date.

§1.88. Interim Report.

(a) In addition to other reports required by this subchapter, each advisory committee created by statute, or by the department or commission, to provide advice or recommendations on matters within the jurisdiction of the commission shall file, before August 31, 2018, with the division designated as responsible for providing administrative support to that advisory committee, a report described by this section. The executive director, or the executive director's designee, will deliver a copy of the report to each commissioner.

(b) The report must clearly state:

(1) the advisory committee's membership and structure;

(2) the objectives of the committee;

(3) the goals of the committee and an assessment of the committee's work to meet each goal;

(4) a list of scheduled meetings of the committee;

(5) a list of each work product that the committee is scheduled to provide to the commission or department, as applicable, and the date on which the work product is scheduled to be delivered; and

(6) any recommendations for changes to commission rules related to the membership or structure of the committee or matters within the committee's assigned duties.

(c) The division designated as responsible for providing administrative support to an advisory committee will assist that committee in providing the report required under this section.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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CHAPTER 27. TOLL PROJECTS
SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

43 TAC §27.82

The Texas Department of Transportation (department) proposes amendments to §27.82, concerning Toll Operations.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 312, 85th Legislature, Regular Session, requires multiple changes to the department's toll collection and enforcement procedures, specifically, the pay-by-mail process, in which customers receive an invoice for payment of tolls after using a department toll project.

The legislation created new Transportation Code, §228.0547, which provides that a person who receives an invoice from the department for the use of a toll project shall, not later than the due date specified in the invoice, pay the amount owed or send a written request to the department for a review of the toll assessments contained in the invoice. If a person fails to pay or request a review of the toll assessments, the department may add an administrative fee, not to exceed $6, to the amount the person owes. The department must set the administrative fee by rule in an amount that does not exceed the cost of collecting the toll, and may not charge a person more than $48 in administrative fees in a 12-month period. These provisions take effect on March 1, 2018.

Amendments to §27.82(e) provide that the owner or lessee of a vehicle who fails to pay the amount owed as stated on an invoice may be charged an administrative fee of $4 per unpaid invoice. In determining the amount of the administrative fee, the department considered the incremental cost of collecting a pay-by-mail transaction, the number of transactions estimated to be included on each invoice, and the anticipated timing of the payment by the customer. The department then compared the estimated fees to be collected to the estimated incremental cost. Using this methodology, and conservative projections and estimates, the department determined that a range of $4 to $5 per invoice was justified. It should be noted that lost toll revenue was not considered in the cost analysis, although that factor was considered during the development of the department's current fee schedule. If lost toll revenue had been considered, the cost would be significantly higher. Finally, the department considered

customer understanding and acceptance of the new fee structure. Since the statutory cap is set at $48 per 12-month period, a level fee amount of $4 per invoice is the easiest structure to understand, implement, and administer. If the department implemented a higher administrative fee, there could potentially be several months of a 12-month period where the fee could not be charged due to the $48 cap. This situation would be difficult for customer service representatives to explain and challenging for customers to understand.

Amendments add §27.82(h) to address requirements for the new toll assessment review process. An owner or lessee may request a toll assessment review, in writing, prior to the due date specified in the invoice. If, after review, the department determines that the tolls were assessed correctly, the customer will be responsible for paying the total amount as stated in the invoice. If the department determines that any of the tolls were assessed incorrectly, the department will provide the customer with updated balance information. If the customer fails to pay the amount owed by the due date specified in the next invoice, the department may charge the customer an administrative fee. The written request must be mailed to the department's customer service center or submitted through www.txtag.org. The amendments also outline specific information that must be provided by the customer to initiate the review process.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Richard Nelson, Director, Toll Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Nelson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a simplified administrative fee structure for customers who use the department's toll projects. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefor, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.82 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Toll Ops Rules." The deadline for receipt of comments is 5:00 p.m. on November 13, 2017. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.0547, which requires the department to set the administrative fee by rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.101 and 228.0547.

§27.82. Toll Operations.

(a) Toll policies. The department shall adopt policies relating to toll collection and enforcement and the operation of customer service centers. The policies will authorize all fees imposed under this section to be paid by credit card, debit card not requiring the entry of a personal identification number (PIN), money order, personal or cashier's check, or cash. In adopting those policies, the department shall consider:

(1) whether those policies will provide ease of use by travelers and maximize mobility on toll projects;

(2) whether those policies will provide a high level of customer service;

(3) the requirements of project bond covenants;

(4) cost of operations;

(5) whether those policies will facilitate the auditing of customer service center operations and the marketing of toll projects; and

(6) whether those policies will maximize the preservation of revenue streams.

(b) Exception. Toll collection and enforcement policies adopted by the department are not subject to the requirements of §5.10 of this title (relating to Collection of Debts).

(c) Customer account fees. The department may charge fees to customers for purposes of establishing and administering electronic toll collection customer accounts. The commission by minute order will establish customer account fees. In establishing customer account fees, the commission will consider the cost of operations, including the estimated cost to the department for labor, materials, storage, and bank fees, as well as the requirements of project bond covenants. Tag fees may be temporarily waived by the department for the purposes of introducing motorists to toll projects and attracting new customers. Customer account fees may include fees for the following items:

(1) standard tags;

(2) specialty tags;

(3) mailed or faxed account statements;

(4) account maintenance;

(5) checks returned for insufficient funds; and

(6) account reactivation.

(d) Toll rates. Except as provided in subsections (f) and (g) of this section, the commission by minute order will establish toll rates for the use of a toll project. In setting toll rates, the commission will consider:

(1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report;

(2) the requirements of project bond covenants; and

(3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

(e) Administrative fees. Except as provided in subsection (f) of this section, the owner or lessee of a vehicle who fails to pay the amount owed as stated in an invoice from the department for the use of a toll project may be charged an administrative fee of $4 per unpaid invoice. [~~the commission by minute order will establish administrative fees charged to owners and lessees of vehicles that use a toll project without paying the proper toll. The total of all administrative fees charged for each uncollected toll may not exceed $100.~~] Administrative fees may be suspended by the department if a violator agrees to open a funded account and to maintain that account in good standing, and may be waived if the account is maintained in good standing for the period of time determined by the department. [~~In establishing an administrative fee, the commission will consider the estimated cost to the department to collect unpaid tolls on toll projects, which will be determined by:~~]

[~~(1) the existing or estimated violation rate on toll projects; and~~]

[~~(2) the estimated number of violations that the department will collect.~~]

(f) Operating agreements. The commission may authorize a private entity under contract to operate a department toll project to set toll rates for the use of the toll project and to establish an administrative fee charged to owners of vehicles that use the toll project without paying the proper toll, if:

(1) the private entity is required under the contract to submit to the department for approval:

(A) the methodology for:

(i) the setting of tolls;

(ii) increasing the amount of the tolls; and

(iii) the setting of an administrative fee to be imposed to recover the cost of collecting an unpaid toll; and

(B) any proposed change in an approved methodology for the setting of a toll or an administrative fee;

(2) the private entity will operate the toll project under a comprehensive development agreement or under a contract resulting from a procurement under §27.83 of this chapter (relating to Contracts to Operate Department Toll Projects) that provides an operational concession to the private entity; and

(3) the commission approves the award of the contract to the private entity.

(g) Dynamic pricing. The executive director will establish toll rates for the use of a toll project where dynamic pricing is in effect. In setting the toll rates, the executive director will consider vehicle classifications, type and location of the facility, regional policies, and similar criteria that apply to a specific project. The toll rates may be established through the approval of an algorithm or other methodology designed to maintain a free-flowing level of traffic on one or more lanes of the toll project.

(h) Toll Assessment Review. An owner or lessee may, not later than the due date specified in the invoice from the department, send a written request to the department for a review of the toll assessments contained in the invoice. If, after a review, the department determines that the tolls were assessed correctly, the customer will be responsible for paying the amount owed as stated in the invoice. If the department determines that any of the tolls were assessed incorrectly, the department will provide the customer with an updated balance due. If the customer fails to pay the amount owed by the due date specified in the first invoice after the review, the department may charge the customer an administrative fee, as described in subsection (e) of this section. A request under this subsection must be mailed to the department's customer service center at 12719 Burnet Road, Austin, Texas 78727, or submitted through www.txtag.org, and must include the following information:

(1) the customer's name, address, and contact information;

(2) the make, model, year, and license plate number of the vehicle associated with the tolls under review;

(3) the date, time, and location of the tolls under review;

(4) the reason that the tolls are being disputed; and

(5) if the dispute involves vehicle ownership, the date that the person purchased or sold the vehicle, as applicable.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS
SUBCHAPTER H. HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY PERMITS

43 TAC §28.102

The Texas Department of Transportation (department) proposes amendments to §28.102, concerning Authority's Powers and Duties.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments grant the Hidalgo County Regional Mobility Authority (HCRMA) additional authority to issue permits for the operation of oversize/overweight vehicles on a designated highway within the county and clarify the limits of that authority. Transportation Code, §623.363(a)(2) authorizes the Texas Transportation Commission (commission) to designate additional routes for which HCRMA may issue oversize and overweight permits. The statute requires that the commission consult with HCRMA prior to the designation. The department worked with HCRMA to identify additional routes that would benefit the HCRMA permitting process.

Amendments to §28.102, Authority's Powers and Duties, clarify that the purpose of the rule is to authorize the issuance of permits by the HCRMA for state-owned roads listed under Transportation Code, §623.363 and those routes identified and designated by the commission. The amendments add an additional route designated by the commission for which HCRMA is authorized to issue permits for the operation of oversize/overweight vehicles. The added route is: U.S. Highway 83 Business between its intersection with South Pleasantview Drive and the intersec-

tion of South Bridge Avenue. This addition expands HCRMA's permitting authority for the operation of the roadways within its jurisdiction and allows HCRMA to provide more complete service to the motor carriers using the permits within Hidalgo County.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The permit fee collected by HCRMA will be used to cover the cost of any additional damage to the roadway added by this amendment. HCRMA has the authority to set the permit fee to accommodate all expected maintenance costs for state highways used by the permit holders.

C. Michael Lee, P.E., Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Lee has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be more efficient freight transportation and a potential for vehicle reduction. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §28.102 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Hidalgo County RMA." The deadline for receipt of comments is 5:00 p.m. on November 13, 2017. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.369 authorizing the commission to adopt rules necessary to implement Subchapter S, Regional Mobility Authority Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter S.

§28.102. Authority's Powers and Duties.

(a) Authority authorized to issue permits. The authority may issue a permit and collect a fee for the movement within the territory of the authority of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight for travel on:

(1) the state-owned roads designated by Transportation Code, §623.363;

(2) US 281/Military Highway from Spur 29 to FM 1015;

(3) FM 1015 from US 281/Military Highway, south to the Progreso International Bridge;

(4) FM 2557 from US 281/Military Highway to Interstate 2;

(5) FM 3072 from Veterans Boulevard ("I" Road) to Cesar Chavez Road; [~~and~~]

(6) US 281 (Cage Boulevard) from Spur 600 to Anaya Road; and[~~.~~]

(7) U.S. Highway 83 Business from South Pleasantview Drive to South Bridge Avenue.

(b) Surety bond. The authority shall obtain a surety bond in the amount set by the department to cover the estimated annual maintenance costs of roads identified in subsection (a) of this section. The department will draw on the bond only if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the authority.

(c) Verification of permits. The authority shall provide law enforcement and department personnel access to any of the authority's property to verify compliance with this subchapter by the authority or another person.

(d) Training. The authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the authority.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the authority must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the authority allowing 30 days for the authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the authority has not corrected the issue, the executive director may revoke the authority's authority to issue permits under this subchapter. The authority may appeal to the commission in writing the revocation of its authority under this subsection. If the authority appeals the revocation, the authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.364. The authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation

of the authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the authority shall pay to the department all permit fees collected by the authority, less allowable administrative costs.

(i) Maintenance contract. The authority shall enter into a contract with the department for the maintenance of roads identified in subsection (a) of this section for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

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 September 28, 2017.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 173. INDIGENT DEFENSE GRANTS

SUBCHAPTER C. ADMINISTERING GRANTS

1 TAC §173.311

The Texas Judicial Council withdraws the proposed new §173.311 which appeared in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3605).

Filed with the Office of the Secretary of State on October 2, 2017.

TRD-201703970
James Bethke
Executive Director
Texas Judicial Council
Effective date: October 2, 2017
For further information, please call: (512) 936-6994

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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.

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rules §20.1, by adding a definition for the term "vendor." The amendment is adopted without changes to the proposed text as published in the July 28, 2017, issue of the *Texas Register* (42 TexReg 3711), and will not be republished.

Concurrently with adoption of this rule amendment, the Commission adopts new rule §20.56 and an amendment to §20.61 to clarify reporting requirements and certain prohibitions on the use of political contributions. The term "vendor" is included in each of those other rules and new rule §20.1(24) provides a needed definition of that term for the regulated community. "Vendor" is defined as any person providing goods or services to a candidate, officeholder, political committee, or other filer of a campaign finance report. The term does not include an employee of the filer.

The rule applies only to expenditures occurring on or after January 1, 2018.

Ms. Margo Cardwell provided written comments to the Commission and addressed the Commission at the Commission's public meeting on September 28, 2017. Ms. Cardwell's comments did not specifically address rule §20.1, but concerned rules §20.56 and §20.61, and they are therefore addressed in the orders adopting those rules in this issue of the *Texas Register.* Mr. Gardner Pate spoke at the meeting in favor of adopting the rule.

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

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

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 September 29, 2017.

TRD-201703936
Seana Willing
Executive Director
Texas Ethics Commission
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Proposal publication date: July 28, 2017
For further information, please call: (512) 463-5800

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SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.56

The Texas Ethics Commission (the commission) adopts new Texas Ethics Commission Rule §20.56, regarding expenditures to vendors providing goods or services to a candidate, officeholder, political committee, or other filer. The new rule is adopted without changes to the proposed text as published in the July 28, 2017, issue of the *Texas Register* (42 TexReg 3711), and will not be republished.

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

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

tributions to pay or reimburse a vendor for an expenditure that would be prohibited by one of those statutes if it were made by the candidate, officeholder, or committee.

The rule applies only to expenditures occurring on or after January 1, 2018.

Ms. Margo Cardwell provided written comments to the Commission and addressed the Commission at the Commission's public meeting on September 28, 2017. Ms. Cardwell spoke against adoption of §20.56 and stated that the rule would create significant administrative burdens for filers with respect to reporting incidental expenses incurred by vendors while providing consulting services to a filer. Ms. Cardwell suggested an amendment to §20.56(a) to exclude incidental expenses. The Commission respectfully disagrees that the rule would be significantly burdensome for filers, particularly in such cases where a vendor is able to provide invoices or receipts of the expenses to the filer. Additionally, depending on the amounts of the expenses (e.g., if the amount paid to a person does not exceed the applicable threshold of $100 or $20 in a reporting period), incidental expenses for meals, travel, or lodging would not be required to be itemized in a report.

Mr. Gardner Pate spoke at the meeting in favor of adopting the rule.

The Commission also received a signed petition from the following individuals in support of the bill: Agee, Betsy; Begnaud, Jerome; Begnaud, Lynda; Blewitt, Karen; Blewitt, John; Brown, Brenda; Collier, Gary; Collier, Kathy; Cordell, Carol; Curry, Jeanette; Curry, Richard; Cyrus, Danny; Dunn, Phyllis; Gannaday, Nancy; Gardner, Wanda; Gomez, Ralph; Holland, Bobbie; James, Cindy; Johnson, Sherry; Kinkaid, Kathy; Kinney, Emily; Ledford, Shirley; Link, Carol; Martensson, Lena; Mertz, Linda; Mitchell, Catherine; Mitchell, Donald; Nimon, Evelyn; Paige, Patricia; Proeter-Smith, George L.; Reshorah, Charles; Sampson, Donna; Shuessler, Ann; Sims, Alfred; Snelling, Linda; Trawick, Camille; Turner, Elbert; Vern, Kay; Vick, Robert; Wilson, Emma; Wilson, Bruce; and Wood, Claire.

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

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

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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Seana Willing
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1 TAC §20.61

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §20.61, regarding expenditures to vendors providing goods or services to a candidate, officeholder, political committee, or other filer. The amendment is adopted with a non-substantive change to the proposed text as published in the July 28, 2017, issue of the *Texas Register* (42 TexReg 3712), and is republished herein.

Section 254.031 of the Election Code requires a candidate, officeholder, political committee, or other filer who files a campaign finance report to include certain information regarding political expenditures and expenditures made from political contributions. When an expenditure is required to be itemized in a report, the report must include certain information regarding the expenditure, including the amount, date, and purpose of the expenditure and the name and address of the person to whom the expenditure is made. The rule furthers transparency in political expenditures by addressing the proper disclosure of an expenditure made by a vendor for a filer with the intent to seek reimbursement from the filer, which must be reported by the filer as though the filer made the expenditure directly. The rule also requires an expenditure other than a reimbursement for more than one type of good or service to be reported by the filer as separate expenditures for each type of good or service provided. Thus, for example, a single payment of $30,000 to a vendor for $10,000 in political advertising, $10,000 in polling, and $10,000 fundraising must be reported as separate expenditures of $10,000 for each type of goods and services.

The rule applies only to expenditures occurring on or after January 1, 2018.

The non-substantive change is a correction under section (d) to correct the reference of the section from (e)(d) to only (e).

Ms. Margo Cardwell provided written comments to the Commission and addressed the Commission at the Commission's public meeting on September 28, 2017. Ms. Cardwell spoke against adoption of §20.61 and stated that the rule would create significant administrative burdens for filers with respect to reporting incidental expenses incurred by vendors while providing consulting services to a filer. Ms. Cardwell suggested an amendment to §20.61(a)(3) to exclude from the definition of "consulting" incidental expenses, such as meals, travel, and lodging, incurred by a consultant in connection with the provision of advice and strategy. The Commission respectfully disagrees that the rule would be significantly burdensome for filers, particularly in such cases where a vendor is able to provide invoices or receipts of the expenses to the filer. Additionally, depending on the amounts of the expenses (e.g., if the amount paid to a person does not exceed the applicable threshold of $100 or $20 in a reporting period), incidental expenses for meals, travel, or lodging would not be required to be itemized in a report.

Mr. Gardner Pate spoke at the meeting in favor of adopting the rule.

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

The amendment to rule §20.61 affects Chapter 254 of the Election Code as it relates to the requirement to report a political expenditure, including §254.031, and to §§253.035, 253.038, and 253.041.

§20.61. Purpose of Expenditure.

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

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

(A) advertising expense;

(B) accounting/banking;

(C) consulting expense;

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

(E) event expense;

(F) fees;

(G) food/beverage expense;

(H) gifts/awards/memorials expense;

(I) legal services;

(J) loan repayment/reimbursement;

(K) office overhead/rental expense;

(L) polling expense;

(M) printing expense;

(N) salaries/wages/contract labor;

(O) solicitation/fundraising expense;

(P) transportation equipment and related expense;

(Q) travel in district;

(R) travel out of district;

(S) other political expenditures; and

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

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

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

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

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

(2) The means of transportation;

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

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

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

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

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

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

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

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

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

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

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

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

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The

acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "campaign vehicle repairs."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 173. INDIGENT DEFENSE GRANTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts the repeal of §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.310, 173.401 and 173.402 concerning rules for grant administration as proposed in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3604). The rules establish the guidelines for the administration of the Commission's grant program, which is designed to promote compliance by counties with the requirements of state law relating to indigent defense. The rules will be replaced by new rules adopted separately in the *Texas Register.*

No comments were received on the proposed repeal of the rules.

SUBCHAPTER A. GENERAL FUNDING PROGRAM PROVISIONS

1 TAC §§173.101 - 173.109

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed repeal of the rules.

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

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Wesley Shackelford
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For further information, please call: (512) 936-6994

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SUBCHAPTER B. ELIGIBILITY AND FUNDING REQUIREMENTS

1 TAC §§173.201 - 173.205

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed repeal of the rules.

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

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SUBCHAPTER C. ADMINISTERING GRANTS

1 TAC §§173.301 - 173.310

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed repeal of the rules.

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

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SUBCHAPTER D. MONITORING AND AUDITS

1 TAC §173.401, §173.402

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed repeal of the rules.

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

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CHAPTER 173. INDIGENT DEFENSE GRANTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission has adopted new §§173.101 - 173.109, 173.201 - 173.205, 73.301, 173.302, 173.304 - 173.310, 173.401, and 173.402 concerning rules for grant administration. Rules are adopted without changes as proposed in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3605). New §173.303 is adopted with changes to the rules as proposed in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3605). The new rules are adopted to establish the guidelines for the administration of the Commission's grant program, which is designed to promote compliance by counties with the requirements of state law relating to indigent defense.

No comments were received on the proposed new rules.

SUBCHAPTER A. GENERAL FUNDING PROGRAM PROVISIONS

1 TAC §§173.101 - 173.109

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the adopted new rules.

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

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SUBCHAPTER B. ELIGIBILITY AND FUNDING REQUIREMENTS

1 TAC §§173.201 - 173.205

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the adopted new rules.

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

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SUBCHAPTER C. ADMINISTERING GRANTS

1 TAC §§173.301 - 173.310

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the adopted new rules.

§173.303. Retention of Records.

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the closure of the most recent audit report or submission of the final expenditure report. Records retention is required for the purposes of state examination and audit. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(c) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review until the resolution of all litigation, claims, or audit findings.

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

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SUBCHAPTER D. MONITORING AND AUDITS

1 TAC §173.401, §173.402

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, in-

cluding grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the adopted new rules.

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.502

The Public Utility Commission of Texas (commission) adopts amendments to §25.502, relating to pricing safeguards in markets operated by the Electric Reliability Council of Texas with changes to the proposed text as published in the April 14, 2017 issue of the *Texas Register* (42 TexReg 1989). The amendments adjust the notice requirements and complaint timeline applicable to suspension of operation of generation resources, give the Electric Reliability Council of Texas (ERCOT) discretion to decline to enter into a Reliability Must-Run (RMR) service agreement based on an analysis that may consider the economic value of lost load, require approval by the ERCOT Board of Directors of ERCOT staff's recommendation regarding RMR and Must-Run Alternative (MRA) service, and require refund of payments for capital expenditures related to RMR or MRA service agreements in certain circumstances. This is a competition rule subject to judicial review as specified by Public Utility Regulatory Act (PURA) §39.001(e). This amendment is adopted under Project Number 46369.

The commission received comments on the proposed amendments from The Lone Star Chapter of the Sierra Club (Sierra Club), The Texas Advanced Energy Business Alliance (TAEBA), Shell Energy North America (Shell Energy), Calpine Corporation (Calpine), Texas Industrial Energy Consumers (TIEC), Electric Reliability Council of Texas, Inc. (ERCOT), Exelon Corporation (Exelon), CenterPoint Energy Houston Electric, LLC (CenterPoint), NRG Texas Power LLC, NRG Power Marketing LLC, Reliant Energy Retail Services LLC, Green Mountain Energy Company, US Retailers LLC, and NRG Curtailment Solutions LLC (collectively, NRG), Environmental Defense Fund, Inc. (EDF), Texas Competitive Power Advocates (TCPA), Big Brown Power Company LLC, Comanche Peak Power Company LLC, La Frontera Holdings LLC, Luminant Energy Company LLC, Luminant Generation Company LLC, Oak Grove Management Company LLC, and Sandow Power Company LLC (collectively, Luminant), The Texas Committee of the Advanced Energy Management Alliance (AEMA), the Solar Energy Industries Association (SEIA), and South Texas Electric Cooperative, Inc. (STEC).

Comments relating to the proposed requirement that the ERCOT Board of Directors approve RMR contracts

Sierra Club and Shell Energy supported the proposal to require that all RMR or MRA contracts be approved by the Board of Directors. NRG and CenterPoint endorsed the requirement for Board approval of any recommendation by ERCOT staff to decline to enter into an RMR or MRA contract when a reliability need is present.

ERCOT staff described several logistical issues that might, according to staff, affect the quality of the ERCOT Board's evaluation of the RMR or MRA recommendation presented by staff to the Board. First, because the Board meets on a bimonthly basis, the time period available to ERCOT staff for evaluation of the reliability need for a resource and for evaluation of alternative arrangements might be substantially less than the 150 days nominally allowed by the rule, depending on the timing of the filing of the suspension notice and the schedule of ERCOT Board meetings. ERCOT stated that this problem could be overcome by scheduling a special Board meeting, at some expense, for the sole purpose of considering the ERCOT staff recommendation. ERCOT staff also pointed to the potential situation where staff recommends against entering into an RMR or MRA agreement on the basis of a cost-benefit analysis, and the ERCOT Board disagrees with that recommendation, thus necessitating the negotiation of an RMR or MRA contract. To accommodate this possibility, ERCOT staff would need to present both its recommendation not to contract for RMR or MRA service as well as the cost of the RMR service and any bids for MRA service for the Board's consideration should it not approve the recommendation to refrain from contracting for RMR or MRA service. For these reasons, ERCOT recommended that the commission modify the proposed rule amendments to state that the action required by the ERCOT Board is to approve ERCOT's decision either to enter into an RMR or MRA contract or not to do so, and not to approve the specifics of an actual contract. ERCOT also recommended changes to the proposed amendments to specify that a resource will be required to continue operations until a contract for MRA service has been executed, should that option be selected by ERCOT staff and approved by the ERCOT Board.

Luminant supported the proposal to require ERCOT Board approval of RMR or MRA contracts, but recommended that language be included in the rule amendments that would require the Board to act within the time frame established by the rule. In reply comments, Luminant responded to ERCOT staff's concerns regarding the logistics of obtaining Board approval of RMR or MRA contracts by suggesting that, in lieu of requiring Board approval of contracts, the rule could simply make clear that any decision by ERCOT staff to enter into an RMR or MRA contract could be appealed to the commission.

Calpine commented that it may not be necessary for all RMR contracts to be approved by the ERCOT Board, and suggested a modification to the rule to require Board approval only when the length of the contract exceeds one year or if the cost of the contract exceeds some dollar threshold. Calpine also recommended changes to clarify that the term "governing board" means the ERCOT Board of Directors.

In reply comments, TIEC opposed Calpine's proposal to exempt certain RMR or MRA contracts from the requirement for ERCOT Board of Directors approval, arguing that the increased complexity of the decision to enter into or not to enter into an RMR or MRA contract based on the costs and reliability benefits of retaining the resource requires a check on the judgment of ERCOT staff by the ERCOT Board. TIEC agreed with ERCOT staff comments that the ERCOT Board evaluation should be of ERCOT staff's recommendation regarding the need for an RMR/MRA service and to enter into or not to enter into a contract for such services, rather than of the RMR or MRA contract itself.

Commission response

ERCOT raised a concern that ERCOT staff may not be able to obtain approval by the ERCOT Board of Directors within the 150-day time frame established by the rule in the event that ERCOT staff has recommended not to enter into an RMR or MRA service agreement to address reliability risks, and the ERCOT Board disagrees with that assessment. ERCOT proposed specific language in the rule to provide that the ERCOT Board shall approve or disapprove ERCOT staff's recommendation, and not the actual service agreement itself. TIEC agreed with ERCOT staff's recommendation.

The intent of the proposed amendments requiring approval by the ERCOT Board of Directors of any RMR or MRA agreement, or of a decision by ERCOT not to enter into such an agreement where a reliability need exists, is to provide greater oversight of the execution of out-of-market contracts that may impose significant costs on consumers. In order to provide this oversight, the ERCOT Board will require detailed information regarding the cost of the RMR agreement with the existing resource, the cost of any MRA offers that have been received, and potentially the cost of the diminished reliability as a result of foregoing RMR or MRA service. In the specific scenario outlined by ERCOT, where ERCOT staff has determined that a reliability need exists, but has recommended against the use of an RMR or MRA service, and where the ERCOT Board disagrees with this recommendation, the commission agrees that a service agreement would not have been executed and therefore would not be available for evaluation by the Board. The commission agrees that this could present problems in completing negotiations for a service agreement and returning to the Board for approval within the 150-day time line established in the rule. ERCOT staff should, as part of its recommendation, have evaluated in detail the cost of RMR service and any offered MRA services, and should be able to present this information to the Board for its evaluation. Accordingly, the commission adopts the language proposed by ERCOT to the effect that ERCOT Board of Directors approval of ERCOT's *recommendation* regarding RMR or MRA service is required, not approval of the final service agreement.

The commission does not agree with Calpine's recommendation that only RMR or MRA service agreements that are above a certain threshold of duration or cost should be subject to approval by the ERCOT Board of Directors nor does the commission agree with Luminant's suggestion that decisions by ERCOT staff could be appealed to the commission in lieu of ERCOT Board approval. Under current procedures the decision to employ RMR or MRA services to meet a reliability need is a deterministic one: if a reliability need is shown to exist under the criteria specified in ERCOT protocols, then an RMR or MRA service to meet that need is required. Under the amended rule, the decision to employ an RMR or MRA service is more flexible, requiring the exercise of judgment in evaluating a number of competing factors. As a result, the commission determines that ERCOT Board approval is necessary as a check on the judgment of ERCOT staff's decision to enter any RMR or MRA service agreement. Additionally, the ERCOT Board regularly approves Nodal Protocol Revision Requests with little to no implementation costs. Extending this authority to require review of all out-of-market RMR or MRA service agreements, regardless of the service agreement costs, better safeguards the public interest.

The commission disagrees with Calpine's recommendation that the term "governing board" be replaced in the rule with "Board of Directors," "governing board" is the term used in §25.362 (relating to Electric Reliability Council of Texas (ERCOT) Governance).

Comments relating to the extension of the timeline for a notice of suspension

Sierra Club supported the proposal to require that the notice of suspension be increased from 90 days to 150 days, but would prefer a longer 180 day notification period.

While Shell Energy expressed skepticism regarding the value of extending the notification period to support the evaluation of additional MRA proposals, Shell opined that the longer timeline would permit ERCOT to perform additional economic studies, which Shell Energy strongly supported.

Calpine opposed the extension of the notice timeline and urged the commission to retain the current 90 day period. According to Calpine, the extension of the timeline would increase operational and commercial challenges for the plant owner while providing no additional benefit to the market or system reliability. The timeline extension would also impose additional costs, requiring a resource owner to continue operating an uneconomic facility for an additional three months after the final determination of RMR necessity. As an alternative, Calpine offered the suggestion that, after ERCOT makes a determination that a unit is needed for reliability purposes during the initial 60-day period, an additional period of 90 days be allowed to permit ERCOT to evaluate any MRA proposals and to contract either for RMR or MRA service. According to Calpine, this would allow ERCOT the additional time needed for consideration of MRA alternatives without requiring resources not needed for reliability purposes to continue operating after the initial ERCOT determination. Calpine also recommended that the suspension notice be kept confidential during the initial 60 day review period after filing the notice with ERCOT, to ameliorate concerns that staff might be difficult to retain in view of the imminent closing of a plant. Finally, Calpine recommended that the rule be clarified to make plain that a resource owner may withdraw a suspension notice at any time before ERCOT makes a final determination of the necessity of the resource for reliability purposes.

Exelon commented that ERCOT had not justified the need for 60 days to evaluate the need for a resource for reliability purposes, and recommended that the period for ERCOT's reliability determination be shortened to 45 days, with the resource subject to a suspension notice permitted to exit the market a maximum of 90 days after filing of the suspension notice. In reply comments, Ex-

elon responded to the comments of other parties that the evaluation of MRA alternatives may take some time by agreeing that the current 90-day notice period should be retained, but that the total review period should be increased to 150 days if ERCOT determines that a resource is needed for reliability purposes, provided, however, that an interim RMR agreement is put into place so that the plant is not required to operate at a loss beyond the desired retirement date. Exelon also reiterated its position that a resource not needed for reliability purposes should be permitted to suspend operations no later than the end of the 90-day notice period.

NRG recommended that a resource owner immediately be permitted to cease operations upon a finding by ERCOT that the resource is not needed for reliability purposes, without any additional approval by ERCOT. NRG also recommended that the rule explicitly provide for the submission of comments by interested parties on ERCOT's analysis of the need for RMR service. Finally, NRG argued that resource owners should be compensated for costs incurred by the owner in keeping a resource available for any period longer than the current 90-day notice period. According to NRG, the 90-day period is onerous enough, but a requirement to keep the resource available for an additional 60 days is a material burden that resource owners should not be expected to bear without compensation.

TCPA echoed NRG's comments in opposing the extension of the notice period from 90 days to 150 days without compensation to the resource owner for keeping the resource in operation during this additional period of time. In reply comments TCPA suggested that the logistical problems discussed by ERCOT in obtaining Board approval added greater weight to TCPA's position that generation owners should be compensated for operations beyond the current 90-day notice period.

Indicating that it was unaware of an instance in which ERCOT entered into a contract for MRA service despite having had authority to do so since 2003, Luminant questioned the need for an extension of the notice period for suspension notices, if the purpose of that extension is to allow for simultaneous evaluation of alternatives to resources deemed subject to RMR requirements. While Luminant acknowledged that the commission has a responsibility to safeguard reliability, Luminant argues that, under PURA §39.001(d), the commission must do so in a way that is least disruptive to the competitive market, and that does not disadvantage any particular market participant. According to Luminant, the proposed extension of the suspension notice period is both disruptive to the competitive market and discriminates against specific market participants and therefore must be rejected. In support of its argument that the proposed notice extension would impose significant costs on a resource owner, it cites the difficulty in maintaining coal stockpiles and arranging for coal transport over a longer period of time as well as the difficulty of maintaining a workforce for the plant in the face of a proposed closure. Luminant also asserted that competitive natural gas prices are more volatile over a 150-day period than over a 90-day period, increasing the likelihood that the owner of a coal-fired generation resource might have incentives to file suspension notices preemptively to guard against sudden changes in the price of natural gas. While Luminant opposed the extension of the notice period, it argued that, if the commission does extend the notice period, the extension should be made optional, at ERCOT's discretion, and that the resource owner should receive compensation for extending operation of the plant beyond the current 90-day notice period, based on the budget of operating costs submitted as part of the suspension notice. Like NRG, Luminant disagreed that suspension of operations following a finding that the resource is not needed for reliability should be subject to ERCOT approval, but argued that if ERCOT is permitted under the rule to require a resource to remain available following a finding of no need for reliability, that ERCOT should be required to specify a date not later than the end of the notice period when the resource will be permitted to suspend operation. Finally, Luminant requested that the commission include language in the rule amendments that would specify that seasonally mothballed resources would not be subject to any extended notice periods applicable to resources that are permanently or indefinitely suspending operations.

AEMA and SEIA supported the extension of the notice period for suspension notices, arguing that the additional time is likely to attract more offers for MRA services provided by demand response resources and solar resources, as it may take some time to develop these resources to address a specific reliability need. In reply comments, AEMA responded to Luminant and others arguing against an extended timeline by pointing out that there are a large number of aging generation resources in densely populated counties- locations that would likely support participation by load resources in MRA services. AEMA also supported comments by ERCOT and Calpine that the authority of ERCOT to enter into MRA contracts should be made clear, even if the MRA service provides a lower level of reliability than the retiring resource. Finally AEMA supported clarifications to the proposed amendments that would make clear that a resource could immediately suspend operations upon a finding by ERCOT that it is not needed for reliability purposes.

In reply comments, STEC supported the extension of the suspension notice timeline, but stated that it would not oppose the retention of the current timeline with the option for ERCOT to extend the timeline if necessary, as proposed by Calpine and Luminant. STEC disagreed that compensation to a resource owner is appropriate under an extended timeline because it would create incentives for resource owners to extend the negotiation period and would result in increased costs to the market generally.

EDF supported the proposed notice timeline of 150 days, noting that it strikes an appropriate balance between the 180 days proposed in the initial strawman version of the rule amendments and the current 90-day notice period.

TIEC stated that the proposed amendments, which provide ERCOT with up to 150 days to negotiate an RMR or MRA contract while requiring a decision on need to be made within 60 days represents a balanced approach that may facilitate more economical RMR or MRA procurement without unduly burdening generation resource owners. In reply comments, TIEC reiterated this position and stated that a primary reason that an MRA service was not adopted as an alternative the recent Greens Bayou RMR contract was the short period of time allowed for solicitation and evaluation of proposed MRA services. TIEC opposed the proposals by some generation resource owners that owners of resources that remain in service longer than the current 90-day notice period are due compensation. TIEC pointed out that the longer time frame for RMR or MRA contract negotiation does not actually require any generation resource to remain in service for a longer period of time than under the current rule, but simply requires the generation owner to provide earlier notice of a retirement date planned by the generation resource owner. TIEC also opposed proposals that would retain the current 90-day notice period but allow ERCOT to extend the operation of a unit if ERCOT determines that it is needed for reliability purposes, ar-

guing that this would create the very uncertainty that generators are hoping to avoid. TIEC also argued against the recommendation by Calpine that the suspension notice be kept confidential for the first 60 days after it is submitted, stating that this would undermine an objective of the longer notice period, namely allowing market participants additional time to determine whether resources are available to provide MRA service.

In reply comments, ERCOT opposed the recommendations by some commenters that the suspension notice review period be shortened to less than the proposed 150 days. According to ERCOT, the quality of the evaluation of potential MRA services would suffer if less time is available following a determination of the need for reliability services, given the number and complexity of the tasks that ERCOT would need to accomplish. ERCOT asserted that extending the timeline, as proposed in the amendments, would increase the likelihood of achieving the most cost-effective solution to addressing a reliability need resulting from a unit's suspension of service. ERCOT also noted that the proposed rule would impose no greater restriction on the ability of a unit to suspend operations than would the proposal advanced by some parties for a 60 or 90 day notice period followed by a 90 or 60 day negotiation period, given that a resource is free to suspend operations under the proposed amendments following a determination of no reliability need. While noting that resource owners do not receive any compensation under the current notice period framework, ERCOT took no position on the proposal by some commenters that a resource owner should receive compensation if required to maintain operations beyond the current 90 day notice period. ERCOT asserted that determining compensation for generators would impose potentially significant administrative and financial burdens on ERCOT, and questioned whether a generator that withdraws its notice after receiving compensation should refund these payments. ERCOT requested that, if generator compensation is required, the methodology for determining the amount of compensation be clearly defined in the rule, or the rule should authorize ERCOT to develop such a methodology.

Commission response

Most of the generation resource owners filing comments in this proceeding opposed the extension of the notice period for suspension of operations, or argue that if the extension is adopted, resource owners should be compensated for "additional costs" incurred as a result of the extended time line. Luminant in particular argued that the proposed amendments to the rule impose costs on generators with no corresponding benefit to the market. The commission rejects this argument. Nothing in the proposed amendments to the rule requires a generation resource to remain in service longer than is required under the current rule. There are no additional operational costs imposed on any resource owner under the proposed amendments. There is nothing in the proposed amendments that dictates on what date a resource owner may retire that resource from service. Resource owners are free to pick any date they choose to suspend or retire any resource. In terms of timing, the only change that the proposed amendments make is that the resource owner must inform ERCOT of its intentions sooner than it must under the current rule. As noted by TIEC, "…generators have superior knowledge of the useful life and operational characteristics of their units, and know well in advance that a unit is no longer economic and approaching retirement. As a part of their core business, generators know the general timeframe when a unit will be retired, so extending the notice of suspension to 150 days simply requires the unit owner to identify a specific retirement date slightly sooner than they do today."

The generation owners argued that it may be difficult to maintain staffing at a plant after submission of a notice of suspension, that it may be difficult or more costly to arrange fuel shipment, and that natural gas prices are more volatile over 150 days than over 90 days. The commission finds these arguments unconvincing. The commission agrees with TIEC's assertion that "…staffing difficulties are inevitable when retiring a unit, as plant employees know when a unit is rarely running and approaching retirement regardless of whether there is a public announcement." While Luminant stated that coal transportation agreements require a 12-month nomination of volume, but acknowledges that managing uncertainty over 90 days is "doable," it failed to show why an 60 additional days is not "doable." And, as ERCOT observed, even if volatility of market prices over a longer time line "…would result in the submission of more 'precautionary' suspension notices (which may or may not be true), that would still be preferable to the current timeline, which does not allow sufficient time for the development and consideration of alternatives to an RMR agreement."

As noted in the Proposal for Publication in this proceeding, the commission anticipates substantial public benefits from the adoption of the proposed amendments, including providing ERCOT sufficient time to evaluate less costly alternatives to RMR agreements; allowing ERCOT to consider the costs of RMR or MRA agreements in relationship to the risk and cost associated with any reliability concerns, thus potentially reducing the number of RMR/MRA agreements and the cost of those agreements; and reducing costs by requiring the refund of capital expenditures if RMR or MRA resources return to market operations. The commission finds that the proposed amendments to the rule do not impose any costs on market participants that would preclude or discourage the realization of these benefits.

Luminant suggested that if the commission determines that a longer timeline is warranted, the commission should maintain the current 90-day notice period, with an optional 60 day extension, to be exercised at ERCOT's discretion. The commission declines to adopt this recommendation. As set forth in the proposal, if ERCOT determines that the suspension of a generation resource does not raise any reliability concerns, then that resource is free to suspend operations at the end of the 60-day evaluation period, subject to ERCOT approval. The 150-day period comes into play only if ERCOT determines that there is a reliability need for the resource. In that case, the full 90 days contemplated under the rule for evaluation of the costs and benefits of maintaining the resource through an RMR agreement, or for evaluation of potential MRA services, may be required. The commission notes that the generators are, in effect, asking to be permitted to retire a generation unit earlier than the date that they have themselves selected for retirement, and agrees with TIEC that Luminant's suggestion would only increase uncertainty for ERCOT and for market participants.

Calpine recommended that the suspension notice and ERCOT's evaluation of the suspension notice be kept confidential during the initial 60-day evaluation period, citing the adverse effect on employee retention after a public announcement of an intent to retire a resource. The commission discusses this argument above, and does not find it convincing. Keeping the suspension notice confidential for 60 days would prevent potential MRA service providers from working on bid preparation until only 90

days remain in the 150-day timeline. The commission declines to adopt Calpine's recommendation.

Calpine also recommended that the commission clarify that a resource owner may withdraw its suspension notice at any time before ERCOT's final determination. As Calpine itself states, there is nothing in the current rule or in the proposed amendments that prohibits the withdrawal of a suspension notice, and the commission therefore declines to make this explicit.

Luminant noted that the rule amendments apply both to resources that indefinitely or permanently retire and to resources that are mothballed seasonally. Because these units suspend operations only at certain times of the year on a regular basis, it would be unworkable to subject them to the 150-day notice requirement. Luminant proposed specific language to provide an exemption for these units. The commission agrees that seasonally mothballed units should not be subject to the 150-day notice requirement, and adopts language exempting these units from that requirement. The commission notes that, because the constrained 90-day timeline will continue to apply to units noticing seasonal mothball status, and because these suspensions may occur regularly and predictably, an evaluation by ERCOT of potential MRA services to replace the need to enter RMR agreements with these units is unnecessary.

In order to ensure that the amendments relating to earlier notice have no possible effect on or interference with a resource owner's retirement timeline, the commission will delay the implementation of the rule until January 1, 2018.

Comments relating to the submission of an upfront budget with the notice of suspension

NRG objected to the proposed requirement that a budget be submitted along with a notice of suspension. According to NRG, it would be difficult to estimate the cost of operating a resource without knowing in advance the level of availability that would be required of the resource, a parameter that is specified by ERCOT as part of negotiations for an RMR contract. NRG instead recommended that a detailed budget not be submitted until ERCOT has made a determination of the need for the resource, but conceded that a high level estimation of costs could be made available at the time the notice is submitted. TCPA agreed with NRG that the submission of a detailed budget should not be required until ERCOT has made a determination that the resource is needed for reliability purposes. STEC also agreed that submission of a detailed budget is not necessary at the time the notice is filed, but is only necessary if ERCOT determines that a resource is required to remain available for reliability purposes.

Luminant argued that submission of a detailed budget should not be required until ERCOT has made a final determination that a resource is needed for reliability purposes. However, Luminant argued that if the commission adopts Luminant's recommendation that a resource owner should be compensated for costs incurred in keeping a resource available beyond the current 90-day notice period, then a good faith estimate of operating costs should be required as part of the notice to form the basis of compensation to the resource owner. ERCOT stated that it is not opposed to eliminating the requirement that a detailed budget of costs be submitted at the time the suspension notice is submitted, as this is in line with current practice.

TIEC opposed recommendations that a detailed budget not be required at the time a suspension notice is submitted, arguing that cost information is necessary in order for ERCOT staff and market participants to determine whether an MRA service could offer a cost-effective alternative, and for potential MRA participants to prepare their bids. While TIEC did not oppose suggestions that a good faith estimate of costs could be submitted in lieu of a detailed budget, TIEC stated that it would be difficult to ensure that the good faith estimate was in fact accurate, and that resource owners might have an incentive to understate costs in order to discourage bids by potential MRA service providers, and that the proposed rule amendment's requirement for a detailed budget was a preferable approach.

Commission response

The commission agrees with commenters that argue that an upfront submission of a detailed operating budget is unnecessary. A detailed budget can reasonably be submitted to ERCOT when ERCOT determines a reliability need is present and thus begins its comparative evaluation of solutions. The budget information is not necessary prior to this determination.

Comments relating to RMR Cost-Benefit Analysis and the incorporation of VOLL into RMR and MRA analysis

Calpine, EDF, NRG, Sierra Club, and Shell Energy supported the incorporation of a cost and benefit analysis and the incorporation of the Value of Lost Load (VOLL) into the evaluation of RMR and MRA service need. Shell Energy noted in initial comments that the inclusion of VOLL will allow for the economic consideration of reliability, consistent with the energy-only market design. Furthermore, Shell Energy stipulated that the consideration of VOLL by ERCOT strengthens ERCOT's evaluation by reviewing all of the costs related to RMR or MRA service, harmonizing reliability needs with market driven resource decisions.

NRG indicated its support for the consideration of a cost and benefits of MRA or RMR service, adding that the commission should give direction to ERCOT to apply probabilistic and economic analyses in evaluating RMR service and alternatives.

TAEBA supported implementation of a more holistic review of reliability alternatives to identify the least-cost solution to customers. TAEBA noted that the RMR process only focuses on building transmission as a long-term solution to the disadvantage of other technologies. In order to address this, TAEBA asks that the commission direct ERCOT to incorporate an analysis of the costs of RMR plus transmission as compared to the costs of a proposed MRA when evaluating MRAs. In TAEBA's opinion this would provide a true comparison of RMR alternatives so that the market adequately considers the value of advanced technologies in relieving short-term RMR requirements and displacing or deferring the need for building a long-term transmission solution.

In reply comments, TIEC disagreed with NRG's suggestion to require a probabilistic analysis, stating that such an approach would inappropriately tie the level of reliability that customers enjoy solely to the specific characteristics of a retiring unit. TIEC believed the current proposal is appropriately designed. TIEC additionally disagreed with TAEBA's recommendation to weigh the cost of RMR service plus the cost of transmission against the cost of a proposed MRA. TIEC argued that competitive resources should not be subsidized as alternatives to long-term transmission exit strategies, and that resource development should be left strictly to the competitive market.

Commission response

The commission agrees with TIEC that requiring a probabilistic analysis of a potential RMR agreement is overly prescriptive and declines to adopt NRG's recommended change. While the commission encourages ERCOT to consider using probabilis-

tic criteria to evaluate the need for RMR and MRA service, the commission declines to incorporate any edits that would unnecessarily encumber ERCOT's ability to determine optimal criteria.

The commission finds TAEBA's emphasis on long-term non-transmission alternatives to be beyond the scope of this rulemaking. The commission emphasizes the short-term nature of RMR and MRA service, which is intended to be used as a stop-gap between unit retirements and long-term solutions identified by ERCOT. The commission does not view MRA resources as a substitute for long-term transmission exit strategies. The commission thus declines to adopt TAEBA's suggestion that the cost of MRAs should be weighed against both the value of an RMR service agreement and the value of avoided transmission. Including the costs of long-term transmission solutions when evaluating RMR and MRA proposals is inappropriate in the context of procuring a short-term reliability service.

Comments relating to the clawback of RMR and MRA capital expenditures

Luminant, NRG, Shell Energy, Sierra Club, STEC, and TIEC supported provisions which require the clawback of capital expenditures by ERCOT from owners of RMR or MRA resources if the resource returns to the competitive market after the expiration of the contract. NRG noted that ERCOT protocols currently require the refund of capital expenditures made to an RMR resource. Just as with a RMR, NRG stated that capital clawback from MRA resources that choose to re-enter the market would help prevent distortions to the ERCOT market caused by subsidizing capital upgrades.

Luminant similarly asserted that the purpose of MRA service is the same as RMR service, and that an MRA service agreement should not be a mechanism to transfer wealth or subsidize a resource that would otherwise be uneconomic to place in service. Luminant noted that existing ERCOT Protocols require resource owners to refund the positive salvage value associated with the capital contributions and suggested the proposal address circumstances where the resource retires permanently following contract expiration. Additionally, Luminant suggested extending the capital clawback provisions to a Private Use Network (PUN) resource that enters a new customer contract or continues operations following the expiration of the RMR or MRA contract. Though such an arrangement does not constitute participation in the energy or ancillary service markets, Luminant posited that the rationale for requiring refunds would be the same.

Conversely, TAEBA disagreed with proposed language that would require the clawback of capital expenditures made by ERCOT with regard to MRA resources, stating that such provisions should only apply to units contracted for RMR service. TAEBA illustrated that the provisions are designed to prevent a generation resource from gaming the system by threatening to retire, entering an RMR agreement, and then later re-entering the market. TAEBA argued that MRA resources should be characterized as avoided transmission rather than as a generation solution and should not be subject to clawback provisions.

In reply comments, Luminant, STEC, TCPA, and TIEC disagreed with TAEBA. Luminant stated that there was no evidence to support TAEBA's suggestion that MRA resources could serve as long-term alternatives to transmission upgrades, and load resources were already considered in the long-term transmission planning process. Luminant further stated that no resource should receive a subsidy that enables an otherwise uneconomic resource to enter the competitive market, and that the rationale for requiring capital contribution refunds for RMR resources should apply equally to MRA resources and PUNs contracted for RMR service. Similarly, STEC stated that allowing MRA resources to avoid the requirement creates a competitive advantage for those resources, amounting to a "capacity payment," which is inconsistent with the ERCOT energy-only market design.

Commission response

The commission rejects TAEBA's assertions that MRA resources are long-term transmission alternatives not subject to payment clawback. First, as detailed above, the implementation of long-term non-transmission alternatives is beyond the scope of this rulemaking.

Second, as noted by TCPA and Luminant, the purpose of MRA service is no different from that of RMR service in that it is provided by an out-of-market resource that receives subsidized payments to fulfill ERCOT reliability requirements.

Third, as characterized by the majority of commenters, subsidizing any MRA resource that later participates in the competitive market is contradictory to the competitive market design the legislature intended. PURA Chapter 39 makes clear that, except for transmission and distribution service, the normal forces of competition should generally determine the economic viability of a resource. The commission reiterates that the premise of RMR service is to address short-term reliability issues. Considering the statutory direction of Chapter 39 and the nature of RMR service, it would be inappropriate for the commission to guarantee capital cost recovery to a resource that will continue to participate in the competitive market after the expiration of an RMR or MRA service agreement.

The commission declines to adopt the language provided by Luminant. The commission determines that any resource that has received RMR or MRA capital contributions should be subject to clawback provisions if it returns to commercial operations or competitive service, and should be subject to clawback of the positive salvage value of capital contributions if it permanently retires. The commission believes the current language is broad enough to address Luminant's concerns at a policy level and expects further details regarding implementation to be developed in the ERCOT stakeholder process.

Comments regarding limitations on MRA participation

In initial comments, TAEBA and AEMA offered language clarifying that the owner of a retiring resource under consideration for RMR service should be prohibited from bidding for MRA service. TAEBA stated that a generation company and its affiliates would have an unfair competitive advantage in bidding for MRA service due to its exclusive knowledge of the generation resource's operational characteristics. AEMA offered similar comments, noting that the Independent Market Monitor (IMM) raised concerns with regard to resource owners and affiliates having an anti-competitive advantage.

In reply comments, STEC concurred with TAEBA and AEMA and urged the commission to adopt the comments that would restrict MRA participation as previously recommended by the IMM. STEC recommended MRA participation limitations as the most responsible avenue for protecting the market against an unfair competitive advantage and for ensuring transparency.

Luminant, TCPA, and TIEC disagreed with TAEBA and AEMA in reply comments. Luminant posited that if the goal of an MRA evaluation is to identify the lowest cost solution that provides

equivalent reliability benefit as an RMR, then an owner should not be prohibited outright from consideration. Luminant also noted that the cost plus compensation structure of MRA resources did not present an attractive gaming opportunity and trusted the IMM to monitor and investigate any questionable bids. Similarly, TIEC opposed a categorical exclusion because there is a finite pool of generation owners and developers in ERCOT. Many of these companies have affiliate retail arms that may have demand response products available for MRA consideration. TIEC recommended against the adoption of this change since it may preclude ERCOT from obtaining the most cost-effective solution.

Commission response

The commission declines to insert blanket language that would restrict an RMR resource owner from participating in the MRA bidding process. The commission appreciates TAEBA and AEMA's caution regarding anti-competitive practices, but finds that there should be no categorical prohibition on MRA offers that may interfere with achieving the least-cost effective solution.

Comments clarifying ERCOT's discretion

AEMA, ERCOT, Exelon, Calpine, NRG and SIEA suggested the commission clarify ERCOT's ability to procure MRA service and not proceed with a RMR agreement, even if the alternative provides acceptable, though not necessarily equivalent, reliability in addition to cost savings.

Commission response

The commission concurs with ERCOT's suggestions and adopts its proposed edits with the caveat that any MRA determination reached by ERCOT must be approved by the ERCOT Board.

Comments regarding resource registration

ERCOT noted there could be potential ambiguity regarding resource registration or the appeals process in situations where ERCOT determines a reliability need exists but also determines that an RMR agreement is not cost-effective, or enters into an MRA agreement. ERCOT proposed specific language to reflect these possible outcomes.

Commission response

The commission agrees with ERCOT that additional clarity in this area is warranted and adopts ERCOT's proposed language.

Comments regarding the manufacturing impacts of RMR service

TIEC requested the commission modify the Proposal to expressly address the requirements of the PURA §39.151(l) when evaluating RMR agreements. TIEC asserted that specific direction will clarify that ERCOT must assess the impact to manufacturing facilities in its evaluation of RMR service, giving ERCOT the latitude to not enter into an RMR arrangement with PUN generation resources where the agreement would be harmful, costly, or impractical.

Commission response

The commission declines to adopt the language provided by TIEC. PURA §39.151(l) already prohibits ERCOT from adopting rules, policies, protocols, or other requirements that adversely impact manufacturing or industrial generation facilities except to the minimum extent necessary to assure reliability of the transmission network. As such, TIEC's proposed change is duplicative and therefore unnecessary.

Comments codifying public comment period

NRG noted the proposed timeline extension should allow for stakeholders to review RMR evaluations. NRG suggested adding language that codified a public comment period to ensure stakeholders can provide feedback on RMR study methods and results.

In reply comments, Luminant opposed NRG's suggestion to codify the protocol requirement for public comment period on RMRs, stating that such decisions should be left to ERCOT and stakeholders.

Commission response

While the commission agrees with NRG that a period for public comment may be valuable, it declines to specify exactly what the period should be or where it falls within the RMR assessment process, so that ERCOT will have the discretion to modify the existing protocol public comment period if reasons arise to do so.

Comments clarifying RMR purpose

Exelon requested the commission clarify that ERCOT will only procure RMR or MRA service to address transmission reliability, and not to address system generation capacity shortfalls. Exelon argued that the out-of-market retention of resources for resource adequacy would prevent ERCOT's energy-only market design from sending the appropriate price signals, resulting in the inability of non-RMR and MRA resources to recover their fixed costs. Exelon stated that these pricing distortions could cause premature resource retirement, compounding resource adequacy concerns.

Commission response

The commission declines to insert language that would unnecessarily limit the application of RMR or MRA service. While the commission acknowledges that, in the majority of circumstances, RMR and MRA service should be used to support local transmission reliability, the commission declines to categorically prohibit ERCOT's procurement of RMR service for capacity. Under current protocol, RMR resources that are committed and dispatched by ERCOT for capacity are priced at the system-wide offer cap. This pricing policy mitigates the impact of out-of-market pricing distortions and ensures that energy dispatched from these units appropriately reflects system-wide scarcity.

Comments regarding RMR dispatch

NRG requested that the commission place limits on out-of-merit-order dispatch for the time period between the effective date of the suspension notice where ERCOT has designated the resource for RMR service but no RMR agreement has been executed, and the execution of an RMR agreement, including any dispute period. NRG recommended that any out-of-merit-order dispatch take place through ERCOT's Reliability Unit Commitment (RUC) process, which is used to commit resources to resolve reliability issues.

In reply comments, TIEC disagreed with NRG, stating that it was unnecessary for the commission to specify the dispatch of a prospective RMR through the RUC process. TIEC posited that NRG's suggested language would not substantively change current practice. Rather, TIEC was concerned that NRG's proposed language would imply that the current process required change and may have other unintended consequences.

Shell Energy emphasized in its comments that ERCOT's analysis of RMR/MRA costs and benefits consider all costs to the nodal market to ensure the appropriate scarcity pricing signals

are sent to market participants. Shell noted that the price signals can be suppressed if subsidized RMR resources are dispatched prior to the deployment of competitive offers. Shell Energy argued, contrary to other commenters, that the Greens Bayou 5 RMR and associated RMR/MRA process demonstrated the effectiveness of market-based solutions when scarcity pricing is allowed to send the appropriate price signals. Shell Energy stated that the Greens Bayou 5 RMR/MRA process was effective in attracting resources to a premium location within the ERCOT footprint.

Commission response

The commission declines to set rules or limitations defining how ERCOT commits potential RMR or MRA resources. The ERCOT staff is in the best position to apply their expertise to determine the process by which RMR resources are committed. The commission appreciates Shell Energy's comments regarding the effectiveness of the nodal price signal and market-based resource investment.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically PURA §39.151, which authorizes the commission to adopt rules relating to the reliability of the ERCOT transmission network.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.502. Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas.

(a) Purpose. The purpose of this section is to protect the public from harm when wholesale electricity prices in markets operated by the Electric Reliability Council of Texas (ERCOT) in the ERCOT power region are not determined by the normal forces of competition.

(b) Applicability. This section applies to any entity, either acting alone or in cooperation with others, that buys or sells at wholesale energy, capacity, or any other wholesale electric service in a market operated by ERCOT in the ERCOT power region; any agent that represents such an entity in such activities; and ERCOT. This section does not limit the commission's authority to ensure reasonable ancillary energy and capacity service prices and to address market power abuse.

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

(1) Competitive constraint--A transmission element on which prices to relieve congestion are moderated by the normal forces of competition between multiple, unaffiliated resources.

(2) Generation entity--an entity that owns or controls a generation resource.

(3) Market location--the location for purposes of financial settlement of a service (*e.g.,* congestion management zone in a zonal market design or a node in a nodal market design).

(4) Must-run alternative (MRA) service--a service that ERCOT may procure as an alternative to reliability must-run service.

(5) Noncompetitive constraint--A transmission element on which prices to relieve congestion are not moderated by the normal forces of competition between multiple, unaffiliated resources.

(6) Reliability must-run (RMR) service--a service provided by a generation resource to meet a reliability need resulting from the planned suspension of operation of that generation resource for a period of greater than 180 calendar days.

(7) Resource--a generation resource, or a load capable of complying with ERCOT instructions to reduce or increase the need for electrical energy or to provide an ancillary service (*i.e.,* a "load acting as a resource").

(8) Resource entity--an entity that owns or controls a resource.

(9) Suspension date--the date specified by a generation entity in a notice to ERCOT as the date on which it intends to suspend operation of a generation resource for a period of greater than 180 calendar days.

(d) Control of resources. Each resource entity shall inform ERCOT as to each resource that it controls, and provide proof that is sufficient for ERCOT to verify control. In addition, the resource entity shall notify ERCOT of any change in control of a resource that it controls no later than 14 calendar days prior to the date that the change in control takes effect, or as soon as possible in a situation where the resource entity cannot meet the 14 calendar day notice requirement. For purposes of this section, "control" means ultimate decision-making authority over how a resource is dispatched and priced, either by virtue of ownership or agreement, and a substantial financial stake in the resource's profitable operation. If a resource is jointly controlled, the resource entities shall inform ERCOT of any right to use an identified portion of the capacity of the resource. Resources under common control shall be considered affiliated.

(e) RMR resources. Except for the occurrence of a forced outage, a generation entity shall submit to ERCOT in writing a notice of suspension of operation no later than 150 calendar days prior to the suspension date. If a generation resource is to be mothballed on a seasonal basis in accordance with ERCOT protocols, the generation entity shall submit in writing a notice of suspension of operation no later than 90 calendar days prior to the suspension date. ERCOT shall issue a final determination of the need for RMR service within 60 calendar days of ERCOT's receipt of the notice. If ERCOT determines that the generation resource is not needed for RMR service, the generation entity may suspend operation of the generation resource before the suspension date, subject to ERCOT approval. Unless ERCOT has determined that a generation entity's generation resource is not required for ERCOT reliability, determined that the resource is needed for reliability but is not a cost-effective solution to the reliability concern, or entered into an MRA service agreement as an alternative to an RMR service agreement, the generation entity shall not terminate its registration of the generation resource with ERCOT unless it has transferred the generation resource to a generation entity that has a current resource-entity agreement with ERCOT and the transferee registers that generation resource with ERCOT at the time of the transfer.

(1) Complaint with the commission. If, by the suspension date, ERCOT has not notified the generation entity that the continued operation of the generation resource is not required for reliability or is not a cost-effective solution to the reliability need, and has not entered into an RMR service agreement with the generation entity for the generation resource or an MRA service agreement as an alternative to an RMR service agreement, then the generation entity may file a complaint with the commission against ERCOT, under §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) conduct).

(A) The generation entity shall have the burden of proof.

(B) As required by §22.251(d) of this title, absent a showing of good cause to the commission to justify a later deadline, the generation entity's deadline to file the complaint is 35 calendar days after the suspension date.

(C) The dispute underlying the complaint is not subject to ERCOT's alternative dispute resolution procedures.

(D) In its complaint, the generation entity may request interim relief under §22.125 of this title (relating to Interim Relief), an expedited procedural schedule, and identify any special circumstances pertaining to the generation resource at issue.

(E) As required by §22.251(f) of this title, ERCOT shall file a response to the generation entity's complaint and shall include as part of the response all existing, non-privileged documents that support ERCOT's position on the issues identified by the generation entity as required by §22.251(d)(1)(C) of this title.

(F) The scope of the complaint may include the need for the RMR service; the reasonable compensation and other terms for the RMR service; the length of the RMR service, including any appropriate RMR exit options; and any other issue pertaining to the RMR service.

(G) Any compensation ordered by the commission shall be effective the first calendar day after the suspension date. If there is a pre-existing RMR service agreement concerning the generation resource, the compensation ordered by the commission shall not become effective until the termination of the pre-existing agreement, unless the commission finds that the pre-existing RMR service agreement is not in the public interest.

(H) If the generation entity does not file a complaint with the commission, the generation entity shall be deemed to have accepted ERCOT's most-recent offer as of the suspension date.

(2) Out-of-merit-order dispatch. The generation entity shall maintain the generation resource so that it is available for out-of-merit-order dispatch instruction by ERCOT until:

(A) ERCOT determines that the generation resource is not required for ERCOT reliability;

(B) any RMR service agreement takes effect;

(C) the commission determines that the generation resource is not required for ERCOT reliability; or

(D) a commission order requiring the generation entity to provide RMR service takes effect.

(3) RMR exit strategy. Unless otherwise ordered by the commission, the implementation of an RMR exit strategy in conformance with the ERCOT Protocols is not affected by the filing of a complaint under this subsection.

(4) Evaluation of RMR and MRA service. ERCOT may decline to enter into an RMR or MRA service agreement based on an evaluation that considers the costs and benefits of the RMR or MRA service, subject to the requirements of paragraph (5) of this subsection. ERCOT may enter into an MRA service agreement if it identifies a resource or group of resources that will address a reliability need resulting from a planned suspension of operation of a generation resource in a more cost-effective manner than entering into an RMR service agreement, subject to the requirements of paragraph (5) of this subsection. ERCOT may incorporate the economic value of lost load into its evaluation.

(5) Approval of RMR and MRA service agreements. All recommendations by ERCOT staff to enter into an RMR or MRA service agreement shall be subject to approval by the ERCOT governing board. If ERCOT identifies a reliability need for RMR or MRA service but recommends against entering into an RMR or MRA service agreement, ERCOT staff's recommendation shall be subject to approval by the ERCOT governing board. In its request for governing board approval, ERCOT staff shall present information that justifies its recommendation.

(6) Refund of payments for capital expenditures. A resource entity that owns or controls a resource providing RMR or MRA service shall refund payments for capital expenditures made by ERCOT in connection with the RMR or MRA service agreement if the resource participates in the energy or ancillary service markets at any time following the termination of the agreement. ERCOT may require less than the entire original amount of capital expenditures to be refunded to reflect the depreciation of capital over time.

(7) Implementation. ERCOT, through its stakeholder process, shall establish protocols and procedures to implement this subsection.

(f) Noncompetitive constraints. ERCOT, through its stakeholder process, shall develop and submit for commission oversight and review protocols to mitigate the price effects of congestion on noncompetitive constraints.

(1) The protocols shall specify a method by which noncompetitive constraints may be distinguished from competitive constraints.

(2) Competitive constraints and noncompetitive constraints shall be designated annually prior to the corresponding auction of annual congestion revenue rights. A constraint may be redesignated on an interim basis.

(3) The protocols shall be designed to ensure that a noncompetitive constraint will not be treated as a competitive constraint.

(4) The protocols shall not take effect until after the commission has exercised its oversight and review authority over these protocols as part of the implementation of the requirements of §25.501 of this title, (relating to Wholesale Market Design for the Electric Reliability Council of Texas) so that these protocols shall take effect as part of the wholesale market design required by that section. Any subsequent amendment to these protocols shall also be submitted to the commission for oversight and review, and shall not take effect unless ordered by the commission.

(5) ERCOT, through its stakeholder process, may adopt protocols that categorize all constraints as noncompetitive constraints. Protocols adopted pursuant to this paragraph shall terminate no later than the 45th day after ERCOT begins to use nodal energy prices for resources pursuant to §25.501(f) of this title. Protocols adopted pursuant to this paragraph need not be submitted to the commission for oversight and review prior to taking effect.

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 September 29, 2017.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 1, 2018
Proposal publication date: April 14, 2017
For further information, please call: (512) 936-7223

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 37. LEGAL SUBCHAPTER B. PENALTIES

16 TAC §37.61

The Texas Alcoholic Beverage Commission adopts amendments to §37.61, relating to Suspensions, without changes to the proposed text as published in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3948).

Generally, Alcoholic Beverage Code (Code) §11.64(a) requires the agency to allow an offender to pay a civil penalty in lieu of having a permit or license suspended. However, that same section lists certain offenses for which the agency may exercise discretion in deciding whether to allow payment of a civil penalty in lieu of suspending the permit or license.

House Bill No. 1612, 85th Regular Session of the Texas Legislature amended Code §11.64(a) to add any offense relating to "controlled substances or drugs" to the list of offenses for which the agency may exercise discretion regarding the civil penalty option.

The adopted amendments include in rule §37.61 the offenses added by House Bill No. 1612 to those violations for which Code §11.64(a) allows the agency discretion concerning whether a civil penalty should be allowed in lieu of a suspension. The offenses listed in the rule as amended match the offenses listed in the code as amended.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed change to the current rule is appropriate.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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

TRD-201703855
Martin Wilson
Assistant General Counsel
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Effective date: October 17, 2017
Proposal publication date: August 11, 2017
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TITLE 19. EDUCATION

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) adopts an amendment to §230.11, concerning general certification requirements. The amendment to §230.11 is adopted with changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3344). The adopted amendment specifies 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 in a country where the official language is not English. The amendment also allows a candidate to satisfy the English language proficiency requirement if the candidate's degree was earned in a country outside of the United States where English is the official language as identified in Figure: 19 TAC §230.11(b)(5)(C).

REASONED JUSTIFICATION: 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.

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 (IHE) 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. In 2006, the SBEC approved the TOEFL iBT as the English language proficiency examination and a passing standard of 26 on the speaking section only, which aligned with the previous examination. Although candidates must pass only the speaking section of the examination, they are assessed on all four sections of the TOEFL: speaking, listening, reading, and writing.

At the December 2016 and March 2017 SBEC meetings, the Board directed Texas Education Agency (TEA) staff to solicit stakeholder feedback and convene a standards-setting committee to develop recommended cut scores for the TOEFL iBT. The Board directives included using all four sections of the TOEFL iBT in determining English language proficiency, cut score recommendations for each section or an overall score, and which candidates should be required to take the examination.

TOEFL Cut Scores

At the June 9, 2017, SBEC meeting, TEA staff presented the Board with the following standard-setting committee cut score recommendations for each section of the examination: 24 for speaking; 25 for listening, 25 for reading, and 21 for writing.

The SBEC approved for proposal in June 2017 and for adoption, subject to State Board of Education (SBOE) review, in August

2017 the following minimum scaled scores on the TOEFL iBT: 24 for speaking; 22 for listening; 22 for reading; and 21 for writing.

Language in adopted 19 TAC §230.11(b)(5)(B) clarifies that minimum scaled scores on the TOEFL iBT would be used to satisfy English language proficiency requirements. The scaled score requirements of 24 for speaking, 22 for listening, 22 for reading, and 21 for writing replace the current use of a score of at least 26 on only the speaking section of the TOEFL iBT. The minimum scaled scores for the listening and reading sections were changed from the committee's recommendation due to this being the first time individuals will be assessed on all four sections of the examination and the scores were still in the high proficiency designation.

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 SBEC-adopted minimum TOEFL iBT scaled scores, specified in 19 TAC §230.11(b)(5)(B), provide clarity to candidates and educator preparation programs on the required minimum scaled scores required by foreign-educated Texas certification applicants.

Candidates Required to Take TOEFL iBT

The Board also discussed which candidates should be required to take the TOEFL iBT to demonstrate English language proficiency and requested clarification on the procedures used by TEA staff to ensure that foreign-educated applicants graduated from IHEs where English was the primary language of instruction. Currently, applicants are required to submit official university transcripts showing degree conferred and date from either an IHE in the United States where English is the primary language of instruction or from an IHE outside the United States where the primary language of instruction was English.

On August 4, 2017, the SBEC added at adoption, subject to SBOE review, new §230.11(b)(5)(C) to allow candidates who have earned their degree outside of the United States to satisfy the English language proficiency requirements. English must be verified as the official language of the country, and the country must appear on the SBEC-approved list that appears in Figure: 19 TAC §230.11(b)(5)(C).

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began June 30, 2017, and ended July 31, 2017. The SBEC also provided an opportunity for registered oral and written comments at the August 4, 2017, meeting in accordance with the SBEC board operating policies and procedures. No comments were received regarding the proposed amendment to 19 TAC §230.11.

STATUTORY AUTHORITY. The amendment is adopted 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 adopted 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) verification of minimum scaled 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; or

(C) if an undergraduate or graduate degree was earned at an institution of higher education in a country outside of the United States listed in the figure provided in this subparagraph.
Figure: 19 TAC §230.11(b)(5)(C)

(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 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 September 27, 2017.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.9

The State Board for Educator Certification (SBEC) adopts an amendment to §232.9, concerning certificate renewal and continuing professional education (CPE) requirements. The amendment to §232.9 is adopted without changes to the proposed text as published in the March 31, 2017, issue of the *Texas Register* (42 TexReg 1701) and will not be republished. The adopted amendment clarifies procedures used by the automated system to process late applications submitted for standard certificate renewal.

REASONED JUSTIFICATION: Current 19 TAC Chapter 232, General Certification Provisions, establishes the renewal requirements relating to types and classes of certificates issued, CPE hours to be completed, and the national criminal history record information review.

The adopted amendment to 19 TAC §232.9 clarifies procedures the automated system uses to renew an educator's certificate(s) when the educator files a late renewal application.

Texas standard certificates have effective (start) dates and expiration (end) dates. The timeframe between the start and end dates of a standard certificate is considered the validity period for that certificate cycle. During that time, individuals should be accruing the required CPE hours for certificate renewal (i.e., 150 hours total for classroom teacher certificates and 200 hours total for certificates other than classroom teacher). Individuals are allowed to submit on-time applications for certificate renewal as early as six months prior and up to the certificate expiration date. Standard certificates not renewed by their expiration date immediately move from "valid" to "inactive" status. Standard certificates remain inactive until they are renewed. Once the renewal has been processed, based on submission of the online application and required fees, confirmation of CPE hours, and a clear background check, the next validity period is posted to the educator's online record of certification.

The renewal of Texas standard certificates is an online, automated application process that requires each educator to respond to a series of affidavit questions, pay the required application fee, complete the fingerprinting process, and provide TEA with the date that all CPE hours for renewal were completed. A renewal application for either certificate class is considered to be on time if it is submitted before or by the expiration date of the certificate. An online application for certificate renewal is considered complete when all questions have been answered, including the date that the required CPE hours were completed, when the required renewal fee has been paid, and when the fingerprint status for an educator shows as "Complete." Once an educator has completed the fingerprinting process for certificate issuance purposes, he or she is not required to repeat that process for future certificate applications.

An individual who submits an online renewal application within the first six months after the certificate expiration date is required to pay a late fee in addition to the renewal fee. If all CPE hours were completed before or by the certificate expiration date, once the late renewal application has been processed, there will be no break in certification validity periods for the certificates being renewed (i.e., the beginning of the next certificate renewal period is dated to begin immediately after the last certificate expiration date).

An individual who submits a renewal application more than six months after the certificate expiration date is required to pay the late fee, a reactivation fee, and the renewal fee. The adopted amendment clarifies that if all CPE hours have been completed, once the late renewal application has been processed, the certification will have a new effective date and will show a break in validity from the prior expiration date to the new effective date. The next certificate renewal period will be the date the educator enters as the completion of CPE requirements, provided it is not more than 60 days prior to the date of the application.

Between September 1, 2012, through December 31, 2016, approximately 80% of the total applications submitted (181,401) were processed as on-time certificate renewals; approximately 15% of the total applications submitted (28,160) were processed as late renewals within the first six months after the expiration of the certificate validity period; and approximately 5% of the total applications submitted (12,893) were processed as late renewals more than six months after the expiration of the certificate validity period.

Language in 19 TAC §232.9(b) clarifies that the automated processing of late renewal applications submitted within six months of the certificate expiration date makes an educator's next certificate renewal begin date the same as the expiration date of the last certificate, as long as the educator has submitted a complete online application, paid renewal fee(s), completed the fingerprinting process, and confirmed that he or she has completed the required CPE hours for certificate renewal prior to the expiration date. Language was also added to clarify the automated processing of late renewal applications and the effective date

for the next certificate renewal period for educators submitting online renewal applications more than six months after the certificate expiration date. The new language confirms that upon receipt of a complete online application, renewal fee(s), fingerprinting, and confirmation that an educator has completed the required CPE hours for certificate renewal, the automated processing will issue an effective date for the next renewal period. The adopted amendment to §232.9(b) clarifies that SBEC allows those who are late in renewing a certificate, but have otherwise completed all renewal requirements, to renew effective when the previous license expired. This process keeps otherwise qualified educators in the classroom, resulting in less disruption to students. The adopted amendment is intended to prevent public confusion regarding the effective date of late-renewed certificates.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 31, 2017, and ended May 1, 2017. The SBEC also provided an opportunity for registered oral and written comments at the June 9, 2017, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendment to 19 TAC §232.9.

Comment: An individual commented that fees being imposed for certificate renewal are extensive, may create an undue hardship to some beginning teachers or teachers on a tight budget, and create another obstacle for a teacher that may have left the field (after 3-5 years) and is considering returning.

Board Response: The SBEC disagreed. Certification renewal fees for standard certificates are authorized by the TEC, §21.041(c). The amendment to 19 TAC §232.9 does not add any new costs to educators. Additionally, the statute requires the fees to cover the cost of the certification and renewal process. The SBEC maintained language as published as proposed.

Comment: An individual stated that the proposed amendment is incompatible with other sections of the rule and allows SBEC to protect professional educators who are derelict in their responsibility to timely renew their certificate in order to maintain their eligibility for employment as a professional educator in a public school district.

Board Response: The SBEC disagreed and maintained that the procedures the SBEC follows in processing late renewal applications do not violate any of its own rules. TEC, §21.003, gives guidelines to school districts regarding who they can hire as teachers and the voidability of teacher contracts in the event an educator allows his or her certification to lapse. The statute does not dictate the manner in which SBEC renews applications or how SBEC determines the effective date of a late renewal application. The SBEC's rules regarding renewal and effective dates for late renewal applications do not impact a school district's ability to void an educator's contract in accordance with the TEC, §21.003, while an educator's certificate is inactive due to the educator's failure to renew timely. The SBEC maintained language as published as proposed.

The State Board of Education (SBOE) took no action on the review of the proposed amendment to 19 TAC §232.9 at the September 15, 2017, SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted 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; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §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; TEC, §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; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; and TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the Texas Education Code, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (9), and 21.054.

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 September 27, 2017.

TRD-201703916
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: October 17, 2017
Proposal publication date: March 31, 2017
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.12

The State Board of Dental Examiners (Board) adopts the repeal of §100.12, concerning the Advisory Committee on Dental Anesthesia without changes to the proposed text as published in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3951). The repeal removes references to the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety, which is no longer active.

Kelly Parker, Executive Director, has determined that for the first five-year period the repeal, there will not be any fiscal implica-

tions for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the repeal is in effect, the public benefit anticipated as a result of repealing the rule will be compliance with the Dental Practice Act. Ms. Parker has determined that for the first five-year period the repeal is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rules are enforced or administered.

No comments were received regarding this repeal.

The repeal is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this adoption.

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

Filed with the Office of the Secretary of State on September 29, 2017.

TRD-201703937
Kelly Parker
Executive Director
State Board of Dental Examiners
Effective date: October 19, 2017
Proposal publication date: August 11, 2017
For further information, please call: (512) 475-0977

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22 TAC §100.12

The State Board of Dental Examiners (Board) adopts new §100.12, concerning the Advisory Committee on Dental Anesthesia without changes to the proposed text as published in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3951). The new rule establishes the Advisory Committee on Dental Anesthesia and specifies its duties and the appointment of its members.

Kelly Parker, Executive Director, has determined that for the first five-year period the adopted rule is in effect there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the new rule is in effect the public benefit anticipated as a result of establishing the committee will be to increase our understanding of anesthesia related incidents in dentistry and to comply with SB313. Ms. Parker has determined that for the first five-year period the adopted rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rules are enforced or administered.

The Board received the following comments from the Texas Dental Association and the Texas Academy of General Dentistry:

Both comments requested that the term "incident" be better defined. The Board's response is that the term "incident" is already sufficiently defined as: "An incident shall be considered anesthesia-related if the dental treatment involved the administration of anesthetic or sedative agent in a dental office, including local anesthesia, and the Dental Review Panel identified a complication associated with the administration of the anesthetic or sedative agent."

Both comments requested that the appointees terms be staggered in accordance with Tex. Occ. Code §258.204(1). The Board's response is to propose an amendment to the rule providing for staggered terms.

TDA requested that the acronym "ASA" be defined. The Board's response is that a definition is unnecessary because the acronym is universally understood by all of the relevant parties involved in the Anesthesia Advisory Committee.

TAGD requested that the rule language mirror the statutory language as close as possible as it relates to the "balanced representation" requirement of the law, specifically that the Board should not have a requirement that each anesthesia permit level be represented on the Committee. The Board's response is that the legislature required "balanced representation…to ensure the committee has expertise with respect to each permit category." The legislature left it up to the Board to determine how to reach a balanced representation. The Board established balanced representation with a rule that requires all permit levels be represented at all times, rather than have to address the issue of "balanced representation" every time an appointment comes up. This simplifies the appointment process and ensures the committee has expertise with respect to each permit category.

The new rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this adoption.

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

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TRD-201703939
Kelly Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

The Texas Juvenile Justice Department (TJJD) adopts amendments to §341.100, concerning definitions, §341.400, concern-

ing duties of certified juvenile probation officers, and §341.702, concerning requirements for restraints, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2662).

TJJD also adopts new §341.204, concerning residential placement, §341.402, concerning duties of certified community activities officers, and §341.403, concerning supervising and transporting juveniles, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2662).

TJJD simultaneously adopts the repeal of §341.705, concerning transport personnel, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2662).

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the revised chapter is youth and public safety and the effective operation of community-based juvenile justice programs and facilities by requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

SECTION-BY-SECTION SUMMARY

The amended §341.100: 1) no longer includes a definition for Transport Personnel; 2) adds a definition for Professional, and 3) includes minor clarifications to the definition of Juvenile Justice Program.

The new §341.204 establishes the responsibilities of each juvenile board relating to: 1) certifying and registering juvenile justice facilities in counties served by the board; and 2) ensuring that juveniles under its jurisdiction are placed only in juvenile justice facilities that are certified by a juvenile board in Texas or public or private residential facilities or programs that are licensed by a state governmental entity or exempt from licensure by state law.

The amended §341.400 adds passing the certification exam to the list of criteria that would allow a non-certified juvenile probation officer to temporarily perform the duties of a certified officer.

The new §341.402 creates a new certification offered by TJJD. The certification is for community activities officers. Any individual who supervises or transports juveniles in a non-secure setting within a juvenile justice program is required to obtain certification as a community activities officer, with several exceptions listed in the section.

The new §341.403 requires at least one staff member who is supervising or transporting a juvenile in a non-secure setting within a juvenile justice program to be certified in cardiopulmonary resuscitation and first aid.

The amended §341.702: 1) adds community activities officers to the list of individuals who may be authorized to use restraints; 2) no longer includes references to transport personnel; and 3) clarifies that only staff members who are trained *and currently certified* in the use of the approved personal restraint technique may use it.

Section 341.705, relating to training for transport personnel, has been repealed because the staff who perform transportation functions will now be covered by the new community activities officer certification and the training requirements associated with that certification.

PUBLIC COMMENTS

TJJD did not receive any public comments concerning the proposed rulemaking actions.

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §341.100

STATUTORY AUTHORITY

The amended section is adopted under §221.002(a)(1), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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 September 27, 2017.

TRD-201703852
Jill Mata
General Counsel
Texas Juvenile Justice Department
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Proposal publication date: May 19, 2017
For further information, please call: (512) 490-7014

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §341.204

STATUTORY AUTHORITY

The new section is adopted under §221.002(a)(1), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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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Jill Mata
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER D. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

37 TAC §§341.400, 341.402, 341.403

STATUTORY AUTHORITY

The amended section and new sections are adopted under §221.002(a)(1), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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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Jill Mata
General Counsel
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For further information, please call: (512) 490-7014

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SUBCHAPTER G. RESTRAINTS

37 TAC §341.702

STATUTORY AUTHORITY

The amended section is adopted under §221.002(a)(1), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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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Jill Mata
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37 TAC §341.705

STATUTORY AUTHORITY

The repeal is adopted under §221.002(a)(1), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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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Jill Mata
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For further information, please call: (512) 490-7014

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CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts amendments to §343.428, concerning resident supervision in pre-adjudication secure detention facilities, and §343.622, concerning resident supervision in post-adjudication secure correctional facilities, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2666).

TJJD also adopts new §343.429, concerning additional required training for certified officers in pre-adjudication secure detention facilities who are hired by a different department, and new §343.623, concerning additional required training for certified officers in post-adjudication secure correctional facilities who are hired by a different department, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2666).

JUSTIFICATION FOR CHANGES

The public benefits anticipated as a result of administering the new and revised sections is youth and public safety and the effective operation of community-based juvenile justice programs and facilities by requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

SECTION-BY-SECTION SUMMARY

The amended §343.428 adds that, in order to supervise residents in a pre-adjudication facility, a certified juvenile supervision officer must have received the facility-specific training listed in §343.429 if the officer was certified while working for another department. The amended section also adds that a juvenile supervision officer who is not yet certified may supervise residents only if the individual: 1) has not exceeded the deadline for submitting an application for certification; 2) has completed *all training required by 37 TAC §344.622 and §344.624* (rather than at least 40 hours consisting of the mandatory exam topics, CPR, first aid, and personal restraint technique); and 3) has passed the certification exam.

The new §343.429 establishes a list of facility-specific training topics that a certified juvenile supervision officer must receive if that officer is hired by a department or facility different than the one where the officer received his/her certification. The new section also prohibits a juvenile supervision officer who has not completed the facility-specific training from being included in officer-to-resident ratios and from performing any duties of a juvenile supervision officer.

The amended §343.622 adds that, in order to supervise residents in a post-adjudication facility, a certified juvenile supervision officer must have received the facility-specific training listed in §343.623 if the officer was certified while working for another department. The amended section also adds that a juvenile supervision officer who is not yet certified may supervise residents only if the individual: 1) has not exceeded the deadline for submitting an application for certification; 2) has completed *all training required by 37 TAC §344.622 and §344.624* (rather than at least 40 hours consisting of the mandatory exam topics, CPR, first aid, and personal restraint technique); and 3) has passed the certification exam.

The new §343.623 establishes a list of facility-specific training topics that a certified juvenile supervision officer must receive if that officer is hired by a department or facility different than the one where the officer received his/her certification. The new section will also prohibit a juvenile supervision officer who has not completed the facility-specific training from being included in officer-to-resident ratios and from performing any duties of a juvenile supervision officer.

PUBLIC COMMENTS

TJJD received a comment from the Coalition for Nurses in Advanced Practice. The following is a summary of the comment and TJJD's response.

Comment: Although not included in this proposal, TJJD should update the definition of Mental Health Provider in 37 TAC §343.100(37) to include persons licensed by the Texas Board of Nursing as soon as it is practical to do so.

Response: As noted in the comment, 37 TAC §343.100 is not included within this proposed rulemaking action and therefore cannot be amended as part of this adoption notice. However, TJJD agrees that the definition should be revised in a future rulemaking action to include psychiatric/mental health nurse practitioners or clinical nurse specialists.

SUBCHAPTER C. SECURE PRE-ADJUDICATION DETENTION FACILITY STANDARDS

37 TAC §343.428, §343.429

STATUTORY AUTHORITY

The amended section and new section are adopted under Section 221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private juvenile pre-adjudication and post-adjudication secure facilities.

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

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TRD-201703862
Jill Mata
General Counsel
Texas Juvenile Justice Department
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Proposal publication date: May 19, 2017
For further information, please call: (512) 490-7014

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SUBCHAPTER D. SECURE POST-ADJUDICATION CORRECTIONAL FACILITY STANDARDS

37 TAC §343.622, §343.623

STATUTORY AUTHORITY

The amended section and new section are adopted under Section 221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private juvenile pre-adjudication and post-adjudication secure facilities.

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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Jill Mata
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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CHAPTER 344. EMPLOYMENT, CERTIFICATION AND TRAINING

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §§344.100, 344.110, 344.120, 344.200, 344.210, 344.220, 344.230, 344.300, 344.310, 344.320, 344.330, 344.340, 344.400, 344.410, 344.500, 344.510, 344.520, 344.600, 344.610, 344.620, 344.630, 344.640, 344.650, 344.660, 344.670, 344.680, 344.700, 344.800, 344.810, 344.820, 344.830, 344.840, 344.850, 344.860, 344.870, 344.880, and 344.890, relating to Employment, Certification and Training, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2669).

JUSTIFICATION FOR REPEAL

The justification for the repeals is to allow for the adoption of a revised chapter.

SECTION-BY-SECTION SUMMARY

The repeal of §344.100 allows for the content to be revised and republished as new §344.100.

The repeal of §344.110 allows for the content to be revised and republished as new §344.110.

Section 344.120, which refers to TJJD's publication of a Compliance Resource Manual for purposes of establishing requirements for ensuring and verifying compliance with this chapter, has been repealed. TJJD no longer publishes a Compliance Resource Manual for this chapter.

The repeal of §344.200 allows for the content to be revised and republished as new §344.200 and §344.202.

The repeal of §344.210 allows for the content to be revised and republished as new §344.210.

The repeal of §344.220 allows for the content to be revised and republished as new §344.220.

The repeal of §344.230 allows for the content to be revised and republished as new §344.230.

The repeal of §344.300 allows for the content to be revised and republished as new §344.300 and §344.302.

The repeal of §344.310 allows for the content to be revised and republished within new §§344.300, 344.312, 344.400, and 344.410.

The repeal of §344.320 allows for the content to be revised and republished as new §344.320.

The repeal of §344.330 allows for the content to be revised and republished as new §344.330.

Section §344.340, which addresses retention of criminal history reports, has been repealed. TJJD verifies compliance with various criminal history requirements through the Fingerprint-Based Applicant Clearinghouse of Texas and not through hard-copy criminal history reports.

The repeal of §344.400 allows for the content to be revised and republished as new §344.400.

The repeal of §344.410 allows for the content to be revised and republished as new §344.410.

The repeal of §344.500 allows for the content to be revised and republished as new §344.204.

The repeal of §344.510 allows for the content to be revised and republished as new §344.208.

The repeal of §344.520 allows for the content to be revised and republished as new §344.212.

The repeal of §344.600 allows for the content to be revised and republished as new §344.600.

The repeal of §344.610 allows for the content to be revised and republished as new §344.610.

The repeal of §344.620 allows for the content to be revised and republished as new §§344.620, 344.622, and 344.624.

The repeal of §344.630 allows for the content to be revised and republished as new §344.630.

The repeal of §344.640 allows for the content to be revised and republished as new §344.640.

Section §344.650 has been repealed because the effects of failing to complete continuing education are generally redundant with failing to renew a certification, which is explained elsewhere within the new chapter.

The repeal of §344.660 allows for the content to be revised and republished as new §344.660.

The repeal of §344.670 allows for the content to be revised and republished as new §344.670.

The repeal of §344.680 allows for the content to be revised and republished as new §344.680.

The repeal of §344.700 allows for the content to be revised and republished as new §344.700.

The repeal of §344.800 allows for the content to be revised and republished as new §§344.800, 344.802, and 344.804

Section 344.810 has been repealed because it is generally redundant with new §344.200 and §344.850.

Section 344.820 has been repealed because the length of certification periods is now addressed in new §344.862.

Section 344.830 has been repealed because the deadline for certification renewals and required information is now addressed in new §344.864.

The repeal of §344.840 allows for the content to be revised and republished as new §344.866.

The repeal of §344.850 allows for the content to be revised and republished as new §344.850.

The repeal of §344.860 allows for the content to be revised and republished as new §344.860 and §344.864.

The repeal of §344.870 allows for the content to be revised and republished as new §344.870.

The repeal of §344.880 allows for the content to be revised and republished as new §344.880.

The repeal of §344.890 allows for the content to be revised and republished as new §344.874.

PUBLIC COMMENTS

No comments were received regarding the proposed repeals.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §§344.100, 344.110, 344.120

STATUTORY AUTHORITY

The repeals are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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 September 27, 2017.

TRD-201703865
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: February 1, 2018
Proposal publication date: May 19, 2017
For further information, please call: (512) 490-7014

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SUBCHAPTER B. QUALIFICATIONS FOR EMPLOYMENT

37 TAC §§344.200, 344.210, 344.220, 344.230

STATUTORY AUTHORITY

The repeals are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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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Jill Mata
General Counsel
Texas Juvenile Justice Department
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SUBCHAPTER C. CRIMINAL HISTORY SEARCHES

37 TAC §§344.300, 344.310, 344.320, 344.330, 344.340

STATUTORY AUTHORITY

The repeals are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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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Jill Mata
General Counsel
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SUBCHAPTER D. DISQUALIFYING CRIMINAL HISTORY

37 TAC §344.400, §344.410

STATUTORY AUTHORITY

The repeals are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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 Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER E. EDUCATION REQUIREMENTS FOR EMPLOYMENT AND CERTIFICATION

37 TAC §§344.500, 344.510, 344.520

STATUTORY AUTHORITY

The repeals are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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

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SUBCHAPTER F. TRAINING AND CONTINUING EDUCATION

37 TAC §§344.600, 344.610, 344.620, 344.630, 344.640, 344.650, 344.660, 344.670, 344.680

STATUTORY AUTHORITY

The repeals are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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

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SUBCHAPTER G. COMPETENCY EXAMINATION

37 TAC §344.700

STATUTORY AUTHORITY

The repeal is adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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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Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: February 1, 2018
Proposal publication date: May 19, 2017
For further information, please call: (512) 490-7014

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SUBCHAPTER H. CERTIFICATION

37 TAC §§344.800, 344.810, 344.820, 344.830, 344.840, 344.850, 344.860, 344.870, 344.880, 344.890

STATUTORY AUTHORITY

The repeals are adopted under Section 221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel.

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 344. EMPLOYMENT, CERTIFICATION, AND TRAINING

The Texas Juvenile Justice Department (TJJD) adopts new §§344.100, 344.110, 344.200, 344.202, 344.206, 344.208, 344.210, 344.212, 344.220, 344.230, 344.302, 344.312, 344.320, 344.330, 344.350, 344.410, 344.600, 344.610, 344.620, 344.622, 344.624, 344.626, 344.630, 344.640, 344.660, 344.680, 344.700, 344.800, 344.802, 344.804, 344.850, 344.860, 344.862, 344.864, 344.868, 344.870, 344.874, 344.876, 344.878, 344.880, and 344.884, relating to Employment, Certification, and Training, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2669).

TJJD also adopts new §§344.204, 344.300, 344.400, 344.670, and 344.866 relating to Employment, Certification, and Training, with changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2669).

Changes to the proposed text of §344.204 consist of correcting a reference to another paragraph in the section.

Changes to the proposed text of §344.300 consist of clarifying that juvenile probation department employees in positions that are *eligible for optional certification* (in addition to positions that require certification) must receive a criminal history check. Additional changes to the proposed text are addressed later in this notice in the section containing TJJD's responses to public comments.

Changes to the proposed text of §344.400 consist of correcting a reference to another paragraph in the section.

Changes to the proposed text of §344.670 consist of clarifying that credit for time spent *developing* training (in addition to time spent delivering training) is allowable only for certain topics.

Changes to the proposed text of §344.866 consist of a grammatical revision.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the sections will be youth and public safety and the effective operation of community-based juvenile justice programs and facilities by requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

SECTION-BY-SECTION SUMMARY

New §344.100 modifies and republishes information previously found in §344.100. The new section provides definitions of terms used in the chapter. Changes in the new section include: 1) adding definitions for the following terms: Certification Exam, Certification Period, Community Activities Officer, Conviction, and Grace Period; 2) deleting definitions for the following terms: Applicant, Board, Commission, Competency Examination,

Mandatory Topics, One Year of Graduate Study, Training, and Youth Activities Supervisor; 3) adding community activities officer to the list of positions included within the definition of Certified Officer; 4) clarifying that the definition of Direct, Unsupervised Access does not include interactions that are incidental and momentary; 5) clarifying that the definition of Facility Administrator applies to all juvenile justice facilities, not just secure facilities; 6) making minor wording changes to the definitions of Juvenile Justice Facility and Juvenile Justice Program to align with definitions in other TJJD rules; 7) clarifying that a Juvenile Probation Department consists of the governmental unit itself, rather than the physical offices and premises used by that governmental unit; 8) removing a reference to being in good standing with TJJD in the definition of Juvenile Probation Officer; and 9) adding that the definition of Juvenile Supervision Officer does not include individuals who supervise juveniles in a juvenile justice program unless that program is a juvenile justice alternative education program operated by a juvenile probation department that also operates a juvenile justice facility.

New §344.110 modifies and republishes information previously found in §344.110. The new section establishes general guidelines for interpreting the chapter and addresses the applicability of the chapter. Changes in the new section include deleting the provision that made this entire chapter apply only to certifications granted after the effective date. The entire chapter applies to all covered individuals (i.e., certified officers and certain non-certified personnel) regardless of when the person began employment or began providing services unless the chapter makes a specific exception. Such exceptions are included within the chapter for certain requirements relating to criminal history, education, and the certification exam. Additional changes in the new section include: 1) clarifying that this chapter applies to all juvenile justice programs and facilities in Texas unless otherwise stated; 2) clarifying that all employment and education qualifications required by this chapter must have been completed before a person begins employment; 3) clarifying that the words "including" and "includes" mean that a non-exhaustive list will follow; 4) deleting the paragraph about use of headings; and 5) moving to new §344.400 the provision that exempts criminal history occurring before September 1, 2003.

New §344.200 modifies and republishes certain information previously found in §344.200. The new section establishes the minimum qualifications for certification in certain positions. Changes in the new section include: 1) adding a requirement for juvenile probation officers and juvenile supervision officers to pass the certification exam and complete all training required by this chapter; 2) adding minimum qualifications for a new type of certification--community activities officer--established by this chapter; 3) removing references to youth activities supervisors, which is a type of certification that is no longer authorized by this chapter; and 4) changing the scope of the section to focus on qualifications for *certification,* rather than qualifications for employment.

New §344.202 modifies and republishes certain information previously found in §344.200. The new section establishes the minimum qualifications to serve as a facility administrator. Changes in the new section include clarifying that a newly appointed facility administrator may obtain the required certification as a juvenile supervision officer *after* assuming the role as facility administrator, subject to the application deadlines in this chapter.

New §344.204 modifies and republishes information previously found in §344.500. The new section establishes specific requirements relating to educational qualifications of certified officers. In addition to the change described earlier in this notice, changes in the new section include: 1) clarifying that one year of graduate study means successful completion of at least 18 post-graduate credit hours; 2) clarifying that if graduate study is used to meet certification requirements, it must have been at a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; 3) extending the education requirements for juvenile supervision officers to apply to community activities officers; 4) clarifying that if a high school diploma is used to meet certification requirements, the diploma must have been issued by a high school accredited by a generally recognized accrediting organization or by a high school operated by the United States Department of Defense; 5) adding a list of generally recognized accrediting organizations; 6) adding a process for requesting TJJD to recognize an organization that is not on the list of generally recognized accrediting organizations; and 7) removing home-school-issued diplomas and certificates from the requirement to be validated by an evaluation service.

New §344.206: 1) requires certain diplomas issued by foreign high schools to be accompanied by an evaluation that verifies the education is the substantial equivalent of a United States high school education; 2) requires the evaluation to be performed by an evaluation service that is a member of the National Association of Credential Evaluation Services; 3) requires the results of the evaluation to be sent directly to the employing department or facility; and 4) allows the employing department or facility to require the applicant to pay any fees required for the evaluation.

New §344.208 modifies and republishes information previously found in §344.510. The new section exempts individuals who have been serving as juvenile probation officers since before September 1, 1981, from meeting the educational requirements for juvenile probation officers. Changes in the new section include: 1) clarifying that a lapse of *employment* (rather than a lapse in certification) as a juvenile probation officer will result in the officer being required to meet all employment, certification, and training requirements; and 2) updating a reference to state law.

New §344.210 modifies and republishes information previously found in §344.210. The new section establishes the amount and type of work experience that may be substituted for one year of graduate study in order to obtain certification as a juvenile probation officer. Changes in the new section include: 1) clarifying that the one year of required full-time experience may be paid or unpaid; 2) specifying that one year of full-time experience means at least 1,500 hours in one or more eligible positions within 12 months, which do not have to be consecutive months; and 3) adding a requirement for the department or facility to verify the dates of employment or volunteer service, the position held, and the total number of hours worked.

New §344.212 modifies and republishes information previously found in §344.520. The new section requires departments and facilities to verify that applicants for certified positions have met the educational requirements. The change in the new section consists of clarifying that it is the responsibility of the *department or facility to require proof* of educational attainment (rather than the responsibility of the applicant to provide proof).

New §344.220 modifies and republishes information previously found in §344.220. The new section provides a way to request an exemption from the requirement for a juvenile probation officer to have one year of graduate study or full-time work experience. Changes in the new section include: 1) specifying that a "diligent effort" to employ an individual who meets the graduate

study or work experience requirement means posting the position in at least two job posting sources for at least 20 days; 2) adding a prohibition on hiring the individual without written verification that TJJD has approved the exemption request; 3) adding a provision stating that facility administrators and chief administrative officers are not eligible for this exemption; and 4) deleting the requirement for the chief administrative officer to provide written notification to the juvenile board chair of each request for exemption.

New §344.230 modifies and republishes information previously found in §344.230. The new section prohibits peace officers, prosecuting attorneys, or other persons who are employed by or directly report to a law enforcement or prosecution official from acting in various juvenile probation capacities. Changes in the new section include: 1) adding a reference to the relevant state law; 2) adding facility administrator and community activities officer to the list of capacities in which law enforcement or prosecution officials may not serve; and 3) to more closely match the statute, clarifying that law enforcement or prosecution officials may not be made responsible for supervising a juvenile *on probation* (rather than in a juvenile justice facility or program).

New §344.300 modifies and republishes information previously found in §344.300 and §344.310. The new section establishes requirements for submitting fingerprints and conducting background checks. In addition to the changes described earlier in this notice, changes in the new section include: 1) clarifying that, in addition to positions requiring certification, the list of individuals who require a criminal history check now includes anyone who may have direct, unsupervised access to juveniles in a juvenile justice facility or program and who is any of the following--an employee in a position not requiring certification, a volunteer or intern, or an individual who provides goods or services under contract, except for employees of a public school district; 2) clarifying that the criminal history check must be *completed* (rather than initiated) before an individual begins employment or service provision; 3) adding that the department must *conduct* the check for contractors who require a criminal history check (rather than verify that the employer has conducted a check within the past two years); 4) clarifying that a juvenile's attorney, family members, managing conservator, guardian, approved visitors, and any other person not specifically listed in this section do not require criminal history checks; 5) adding a requirement for departments to maintain a Fingerprint Applicant Clearinghouse of Texas (FACT) subscription for each individual in a position requiring a criminal history check for as long as the individual remains in such a position; and 6) removing TJJD's obligation to maintain a FACT subscription for certified officers.

New §344.302 modifies and republishes certain information previously found in §344.300. The new section requires departments to review an applicant's military history and to request additional information from the appropriate governmental entity if the character of service is other than honorable discharge. Changes in the new section include: 1) replacing references to the DD-214 form with "separation or discharge documents;" 2) adding a requirement for the department or facility to use information from the separation or discharge documents and any additional requested information to determine if the individual has a disqualifying history *before the individual begins employment or service provision;* and 3) adding a requirement for the department or facility to review the most recent separation or discharge documents when a currently employed certified officer returns from a period of active duty or is discharged.

New §344.312 modifies and republishes certain information previously found in §344.310. The new section exempts employees of facilities or programs that are licensed by other state agencies from the criminal history checks performed by juvenile probation departments, provided the license of the facility/program is in good standing with the licensing agency. Changes in the new section include: 1) adding that employees of facilities or programs that are licensed in other states by agencies equivalent to the Texas Department of Family and Protective Services or the Texas Health and Human Services Commission are exempt from the background check requirements of this chapter; and 2) clarifying that the term "license" may include permits, certificates, registrations, or other forms of permission required by law.

New §344.320 modifies and republishes information previously found in §344.320. The new section requires a criminal history check when a person transfers into a position requiring certification or when a certified officer accepts simultaneous or subsequent employment in a different department or in a private facility. Changes in the new section consist of non-substantive wording changes and clarifications.

New §344.330 modifies and republishes information previously found in §344.330. The new section explains the responsibilities of private juvenile justice facilities and of the juvenile probation department serving the county where a private juvenile justice facility is located with regard to conducting criminal history checks for the private facility. Changes in the new section include: 1) clarifying that the department must maintain a subscription to FACT records on behalf of the private facility for each person requiring a criminal history check; 2) adding a requirement for a private facility to notify the department within 10 calendar days after an individual subject to criminal history checks separates from employment, ceases to provide services, or transfers out of a position that requires criminal history checks; 3) adding a requirement for the department to immediately notify the private facility administrator in writing if the department receives a FACT alert regarding an arrest, conviction, or deferred adjudication for a disqualifying offense for a person who is employed by or provides services at the private facility; and 4) removing the requirement for the private facility to contact the referring criminal justice agency to follow up on any arrest for which a disposition has not been reported.

New §344.350 requires departments and facilities to verify with TJJD, before making an offer of employment for a certification-eligible position, that several disqualifying factors are not present.

New §344.400 modifies and republishes information previously found in §344.310 and §344.400. The new section establishes the disqualifying criminal history for positions requiring certification and for certain non-certified positions. In addition to the changes described earlier in this notice, changes in the new section include adding a lifetime ban for individuals convicted of a felony listed in Article 42A.054, Texas Code of Criminal Procedure (formerly known as "3g" offenses). This ban will not affect officers who were certified before the date this section takes effect unless the officer's certification expires in the future. This ban will not affect individuals in non-certified positions who began providing services for the department before this revised section takes effect unless there is a future break in service. Additional changes in the new section include: 1) adding a requirement for a department to notify TJJD in writing within 10 days if the department receives notice that a person in a position requiring certification has been *arrested* for potentially disqualifying criminal conduct; and 2) adding a requirement for a depart-

ment to notify TJJD in writing within 10 days if the department receives notice that a person in a position requiring certification has been *convicted* of disqualifying criminal conduct.

New §344.410 modifies and republishes information previously found in §344.310 and §344.410. The new section establishes the methods that may allow individuals convicted of Class B misdemeanors to be eligible for certification or to serve in certain non-certified positions. Changes in the new section include adding a requirement that the justification must be documented if a juvenile board grants an exemption allowing an individual with a conviction for a Class B misdemeanor to serve in certain non-certified positions.

New §344.600 modifies and republishes information previously found in §344.600. The new section establishes the number of training hours required for initial certification. Changes in the new section include: 1) adding that certification as a community activities officer requires a minimum of 40 hours of training, which must include the topics listed in §344.626; and 2) adding that, to be eligible for credit, training must have been received within 18 months prior to the date the certification application is submitted; and 3) removing references to certification of youth activities supervisors.

New §344.610 modifies and republishes information previously found in §344.610. The new section establishes that training must be relevant to an officer's duties and requires that TJJD's standardized curriculum be used when training on mandatory exam topics. The section also establishes who may provide training on the mandatory exam topics. Changes in the new section include adding that individuals who are qualified by relevant knowledge, education, and/or experience may provide training on mandatory exam topics. Such individuals are not required to complete specialized training provided by TJJD or the employing department.

New §344.620 modifies and republishes certain information previously found in §344.620. The new section lists the topics that are covered in the certification exam for juvenile probation officers. Changes in the new section include making several changes to the list of required topics, including: 1) adding trauma-informed care as a topic; 2) adding adolescent development and behavior as a topic; 3) adding cultural competency as a topic; 4) adding risk and needs assessment to the existing topic covering case planning and case management; 5) clarifying that prevention is included in the topic that addresses identifying and reporting abuse, neglect, and exploitation; and 6) clarifying that the topic covering the Prison Rape Elimination Act focuses on the purpose and goals of the Act.

New §344.622 modifies and republishes certain information previously found in §344.620. The new section lists the topics that are covered in the certification exam for juvenile supervision officers. Youth activities supervisors are no longer included in the requirements of this section. Changes in the new section include clarifying that successful completion of the certification exam is required before a juvenile supervision officer may count in any staff-to-juvenile ratio. Additional changes in the new section include making several changes to the list of required topics, including: 1) adding trauma-informed care as a topic; 2) adding cultural competency as a topic; 3) clarifying that prevention is included in the topic that addresses identifying and reporting abuse, neglect, and exploitation; 4) clarifying that the topic covering the Prison Rape Elimination Act focuses on the purpose and goals of the Act; and 5) changing "adolescent physical development and exercise related health risks" to "adolescent development and behavior."

New §344.624 modifies and republishes certain information previously found in §344.620. The new section lists the topics not covered on the certification exam that are required for initial certification as a juvenile supervision officer. Changes in the new section include: 1) removing the reference to youth activities supervisors; 2) adding verbal de-escalation policies, procedures, and practices as a topic; 3) adding resident-initiated separation as a topic; 4) adding searches of juveniles as a topic; 5) clarifying that the topic addressing behavior management must also include the juvenile discipline plan and safety-based seclusion; 6) clarifying that the topic addressing use of restraints must also cover TJJD's standards on restraints, including prohibited techniques and criteria for use; 7) clarifying that the topic addressing department-specific policies for reporting abuse, neglect, and exploitation must also include prevention and identification; 8) removing supervision of residents in seclusion as a stand-alone topic; 9) combining the topic covering resident supervision with the topic covering juvenile behavior observation and documentation; 10) removing risk management from the topic addressing facility safety and security; 11) removing cultural diversity as a topic (cultural competency is now included in §344.622 as a mandatory exam topic); 12) clarifying that the topic addressing fire drill procedures must also include the fire safety plan; 13) clarifying that the topic addressing emergency and evacuation procedures relates to *non-fire* emergencies; 14) removing departmental security from the topic addressing emergency and evacuation procedures; and 15) clarifying that the topic addressing medical and health services relates to referral of residents in need of medical, mental health, or dental services, as identified by staff or reported by residents.

New §344.626 lists the training topics that must be received for an individual to obtain initial certification as a community activities officer.

New §344.630 modifies and republishes information previously found in §344.630. The new section lists the requirements that on-the-job training (OJT) must meet in order to be eligible for credit toward certification or renewal of certification. Changes in the new section include: 1) adding that no more than 20 hours of OJT may be counted toward initial certification or renewal of certification for community activities officers; 2) adding a list of specific elements that must be included in the documentation of an OJT program in order for the training to count toward certification; 3) removing the requirement for departments to use the OJT documentation format developed by TJJD or an equivalent format; and 4) removing references to certification of youth activities supervisors.

New §344.640 modifies and republishes information previously found in §344.640. The new section establishes the amount and type of continuing education officers must receive to renew their certifications. Changes in the new section include: 1) reducing the number of continuing education hours required for juvenile probation officers from 80 to 60; 2) adding the following to the list of topics that juvenile supervision officers must receive during each certification period--preventing, identifying, and reporting abuse, neglect, and exploitation; verbal de-escalation policies, procedures, and practices; and standards regarding the use of personal and mechanical restraints, including prohibited techniques and criteria for use; 3) adding that community activities officers must complete 40 hours of continuing education to maintain an active certification; 4) adding a list of five topics that com-

munity activities officers must receive during each certification period; 5) adding that the requirement for chief administrative officers and facility administrators to complete 20 hours of management-related topics does not apply to the certification period during which an individual is appointed as a chief administrative officer or facility administrator; and 6) clarifying that the amount of required continuing education does not change if an officer's certification becomes inactive and is later reactivated within the same certification period.

New §344.660 modifies and republishes information previously found in §344.660. The new section establishes that TJJD must approve training and continuing education topics in order for them to be eligible for credit toward certification. Changes in the new section include adding that each training or continuing education event must meet the following criteria in order to be eligible to count toward certification: 1) *relevant,* which means it is related to job responsibilities, the field of juvenile justice, or fields of study approved by TJJD; 2) *organized,* which means it is based on documentation that includes specific learning objectives, training methods, and evaluation techniques; and 3) *planned,* which means it is scheduled and conducted in a predetermined location. If the training is provided by the department or facility, the training must also be *evaluated,* which means participants are provided an opportunity to provide written feedback and/or participants are tested to measure the transfer of knowledge. Additional changes to the section consist of adding that TJJD may, on a case-by-case basis, approve events for credit that do not meet these specific requirements. Further changes to the section consist of adding that departments and facilities may contact TJJD to request advance approval of a training or continuing education topic.

New §344.670 modifies and republishes information previously found in §344.670. The new section sets limits on the types and methods of training that may be counted toward certification. In addition to the changes described earlier in this notice, changes in the new section include: 1) adding that any training topic may be counted twice in a certification period; 2) adding that any training topic may be counted up to four times in a certification period if an officer is concurrently employed by more than one department or facility or has transferred to a new department or facility within a certification period; 3) clarifying that meetings, reviews of policy/procedure, and reviews of employment-related benefits are not eligible for training credit *unless they meet the requirements in §344.660;* 4) adding that firearms training required under §341.808 is not eligible for credit toward continuing education requirements; 5) clarifying that juvenile probation officers and juvenile supervision officers may not count more than 20 hours of *pre-recorded* training in a certification period; 6) adding that community activities officers may not count more than 20 total hours of video or web-based training, with no more than 10 of those hours from pre-recorded training; 7) removing the paragraph relating to credit for correspondence courses (these are generally college courses, which are addressed elsewhere in this section); 8) adding that credit for college courses may be used toward requirements for *initial* certification, in addition to certification renewal; 9) clarifying that TJJD determines on a case-by-case basis whether training credit will be granted for a particular college course and how many training hours will be approved for credit; 10) increasing the maximum training credit that may be granted for developing training curriculum from 10 hours to 20 hours; and 11) increasing the maximum training credit that may be granted for time spent delivering training from 10 hours to 20 hours.

New §344.680 modifies and republishes information previously found in §344.680. The new section requires departments to keep documentation of training received. Changes in the new section include: 1) specifying that documentation of training *used for certification* (rather than all training received) must be maintained *at a minimum until the end of the current certification period plus two years;* 2) specifying that training curricula are included as a type of training documentation; and 3) clarifying that a department or facility must submit training records to another department or facility upon request if an officer obtains concurrent employment at the other department or facility.

New §344.700 modifies and republishes information previously found in §344.700. The new section requires officers to pass a certification exam to be eligible for certification. Changes in the new section include: 1) removing references to a certification exam for youth activities supervisors; 2) specifying that the department or facility that employs the individual taking the exam must either pay any required exam fee or require the individual to pay the fee; 3) adding that a score of 70% is required to pass the exam; 4) adding that individuals are allowed three attempts to pass the exam and that if an individual has not passed the exam on the third attempt, he or she may not take the exam again until 180 days have elapsed and he or she has repeated training in all mandatory exam topics; 5) adding that individuals who are dismissed from the exam for cheating or otherwise failing to follow exam rules are not eligible to take the exam again; 6) adding a requirement for departments or facilities to notify TJJD within one business day after an individual is dismissed from an exam for cheating or not following exam rules; 7) removing references to the process for dissemination of exam scores; 8) removing references to TJJD's responsibilities for retention of exam scores; 9) changing the dates on which the requirement to pass the exam takes effect (the exam for juvenile probation officers will be required for individuals who began employment on or after 9/1/16 and the exam for juvenile supervision officers will be required for individuals who began employment on or after 9/1/17); 10) adding an exemption from the requirement to pass the exam for individuals whose certifications have expired if less than six months has elapsed between the date of expiration and the date the individual submits an application for the same certification; and 11) adding a requirement for departments and facilities that proctor the certification exam to ensure the proctor complies with TJJD's proctoring agreement.

New §344.800 modifies and republishes certain information previously found in §344.800. The new section lists the individuals who must maintain a certification issued by TJJD. Changes in the new section include: 1) adding that an individual who is employed by a juvenile justice program and whose position may require supervising juveniles in a non-secure setting within a juvenile justice program must maintain an active certification as a community activities officer unless the individual holds another TJJD certification or is providing professional services; 2) removing the requirement that any individual, other than a certified physical education teacher, must be certified as a juvenile supervision officer if the individual participates in administering intensive physical activity in a juvenile justice alternative education program (such individuals will now generally be required to maintain certification as community activities officers); 3) adding that any staff member whose position may require *temporarily* performing the duties of a juvenile probation officer must maintain an active certification as a juvenile probation officer; 4) adding that any staff member whose position may require *temporarily* performing the duties of a juvenile supervision officer must maintain

an active certification as a juvenile supervision officer; 5) clarifying that supervisors in the direct chain of supervision over juvenile supervision officers must be certified *as a juvenile supervision officer and/or a juvenile probation officer;* and 6) adding that supervisors in the direct chain of supervision over community activities officers must be certified as a juvenile probation officer, juvenile supervision officer, and/or community activities officer.

New §344.802 modifies and republishes certain information previously found in §344.800. The new section lists the individuals who may maintain a certification issued by TJJD, although it is not required. Changes in the new section include: 1) clarifying that TJJD's optional certifications are available only to individuals who meet the criteria for one of TJJD's three certifications; and 2) removing staff responsible for supervising youth in a juvenile justice alternative education program from the list of optional certifications. Such staff will now be required to maintain a certification, as established by §344.800.

New §344.804 modifies and republishes certain information previously found in §344.800. The new section establishes circumstances under which a person may hold more than one TJJD certification. Changes in the new section include: 1) clarifying that individuals may hold more than one certification only if their job duties are consistent with *all certifications held;* 2) adding that an individual may not hold an active certification as a juvenile supervision officer and as a community activities officer unless the individual is concurrently employed by more than one department or facility; and 3) adding that training received may be used for credit toward more than one type of certification if is relevant to each certification.

New §344.850 modifies and republishes information previously found in §344.850. The new section requires certified officers to remain employed with a governmental unit or a private provider under contract with a governmental unit in order to maintain an active certification. Changes in the new section include clarifying that an individual must also remain employed in a position eligible for certification to maintain an active certification.

New §344.860 modifies and republishes information previously found in §344.860. The new section explains the requirements for submitting an application for initial certification. Changes in the new section include: 1) removing the requirements for certain specified individuals to review, approve, and/or submit each application; 2) adding that if an individual's application has not been submitted within the required time frame, he or she may not perform the duties of a certified officer or count toward any staff-to-juvenile ratios until the application has been approved by TJJD; 3) clarifying that part-time staff *are* allowed (rather than may be allowed) an additional 90 days to complete the required training; 4) adding that an application must include verification that the applicant currently meets the criminal history standards in this chapter; 5) deleting the requirement that the criminal history check must have been completed within 180 days prior to submission of the application; 6) adding that when a department or facility fails to respond within 14 calendar days to TJJD's request for additional information for an application, the officer is ineligible to perform the duties of a certified officer and may not count in any staff-to-juvenile ratio; and 7) clarifying that when TJJD denies an application because TJJD has decided a certification will not be granted, the individual may not be employed in any position requiring certification.

New §344.862 establishes the length of a certification period. The new section also explains that certifications that are not renewed by the deadline will expire.

New §344.864 modifies and republishes certain information previously found in §344.860. The new section explains the requirements for submitting an application for certification renewal. Changes in the new section include: 1) adding that renewal applications must be submitted before the end of an officer's certification period; 2) adding that renewal applications may not be submitted earlier than 30 days before the end of an officer's certification period; 3) adding that an officer's certification expires if a renewal application is not submitted before the end of the certification period plus any applicable grace period or extension; 4) adding that when a department or facility fails to respond within 14 calendar days to TJJD's request for additional information for an application, the officer is ineligible to perform the duties of a certified officer and may not count in any staff-to-juvenile ratio; 5) adding that a renewal application must include verification that the applicant currently meets the criminal history standards in this chapter; 6) deleting the requirement that the criminal history check must have been completed within 180 days prior to submission of the application; and 7) adding that when TJJD denies a renewal application because TJJD has decided a certification renewal will not be granted, the individual may not be employed in any position requiring certification and may not perform the duties of a certified officer.

New §344.866 modifies and republishes information previously found in §344.840. The new section explains the various statuses of TJJD-issued certifications. In addition to the changes described earlier in this notice, changes in the new section include: 1) changing the definition of *inactive* to mean that an officer's certification has not expired, but the officer is ineligible to perform the duties of a certified officer because the officer is no longer employed in a position that either requires or is eligible for certification, the officer has been convicted of a disqualifying criminal offense, or the officer's application is determined by TJJD to contain deliberately false or misleading information; 2) adding a status for expired, which means that an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension; 3) deleting the provisional status (provisional status allowed an extra 180 days to evaluate or verify an individual's education credentials); 4) clarifying that the suspended status results in the officer no longer being eligible for employment in a position requiring certification; 5) removing a statement that indicated the end date of suspensions is determined in a disciplinary hearing; 6) clarifying that the revoked status results in the officer not being eligible for any future certification; and 7) adding a status for a voluntarily relinquished certification.

New §344.868 establishes that all inactive certifications will expire on the date this section takes effect if the deadline for submitting a renewal application has already passed.

New §344.870 modifies and republishes information previously found in §344.870. The new section allows TJJD to grant extensions of the deadline for submitting renewal applications. Changes in the new section include: 1) removing the requirement for TJJD to grant extensions of the renewal deadline in increments up to 90 days; and 2) clarifying that the result of not satisfying all requirements necessary to maintain an active certification by the end of the extension period *is that the certification expires.*

New §344.874 modifies and republishes information previously found in §344.890. The new section addresses requirements for notifying TJJD when certain staff members separate from employment or transfer to positions not eligible for certification. Changes in the new section include: 1) adding that the department or facility must notify TJJD if a certified officer transfers to a position that does not require certification and that is not eligible for certification; 2) changing the deadline for notifying TJJD of separations and transfers from 10 working days to 10 calendar days; and 3) adding that the department or facility must notify TJJD as soon as possible but no later than one business day after an individual who is an authorized user of any TJJD web-based computer application separates from employment.

New §344.876 requires departments and facilities to ensure TJJD's certification system reflects the last known address of each certified officer employed by the department or facility.

New §344.878 requires a certified officer who separated from employment with a department or facility to notify TJJD's certification office of all address changes occurring after separation of employment until the certification expires or is reactivated, revoked, or voluntarily relinquished.

New §344.880 modifies and republishes information previously found in §344.880. The new section requires departments and facilities to request TJJD to transfer or reactivate the certification record when an officer returns from inactive or expired status or obtains concurrent employment. Changes in the new section include: 1) adding that departments and facilities must request TJJD to restore an individual's certification record if the individual has an expired certification and is hired into a position requiring certification; 2) adding that an application for a new certification must be submitted when an individual with an expired certification has his or her record restored; 3) adding that an individual whose expired certification record is restored must complete all training requirements of this chapter; 4) adding that training received during the entire previous certification period may be used on the application if a certification was expired for less than six months; 5) adding that training received within the previous 18 months may be used on the application if a certification was expired for six months or more; 6) adding that an individual with an expired certification as a juvenile probation officer or juvenile supervision officer must pass the certification exam if he or she applies for the same type of certification six months or more after his or her certification expired; 7) clarifying that an officer with a reactivated certification may count all training received during the current certification period to meet continuing education requirements; and 8) clarifying that an officer with a reactivated certification must complete all required continuing education hours *within the current certification period* (rather than within 180 days after employment).

New §344.884 allows a certified officer to submit a request to TJJD to voluntarily relinquish a certification. The new section establishes that TJJD will decide whether to accept or deny the request and will also determine whether an individual who has relinquished his/her certification will be eligible for future certification.

PUBLIC COMMENTS

TJJD received public comments from the Bexar County Juvenile Probation Department. The following is a summary of the comments and TJJD's responses.

Comment: In §344.300(c), include other individuals acting under the auspices of a public school district (e.g., volunteers) as not requiring a criminal history check if they are providing services in a juvenile justice facility or program, and have completed all criminal history checks required by the Texas Education Agency (TEA). There does not appear to be any reason to limit this exemption to only employees, since it is the completion of criminal history checks that would seem to be the decisive fact in not requiring these individuals to undergo yet another criminal history check.

Response: TJJD's proposed rules intend to ensure that individuals who have unsupervised access to juveniles while providing services on behalf of the juvenile probation department have undergone a fingerprint-based criminal history check and that such individuals are included in the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), which allows the juvenile probation department to receive ongoing notifications of new arrests and subsequent court actions.

The type of criminal history check required for school volunteers is not fingerprint-based and is not part of the FACT clearinghouse. TJJD does not believe these checks are sufficient to protect the safety of juveniles due to the lack of ongoing notifications of new arrests and other court actions.

The proposed text allows an exception for school district employees because they are included in the FACT clearinghouse, which allows the school district to receive arrest notifications. Additionally, the school district generally controls which employees are sent to provide educational services to the juvenile probation department, which may make it impractical for the department to conduct its own criminal history checks before teachers begin providing services.

No changes were made to the proposed text as a result of this comment.

Comment: In §344.300(c), extend not requiring a criminal history check to employees and other individuals acting under the auspices of a department contractor that already subscribes to FACT if the individual is providing services in a juvenile justice facility or program, and the contractor has provided written certification to the department stating that the individual is enrolled in FACT and does not have a disqualifying history as defined in §344.400, and that the contractor will notify the department if FACT alerts pertaining to the individual are received or if the individual ceases to be enrolled in FACT. Again, there does not appear to be any reason to not extend the same logic applied to employees of a public school district to employees and individuals of contractors who have their own FACT account since it is the successful completion of a criminal history check, in tandem with the ongoing notification provided by FACT, that would seem to be the decisive factor in not requiring these employees and individuals to undergo yet another criminal history check.

Response: Unless a contractor is an entity listed in Government Code Chapter 411, the contractor would not be authorized by law to subscribe to the FACT clearinghouse. Even if the contractor is an entity authorized by law to subscribe to the FACT clearinghouse, not all entities have the same level of access to criminal history information maintained by the Department of Public Safety. There may be certain types of criminal history information that would be available to the juvenile probation department that would not be available to the contractor. Additionally, entities' ability to share criminal history information is limited by law, which may mean the contractor is unable to legally provide the juvenile probation department with any criminal history information regarding the contractor's employees.

Due to these factors, TJJD's proposed rules require contractors who will have unsupervised access to juveniles to be registered in the FACT clearinghouse under the juvenile probation department's Originating Agency Identifier (ORI) number. However, to reduce potential redundancies, the proposed rules allow a juvenile probation department to subscribe to a contractor's FACT record if it already exists because the contractor has provided services to another juvenile probation department. Allowing departments to subscribe to existing FACT records would eliminate the need for the contractor to submit an additional set of fingerprints.

No changes were made to the proposed text as a result of this comment.

Comment: In §344.300(c), extend not requiring a criminal history check to employees and other individuals acting under the auspices of a department contractor if they are providing services in a juvenile justice facility or program, are Professionals, as defined in §344.100(16), and have provided documentation confirming that their professional license is in good standing. As currently written, the professional reciprocity is only extended to professionals who work for a public school district, even though virtually all of the other "professionals" listed in §344.100(16) are held to high codified professional standards.

Response: TJJD's proposed rules intend to ensure that individuals who have unsupervised access to juveniles while providing services on behalf of the juvenile probation department have undergone a fingerprint-based criminal history check and that such individuals are included in the FACT clearinghouse, which allows the juvenile probation department to receive ongoing notifications of new arrests and subsequent court actions.

Not all licensing entities require fingerprint-based criminal history checks. Additionally, not all licensing entities require periodic criminal history checks. Even for licensing entities that do require fingerprint-based checks and enrollment in the FACT clearinghouse, the disqualifying criminal history standards used by the licensing entity may be different than those required by TJJD's administrative rules.

No changes were made to the proposed text as a result of this comment.

Comment: In §344.300(f), clarify that the criminal history check requirements do not apply to any individuals who are statutorily required or court ordered to provide services to the juvenile. There appears to be no reason to limit the section to specific positions, such as attorneys and managing conservators. Examples of individuals who would be included following this revision are those working with Child Advocates of San Antonio (Tex. Fam. Code Chapter 107, Subchapter C) and with ChildSafe (Tex. Fam. Code Chapter 264, Subchapter E).

Response: The list of individuals in §344.300(f) who are not subject to criminal history checks is not intended to be an exhaustive list. The only individuals required to have criminal history checks are those listed in §344.300(b).

The proposed text of §344.300(f) has been modified to clarify that "any other individual who is not listed in subsection (b) of this section" is also exempt from the criminal history check requirements.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §344.100, §344.110,

STATUTORY AUTHORITY

The new sections are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new sections are also adopted under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

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. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §§344.200, 344.202, 344.204, 344.206, 344.208, 344.210, 344.212, 344.220, 344.230

STATUTORY AUTHORITY

The new sections are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new sections are also adopted under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

§344.204. Education Requirements.

(a) Juvenile Probation Officer.

(1) To be eligible for certification as a juvenile probation officer, an individual must meet the following educational requirements:

(A) have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; and

(B) have either:

(i) one year of graduate study at a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJD; or

(ii) qualifying work experience as specified in §344.210 of this title.

(2) For purposes of this section, one year of graduate study means successful completion of at least 18 post-graduate credit hours.

(b) Juvenile Supervision Officer and Community Activities Officer.

(1) To be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJD considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this title; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJD certification office. Based on the documentation, TJJD will determine whether the entity is a generally recognized accrediting organization.

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

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SUBCHAPTER C. CRIMINAL HISTORY AND BACKGROUND CHECKS

37 TAC §§344.300, 344.302, 344.312, 344.320, 344.330, 344.350

STATUTORY AUTHORITY

The new sections are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new sections are also adopted under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

§344.300. Criminal History Checks.

(a) Department or facility policy must prohibit direct, unsupervised access to juveniles in a juvenile justice program or facility by any person with a disqualifying criminal history as described in §344.400 of this title.

(b) A criminal history check as described in this section must be conducted for:

(1) an individual in a position requiring certification or eligible for optional certification; and

(2) an individual who may have direct, unsupervised access to juveniles in a juvenile justice facility or program and who is:

(A) an employee in a position not requiring certification and not eligible for optional certification;

(B) a volunteer;

(C) an intern; or

(D) an individual who provides goods or services under contract, except as provided in subsection (c) of this section.

(c) A criminal history check as specified in this section is not required for employees of a public school district who:

(1) provide services in a juvenile justice facility or program; and

(2) have completed all criminal history checks required by the Texas Education Agency.

(d) Before any individual listed in subsection (b) of this section begins employment or service provision:

(1) the department or facility must ensure the individual has electronically submitted fingerprints using Fingerprint Applicant Services of Texas (FAST) and verify that the department is able to subscribe to the individual's Fingerprint-Based Applicant Clearinghouse of Texas (FACT) record;

(2) the department must subscribe to that individual's record in FACT; and

(3) the department must use the information in FACT to determine if the individual has a disqualifying criminal history as specified in §344.400 of this title.

(e) The department must maintain a FACT subscription for each individual in a position requiring a criminal history check for as long as the individual remains in such a position. This requirement applies regardless of the date employment or service provision began.

(f) The requirements of this section do not apply to the juvenile's attorney, family members, managing conservator, guardians, individuals listed as a juvenile's approved visitors, or any other individual not listed in subsection (b) of this section.

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

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SUBCHAPTER D. DISQUALIFYING CRIMINAL HISTORY

37 TAC §344.400, §344.410

STATUTORY AUTHORITY

The new sections are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new sections are also adopted under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

§344.400. Disqualifying Criminal History.

(a) Applicants for Certification. An individual with the following criminal history is not eligible for initial certification or initial employment in a position requiring certification:

(1) deferred adjudication or conviction for a felony listed in Texas Code of Criminal Procedure Article 42A.054 (formerly known as "3(g) offenses" under Article 42.12) or a substantially equivalent violation against the laws of another state or the United States, regardless of the date of disposition;

(2) deferred adjudication or conviction for a felony other than those referenced in paragraph (1) of this subsection or a substantially equivalent violation against the laws of another state or the United States within the past 10 years;

(3) deferred adjudication or conviction for any Class A or B misdemeanor in Texas or a substantially equivalent violation against the laws of another state or the United States within the past five years; or

(4) current requirement to register as a sex offender under Texas Code of Criminal Procedure Chapter 62.

(b) Individuals Employed in a Position Requiring Certification. An individual with the criminal history described in subsection (a) of this section is not eligible for continued employment in a position requiring certification unless a variance has been granted in accordance with §344.410 of this title.

(c) Other Individuals Subject to Criminal Background Checks. An individual with the criminal history described in subsection (a) of this section is not eligible to serve in a position listed in §344.300(b)(2) of this title unless an exemption has been granted in accordance with §344.410 of this title.

(d) General Provisions.

(1) The date of conviction or order of deferred adjudication is used to determine when applicable time periods expire.

(2) Regardless of the time periods set forth in subsection (a) of this section, at least one year must have elapsed since the completion of any period of incarceration, community supervision, or parole.

(3) If a department receives notification of an arrest for potentially disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the alleged offense no later than 10 calendar days after receiving notice of the arrest.

(4) If a department receives notification of a conviction for disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the offense no later than 10 calendar days after receiving notice of the conviction.

(5) Subsection (a)(1) of this section does not apply to officers certified before the effective date of this section unless the certification expires.

(6) Subsection (a)(1) of this section does not apply to individuals in a position listed in §344.300(b)(2) of this title who began service provision before the effective date of this section with no break in service after that date.

(7) Any conviction occurring before January 1, 2010, will not disqualify an individual in a position listed in §344.300(b)(2) of this title who began employment or service provision before January 1, 2010, with no break in service after that date.

(8) Any felony conviction, felony deferred prosecution, felony deferred adjudication, misdemeanor conviction, misdemeanor deferred prosecution, or misdemeanor deferred adjudication occurring before September 1, 2003, will not disqualify a certified officer who held an active certification on September 1, 2003.

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. TRAINING AND CONTINUING EDUCATION

37 TAC §§344.600, 344.610, 344.620, 344.622, 344.624, 344.626, 344.630, 344.640, 344.660, 344.670, 344.680

STATUTORY AUTHORITY

The new sections are adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new sections are also adopted under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

§344.670. Training Methods and Limitations.

(a) Limitations on Topics.

(1) Repetitive Training.

(A) Credit will not be granted more than twice in a certification period for training that is duplicative in nature, except as noted in subparagraph (B) of this paragraph.

(B) If an officer is concurrently employed by more than one department or facility or has transferred to a new department or facility within a certification period, credit for a training topic may be granted up to four times in a certification period.

(2) Review of Policy and Procedure. A review of the policies and procedures of the department or facility is not eligible for credit unless documentation reflects that the review meets the requirements in §344.660(a) of this title.

(3) Meetings/Staff Meetings. Meetings are not considered a training activity unless supporting documentation indicates that all or part of the meeting meets the requirements in §344.660(a) of this title. If only a portion of the meeting meets the requirements in §344.660(a) of this title, credit may be awarded only for that portion of the meeting.

(4) Review of Employee Benefits. A review of employment-related benefits and plans is not eligible for credit unless:

(A) the officer is a supervisor and the review relates to supervisory duties or is being provided as part of a formal leadership development program; and

(B) the review meets the requirements in §344.660(a) of this title.

(5) Firearms Training. Training required under §341.808 of this title relating to carrying a firearm in the course of an officer's official duties is not eligible for credit toward continuing education requirements in this chapter.

(b) Limitations on Training Methods. The hour limitations in this section apply to training received within a certification period.

(1) Video or Web-Based Training for Juvenile Probation Officers and Juvenile Supervision Officers. For juvenile probation officers and juvenile supervision officers, a maximum of 40 hours of any combination of the following types of training may be eligible for credit:

(A) interactive, web-based training, such as live webinars;

(B) video conferencing; and

(C) pre-recorded training, which may account for no more than 20 hours of the total.

(2) Video or Web-Based Training for Community Activities Officers. For community activities officers, a maximum of 20 hours of any combination of the following types of training may be eligible for credit:

(A) interactive, web-based training, such as live webinars;

(B) video conferencing; and

(C) pre-recorded training, which may account for no more than 10 hours of the total.

(3) College Courses. A maximum of 40 hours may be eligible for credit for successful completion of one or more college courses in topics relevant to the officer's job duties. A course must be provided by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board. TJJD determines on a case-by-case basis whether credit is granted for the course and the number of hours approved for credit.

(c) Limitations on Credit for Development and Delivery of Training.

(1) A training provider may claim a maximum of 20 hours in a certification period for the time spent delivering training.

(2) An individual who develops training curriculum may claim a maximum of 20 hours in a certification period for the time spent developing the curriculum.

(3) Credit under this subsection is allowed only for the topics listed in §§344.620, 344.622, 344.624, and 344.626 of this title.

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

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SUBCHAPTER F. CERTIFICATION EXAM

37 TAC §344.700

STATUTORY AUTHORITY

The new section is adopted under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new section is also adopted under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

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SUBCHAPTER G. CERTIFICATION

37 TAC §§344.800, 344.802, 344.804, 344.850, 344.860, 344.862, 344.864, 344.866, 344.868, 344.870, 344.874, 344.876, 344.878, 344.880, 344.884

STATUTORY AUTHORITY

The new sections are adopted under Section 221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The new sections are also adopted under Sections 222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

§344.866. Certification Status.

(a) Active. A status that indicates a certified officer meets the current requirements of certification as set forth in this chapter and is eligible to perform the duties of a juvenile probation officer, juvenile supervision officer, and/or community activities officer, as applicable.

(b) Inactive. A status that indicates an officer's certification has not expired but the officer is ineligible to perform the duties of a certified officer because:

(1) the officer is no longer employed in a position that either requires or is eligible for the certification held;

(2) the officer has been convicted of a disqualifying criminal offense; or

(3) the officer's application for certification or renewal of certification is determined by TJJD to contain deliberately false or misleading information.

(c) Expired. A status that indicates an application to renew or reactivate a certification has not been submitted before the end of the grace period or any applicable extension.

(d) Suspended. A status that indicates an officer's certification is actively suspended and the officer is no longer eligible for employment in a position requiring certification. If the officer's certification is suspended for failure to pay child support under Section 232.003, Texas Family Code, the suspension remains in effect until TJJD receives an order staying or vacating the suspension.

(e) Revoked. A status that indicates an officer's certification has been permanently revoked by TJJD and that the officer is no longer eligible for employment or certification as a juvenile probation officer, juvenile supervision officer, or community activities officer. An individual who has had his/her certification revoked is not eligible for any future certification.

(f) Voluntarily Relinquished. A status that indicates an officer has voluntarily relinquished his/her certification as provided in §344.884 of this title.

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 355. NON-SECURE CORRECTIONAL FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts amendments to §355.404, concerning designation of a facility administrator, §355.426, concerning housing records, §355.428, concerning qualifications to provide resident supervision, §355.430, concerning supervision requirements, §355.524, concerning medical separation, §355.538, concerning supervision of moderate-risk suicidal youth, §355.638, concerning disciplinary restriction, §355.640, concerning disciplinary separation, §355.802, concerning restraint requirements, §355.804, concerning restraint prohibitions, and §355.808, concerning personal restraint, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2690).

TJJD also adopts new §355.429, concerning additional training required for certified officers hired by a different department, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2690).

TJJD also adopts the repeal of §355.230, concerning criminal history searches, §355.434, concerning primary control room, and §355.818, concerning preventive mechanical restraints, without changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2690).

Additionally, TJJD adopts amendments to §355.100, concerning definitions, §355.406, concerning duties of a facility administrator, §355.520, concerning confidentiality of health care encounters, and §355.536, concerning supervision of high-risk suicidal youth, with changes to the proposed text as published in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2690).

Changes to the proposed text of §355.100 consist of: 1) clarifying that a qualified mental health professional is someone who meets the definition of a qualified mental health professional in the *administrative rules* (rather than guidelines) of the Texas Department of State Health Services; and 2) making a grammatical revision in the definition of Youth-on-Youth Sexual Conduct. Additional changes to the proposed text are addressed later in this

notice in the section containing TJJD's responses to public comments.

Changes to the proposed text of §355.406 consist of a grammatical revision.

Changes to the proposed text of §355.520 consist of clarifying that a juvenile supervision officer may be present during *any health care encounter* between a resident and a health care professional (rather than only during medical treatment) under certain circumstances.

Changes to the proposed text of §355.536 consist of a grammatical correction.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the sections will be youth and public safety and the effective operation of community-based juvenile justice programs and facilities by requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

SECTION-BY-SECTION SUMMARY

In addition to the changes described earlier in this notice, the amended §355.100: 1) no longer includes definitions for Youth Activities Supervisor and Material Safety Data Sheet; 2) adds a definition for Safety Data Sheet; 3) clarifies that a psycho-social evaluation conducted as part of a behavioral health assessment includes a history of traumatic events; 4) clarifies that a behavioral health assessment may be conducted by a mental health provider who is licensed *or otherwise authorized to provide mental health services* under the applicable licensing statutes; 5) adds that the definition of Juvenile Supervision Officer does not include individuals who supervise juveniles in a juvenile justice program unless that program is a juvenile justice alternative education program operated by a juvenile probation department that also operates a juvenile justice facility; 6) replaces the names of the licensing boards in the definition of Mental Health Provider with the associated subtitles and chapters of the Texas Occupations Code; and 8) includes minor wording clarifications and grammatical changes in the definitions of Contraband, Governing Board, Housing Unit, Non-Secure Correctional Facility, and Premises.

Section 355.230, which required criminal history searches for certain individuals, has been repealed because criminal history checks for individuals employed by or providing services at non-secure facilities are addressed in Chapter 344.

The amended §355.404 no longer includes the minimum qualifications for employment as a facility administrator. These requirements are now addressed in §344.202, which is also adopted in this issue of the *Texas Register.*

In addition to the change described earlier in this notice, the amended §355.406 clarifies that the facility administrator must ensure that criminal history and background checks are completed for all individuals identified by Chapter 344 (rather than just for employees who have unsupervised contact with residents).

The amended §355.426 no longer includes a reference to the term youth activities supervisors.

The amended §355.428: 1) no longer includes youth activities supervisors in the list of individuals who are authorized to provide resident supervision; 2) adds that, in order to supervise residents, a certified juvenile supervision officer must have received the facility-specific training listed in §355.429 if the officer was certified while working for another department; 3) adds that a juvenile supervision officer who is not yet certified may supervise residents only if the individual has not exceeded the deadline for submitting an application for certification, has completed *all training required by §344.622 and §344.624* (rather than at least 40 hours consisting of the mandatory exam topics, CPR, first aid, and personal restraint technique), and has passed the certification exam; and 4) adds that a juvenile supervision officer who has not met the requirements to provide resident supervision may not be included in officer-to-resident ratios and may not perform any duties of a juvenile supervision officer.

The new §355.429 establishes a list of facility-specific training topics that a certified juvenile supervision officer must receive if that officer is hired by a department or facility different than the one where the officer received his or her certification. The new section also prohibits a juvenile supervision officer who has not completed the facility-specific training from being included in officer-to-resident ratios and from performing any duties of a juvenile supervision officer.

The amended §355.430: 1) no longer includes references to the term youth activities supervisors; and 2) now includes a reference to §355.429 as a standard that may apply to a juvenile supervision officer's ability to count in the ratio.

Section 355.434, which established rules about whether staff in a primary control room may count toward supervision ratios, has been repealed because this section is not needed for non-secure facilities.

In addition to the change described earlier in this notice, the amended §355.520 no longer includes references to the term youth activities supervisor.

The amended §355.524 no longer includes a reference to the term youth activities supervisor.

In addition to the change described earlier in this notice, the amended §355.536 no longer includes references to the term youth activities supervisor.

The amended §§355.538, 355.638, and 355.640 no longer include references to the term youth activities supervisor.

The amended §355.802: 1) no longer includes a reference to the threat of escape as a reason restraints may be used; and 2) no longer includes references to the term youth activities supervisors.

The amended §355.804: 1) adds a prohibition on using a restraint procedure that places anything around the resident's neck; and 2) moves the prohibition on securing residents to vehicles or other residents from §355.818 to this section.

The amended §355.808 no longer includes a reference to the term youth activities supervisors.

Section 355.818, which addressed preventive mechanical restraints, has been repealed because preventive mechanical restraints are not needed for residents of non-secure facilities.

PUBLIC COMMENTS

TJJD received comments from the Coalition for Nurses in Advanced Practice. The following is a summary of the comments and TJJD's responses.

Comment: §355.100(20) defining "Medical Treatment" needs to be amended to make it clear all types of advanced practice registered nurses (APRNs) may order medical treatment.

Response: TJJD agrees with the suggested revision. The proposed text has been amended to include advanced practice registered nurses among the list of health care professionals who may perform or order medical treatment. The proposed text has also been amended to remove the reference to licensed nurse practitioners.

Comment: In §355.100, proposed definition (21) needs to be amended to include Subtitle E of the Occupations Code so these rules include psychiatric-mental health APRNs as mental health providers.

Response: TJJD agrees with the suggested revision. The proposed text has been amended to include the following addition: "Subtitle E (limited to nurse practitioners or clinical nurse specialists who are authorized to practice and hold title in the psychiatric/mental health category as provided in 22 TAC Chapter 221)."

SUBCHAPTER A. DEFINITIONS

37 TAC §355.100

STATUTORY AUTHORITY

The amended section is adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

§355.100. Definitions.

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

(1) Behavioral Health Assessment--A mental health assessment conducted by a masters-level mental health provider who is licensed or otherwise authorized to provide mental health services under the statutes listed in paragraph (21) of this section and who is qualified by training to conduct all required elements of a behavioral health assessment. At a minimum, a behavioral health assessment must include the following elements:

(A) clinical interview;

(B) psycho-social evaluation, including a history of traumatic events, to include:

(i) family history;

(ii) community/living environment;

(iii) peer relationships; and

(iv) academic/vocational history;

(C) review of the following files and associated records in the possession of the juvenile probation department:

(i) juvenile probation records;

(ii) mental health records;

(iii) medical records;

(iv) previous mental health testing records; and

(v) educational records;

(D) parent/guardian interview, unless the parent/guardian is unwilling to participate, and any other collateral interviews the mental health provider deems appropriate, such as a teacher or the child's juvenile probation officer;

(E) psychometric testing, to include:

(i) achievement assessment, only if there is no record of an achievement assessment within the last three years;

(ii) personality assessment, only if there is no record of a personality assessment within the last three years;

(iii) intellectual assessment, only if:

(I) there is no record of an intellectual assessment within the last three years; or

(II) a new intellectual assessment is indicated by:

(-a-) pervasive use of drugs known to impair thought processes;

(-b-) traumatic brain injury;

(-c-) the child was age 12 or younger on the date of the most recent psychometric testing; or

(-d-) obvious impairment in cognitive or interpersonal functioning; and

(F) review of risks, strengths, and recommendations for intervention.

(2) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department for a single county or a multi-county judicial district.

(3) Contraband--Any item not issued to employees for the performance of their duties and that employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual that a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of a resident, or family members of a resident.

(4) Date and Time of Admission--The date and time a juvenile was admitted into a non-secure correctional facility.

(5) Disciplinary Restriction--The removal of a resident from other residents for behavior modification and the placement of the resident alone for 90 minutes or less.

(6) Disciplinary Separation--The removal of a resident from program activities or other residents for 24 hours or less because of a major rule violation or an imminent physical threat to self or others.

(7) Facility Administrator--The individual designated by the chief administrative officer or governing board of the facility who has the ultimate responsibility for managing and operating the facility. This definition includes the certified juvenile supervision officer who is designated in writing as the acting facility administrator during the absence of the facility administrator.

(8) Facility Staff--All full-time, part-time, temporary, and seasonal staff who are employed or contracted to perform facility-related duties.

(9) Governing Board--A governmental unit (typically a juvenile board) or a board of trustees appointed by the governmental unit that establishes and operates or contracts for the establishment and operation of the facility. The governing board for the facility must provide oversight of facility operations, policies, and procedures.

(10) Hazardous Material--Any substance that is explosive, flammable, combustible, poisonous, corrosive, irritating, or otherwise harmful and is likely to cause injury or death.

(11) Health Assessment--The process whereby the health status of an individual is evaluated, which may include questioning the patient regarding symptoms.

(12) Health Care Professional--A term that includes physicians, physician assistants, nurses, nurse practitioners, dentists, medical assistants, emergency medical technicians, and others who, by virtue of their education, credentials, and experience, are permitted by law to evaluate and care for patients.

(13) Health Service Authority--The agency, organization, entity, or individual responsible for consulting and collaborating with the facility administrator and/or the health services coordinator to ensure a coordinated and adequate health care system is available to residents of the facility.

(14) Housing Area--An area within the non-secure correctional facility that contains residents.

(15) Housing Unit--A unit within the housing area that may be designed and constructed as either a single-occupancy housing unit (SOHU) or a multiple-occupancy housing unit (MOHU).

(16) Intra-Jurisdictional Custodial Transfer--The transfer of a resident from a pre-adjudication or post-adjudication secure facility into a non-secure correctional facility under the same administrative authority.

(17) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program administered or operated under the authority of the juvenile board.

(18) Juvenile Supervision Officer--An individual whose primary responsibility and essential job function is the supervision of juveniles in a:

(A) juvenile justice facility; or

(B) juvenile justice alternative education program operated by a department that also operates a juvenile justice facility.

(19) Medical Separation--The removal of a resident from program activities or other residents for medical purposes in accordance with §355.524 of this title.

(20) Medical Treatment--Medical care and diagnostic testing (e.g., x-rays, laboratory testing) performed or ordered by a physician, advanced practice registered nurse, or physician assistant or performed by an emergency medical technician, paramedic, registered nurse (RN), or licensed vocational nurse (LVN) according to their respective licensure.

(21) Mental Health Provider--An individual who is licensed or otherwise authorized to provide mental health services under the following subtitles or chapters of the Texas Occupations Code:

(A) Chapter 110 (sex offender treatment providers);

(B) Subtitle B (physicians);

(C) Subtitle E (limited to nurse practitioners or clinical nurse specialists who are authorized to practice and hold title in the psychiatric/mental health category as provided in 22 TAC Chapter 221); or

(D) Subtitle I (psychologists, marriage and family therapists, licensed professional counselors, chemical dependency counselors, and social workers).

(22) Mental Health Screening--A process that includes a series of questions that are designed to identify a resident who is at an increased risk of having mental health disorders that warrant attention and a professional review.

(23) Multiple-Occupancy Housing Unit (MOHU)--A housing unit designed and constructed for multiple-occupancy sleeping.

(24) Non-Program Hours--The time period when the facility's scheduled resident activity has ceased for the day.

(25) Non-Secure Correctional Facility (Facility)--Any public or private residential facility operated solely or partly by or under contract with a juvenile board or governing board in which the construction fixtures, hardware, staffing models, and procedures do not restrict the egress of residents from the facility.

(26) Physical Training Program--Any program that requires participants to engage in and perform structured physical training and activity. This does not include recreational team activities or activities related to the educational curriculum (i.e., physical education).

(27) Positive Screening--A scored result of a completed mental health screening instrument (i.e., MAYSI-2) recommending services requiring a primary service by a mental health provider as described on the MAYSI-2 reference card.

(28) Premises--One or more buildings together with their grounds or other appurtenances.

(29) Program Hours--The time period when the facility schedules activities for the resident population.

(30) Qualified Individual--A person who may supervise residents when working with residents in a capacity that relates to the person's qualifications.

(31) Qualified Mental Health Professional--An individual employed by the local mental health authority or an entity who contracts as a service provider with the local mental health authority who meets the definition of a qualified mental health professional in the administrative rules adopted by the Texas Department of State Health Services.

(32) Rated Capacity--The maximum number of beds available in a facility that were architecturally designed or redesigned as a housing unit.

(33) Resident--A juvenile who is placed in the non-secure correctional facility.

(34) Riot--A situation in which three or more residents in the facility intentionally participate in conduct that constitutes a clear and present danger to persons or property and substantially obstructs the performance of facility operations or a program therein. Rebellion is a form of riot.

(35) Safety Data Sheet--A document prepared by the supplier or manufacturer of a product clearly stating its hazardous na-

ture, ingredients, precautions to follow, health effects, and safe handling/storage information.

(36) Secondary Screening--A triage process that is brief and designed to clarify if a resident is in need of intervention or a more comprehensive assessment and what type of intervention or assessment is needed.

(37) Single-Occupancy Housing Unit (SOHU)--A housing unit designed and constructed with separate and individual resident sleeping quarters.

(38) TJJD--The Texas Juvenile Justice Department.

(39) Volunteer--An individual who agrees to perform services without compensation and may have regular or periodic supervised contact with juveniles under the direction of the non-secure correctional facility.

(40) Youth-on-Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, or sexual performance as those terms are defined in subparagraphs (A) - (D) of this paragraph:

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with an object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons, including simulated or actual sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(E) A juvenile may not consent to the acts as defined in this paragraph under any circumstances. Consent may not be implied regardless of the age of the juvenile.

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 September 27, 2017.

TRD-201703892

Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: February 1, 2018
Proposal publication date: May 19, 2017
For further information, please call: (512) 490-7014

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SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §355.230

STATUTORY AUTHORITY

The repeal is adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

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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Jill Mata
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER D. FACILITY MANAGEMENT AND OPERATIONS

37 TAC §§355.404, 355.406, 355.426, 355.428 - 355.430

STATUTORY AUTHORITY

The new section and amended sections are adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

§355.406. Duties of Facility Administrator.

(a) The facility administrator is responsible for the daily operations of the facility and must maintain an office on the grounds of the facility.

(b) The facility administrator must designate a certified juvenile supervision officer to be in charge during his or her absence from the facility.

(c) The facility administrator must develop, implement, and maintain a policies and procedures manual for the facility and must ensure the daily facility practice conforms to the policies and procedures detailed in the manual.

(d) The facility administrator must review the facility's policies and procedures manual at least once each year, no later than the

last day of the calendar month of the previous year's review, and maintain documentation of this review.

(e) The facility administrator must make the policies and procedures manual available to all employees of the facility.

(f) The facility administrator must ensure that all employees of the facility are:

(1) trained on the policies and procedures manual provisions relevant to the employee's job functions during new employee orientation or prior to beginning service at the facility; and

(2) notified of all changes or modifications to the policies and procedures manual in a timely manner.

(g) The facility administrator must maintain documentation of the training described in subsection (f) of this section.

(h) The facility administrator or designee must ensure that current, accurate, and confidential personnel records are maintained for each employee, which must include:

(1) proof of age;

(2) documentation of criminal background checks conducted as required by Chapter 344 of this title;

(3) the completed application for employment;

(4) training records; and

(5) documentation of promotion, demotion, termination, and other personnel actions.

(i) The facility administrator of a private entity under contract with a governmental unit in this state must provide the presiding officer of the juvenile board with jurisdiction over the facility with periodic updates on the operation of the facility, including the following information to be provided at least every quarter:

(1) facility population and capacity reports;

(2) number of serious incidents, by category, that occurred in the facility;

(3) number of resident restraints by type (e.g., personal and mechanical);

(4) number of injuries to residents requiring medical treatment; and

(5) number of injuries to staff requiring medical treatment.

(j) The facility administrator or chief administrative officer must ensure the accurate and timely submission of statistical data to TJJD in an electronic format or other format as requested by TJJD.

(k) The facility administrator or chief administrative officer must ensure that all criminal history and background checks as required by Chapter 344 of this title are completed.

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 September 27, 2017.

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Jill Mata
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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37 TAC §355.434

STATUTORY AUTHORITY

The repeal is adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

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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Jill Mata
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Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER E. RESIDENT HEALTH AND SAFETY

37 TAC §§355.520, 355.524, 355.536, 355.538

STATUTORY AUTHORITY

The amended sections are adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

§355.520. Confidentiality of Health Care Encounters.

(a) All medical and mental health screenings and assessments must be conducted in a confidential setting consistent with facility operations and security.

(b) All interactions between a resident and a health care professional that involve treatment or an exchange of confidential medical information must be conducted in private. The facility's policies and procedures may authorize a juvenile supervision officer to be present in the following situations:

(1) if the resident poses a substantial risk to the safety of the health care professional or others;

(2) if the facility has a written policy requiring the presence of a juvenile supervision officer during health care encounters;

(3) if the health care professional or resident requests the presence of a juvenile supervision officer during the health care encounter; or

(4) if the circumstances or situation indicate the presence of a juvenile supervision officer is necessary and prudent.

§355.536. Supervision of High-Risk Suicidal Youth.

(a) Supervision. Residents classified as high risk for suicidal behavior who are awaiting an assessment by a mental health provider or transfer or release as described in §355.534(b) of this title must be:

(1) provided constant, uninterrupted supervision by a certified juvenile probation officer or certified juvenile supervision officer; and

(2) the supervising staff member must document his or her personal observations of the high-risk resident at intervals not to exceed 30 minutes.

(b) Required Documentation. The following documentation must be maintained for high-risk suicidal residents:

(1) the date and time the resident was classified as high risk for suicidal behavior;

(2) name and title of the person who classified the resident as high risk for suicidal behavior;

(3) a description of the resident's behavior and/or factors that led to the resident's classification as high risk for suicidal behavior;

(4) name of the certified juvenile probation officer or certified juvenile supervision officer providing supervision of the resident;

(5) the location of the resident's supervision;

(6) the date and time the resident was reclassified as no longer being at high risk for suicidal behavior; and

(7) the name and title of the mental health provider or physician who recommended the reclassification of the resident as no longer being at high risk for suicidal behavior.

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 September 27, 2017.

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Jill Mata
General Counsel
Texas Juvenile Justice Department
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SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §355.638, §355.640

STATUTORY AUTHORITY

The amended sections are adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

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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Jill Mata
General Counsel
Texas Juvenile Justice Department
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SUBCHAPTER H. RESTRAINTS

37 TAC §§355.802, 355.804, 355.808

STATUTORY AUTHORITY

The amended sections are adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

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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Jill Mata
General Counsel
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For further information, please call: (512) 490-7014

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37 TAC §355.818

STATUTORY AUTHORITY

The repeal is adopted under §221.002(a)(4), Human Resources Code, which requires TJJD to adopt reasonable rules that provide minimum standards for the operation of public and private non-secure correctional facilities.

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) 490-7014

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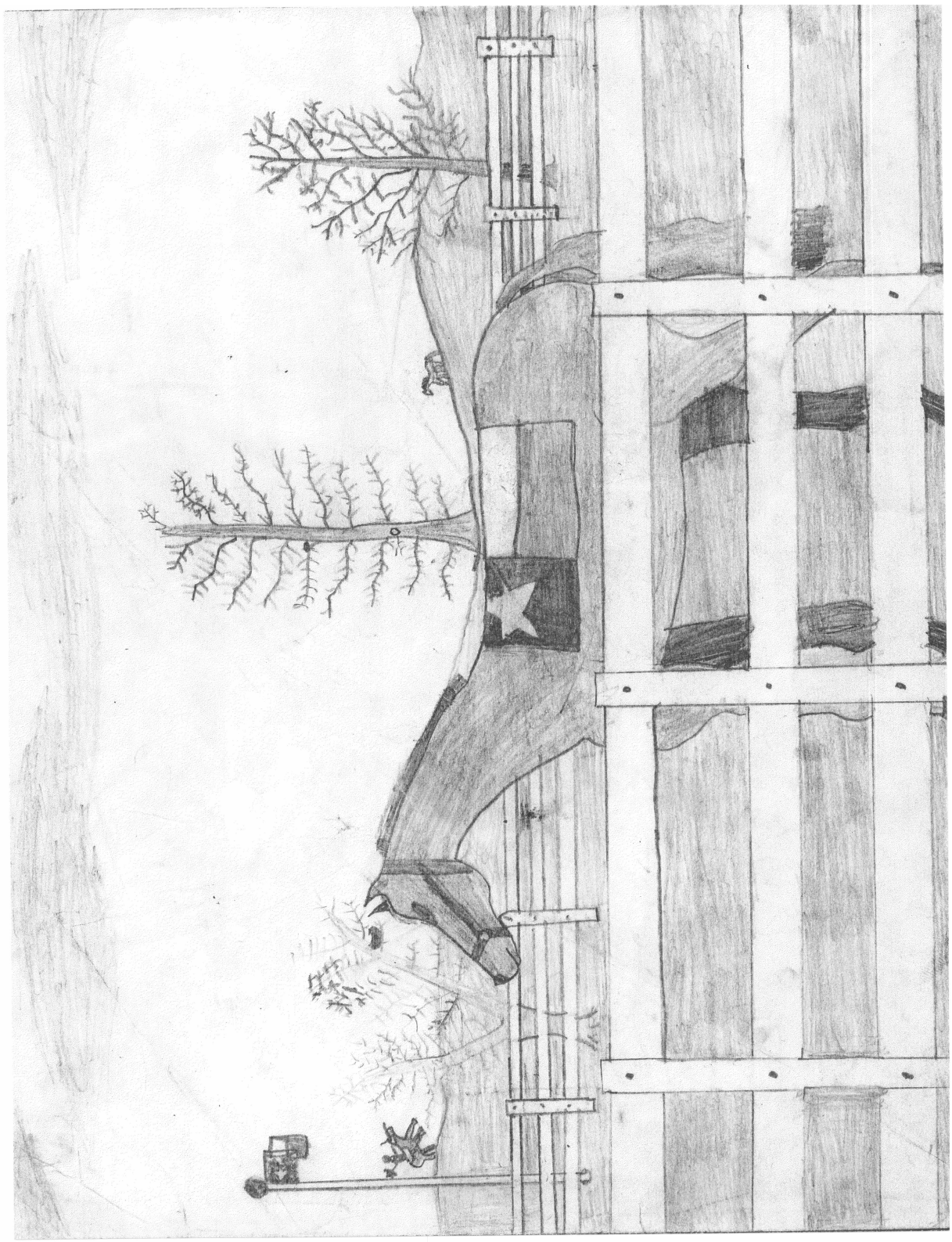

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists files this notice of intent to review and consider for re-adoption, revision or repeal Texas Administrative Code, Title 22, Part 21, Texas State Board of Examiners of Psychologists rules.

Chapter 461. General Rulings

Chapter 463. Applications and Examinations

Chapter 465. Rules of Practice

Chapter 469. Complaints and Enforcement

Chapter 470. Administrative Procedure

Chapter 471. Renewals

Chapter 473. Fees

This review is conducted pursuant to the Texas Government Code §2001.039, which requires state agencies to review and consider for re-adoption their administrative rules every four years.

All comments or questions in response to this notice of rule review may be submitted in writing to Brenda Skiff, Public Information Officer of the Texas State Board of Examiners of Psychologists, at 333 Guadalupe, Ste 2-450, Austin, TX 78701. Comments may also be submitted via fax to (512) 305-7701, or via email to brenda@tsbep.texas.gov. The Board will accept public comments regarding the rule review within 30 days following the publication of this notice in the *Texas Register.*

TRD-201703921
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Filed: September 28, 2017

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Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) published notice of its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" in §255.4 in the August 11, 2017, issue of the *Texas Register* (42 TexReg 3985). CSEC is required by Health and Safety Code §771.063 to adopt by rule the foregoing definitions and to annually review these definitions to address technical and structural changes in the provision of telecommunications and data services.

No comments were received regarding CSEC's notice of annual review.

CSEC has determined not to propose amendments to the definitions in §255.4, and to leave in effect the rule as adopted by CSEC in September 2007.

This concludes CSEC's annual review of §255.4.

TRD-201703904
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: September 27, 2017

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Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 403, concerning Criminal Convictions and Eligibility for Certification. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the August 18, 2017 issue of the *Texas Register* (42 TexReg 4151).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 403.

TRD-201703905
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Filed: September 27, 2017

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The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 421, concerning Standards for Certification. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the August 18, 2017, issue of the *Texas Register* (42 TexReg 4151).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 421.

TRD-201703914
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Filed: September 27, 2017

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The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 427, concerning Training Facility Certification. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the August 18, 2017 issue of the *Texas Register* (42 TexReg 4151).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 427.

TRD-201703907
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Filed: September 27, 2017

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The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 439, concerning Examinations For Certification. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the August 18, 2017, issue of the *Texas Register* (42 TexReg 4152).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 439.

TRD-201703908
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Filed: September 27, 2017

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The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 449, concerning Head of a Fire Department. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the August 18, 2017, issue of the *Texas Register* (42 TexReg 4152).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 449.

TRD-201703910
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Filed: September 27, 2017

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Texas Department of Public Safety

Title 37, Part 1

Pursuant to the notice of proposed rule review published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4313), the Texas Department of Public Safety (the department) has reviewed and considered for readoption, revision or repeal all sections of the following chapters of Title 37, Part I of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 2 (Capitol Access Pass); Chapter 3 (Texas Highway Patrol); Chapter 8 (Capitol Complex); Chapter 9 (Public Safety Communications); Chapter 14 (School Bus Safety Standards); Chapter 15 (Driver License Rules); Chapter 16 (Commercial Driver License); Chapter 18 (Driver Education); Chapter 23 (Vehicle Inspection); Chapter 25 (Safety Responsibility Regulations); Chapter 35 (Private Security); and Chapter 37 (Sex Offender Registration).

The department received no written comments regarding the review of its rules.

The department has completed its review and determined that the reasons for originally adopting the above rules continue to exist. As a result of the rule review process, the department may propose revisions to its rules when appropriate and necessary. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the department in accordance with the requirements of the Administrative Procedure Act, Texas Government code, Chapter 2001.

This concludes the department's review of 37 TAC Part I, Chapters 2, 3, 8, 9, 14, 15, 16, 18, 23, 25, 35, and 37.

TRD-201703926
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: September 29, 2017

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

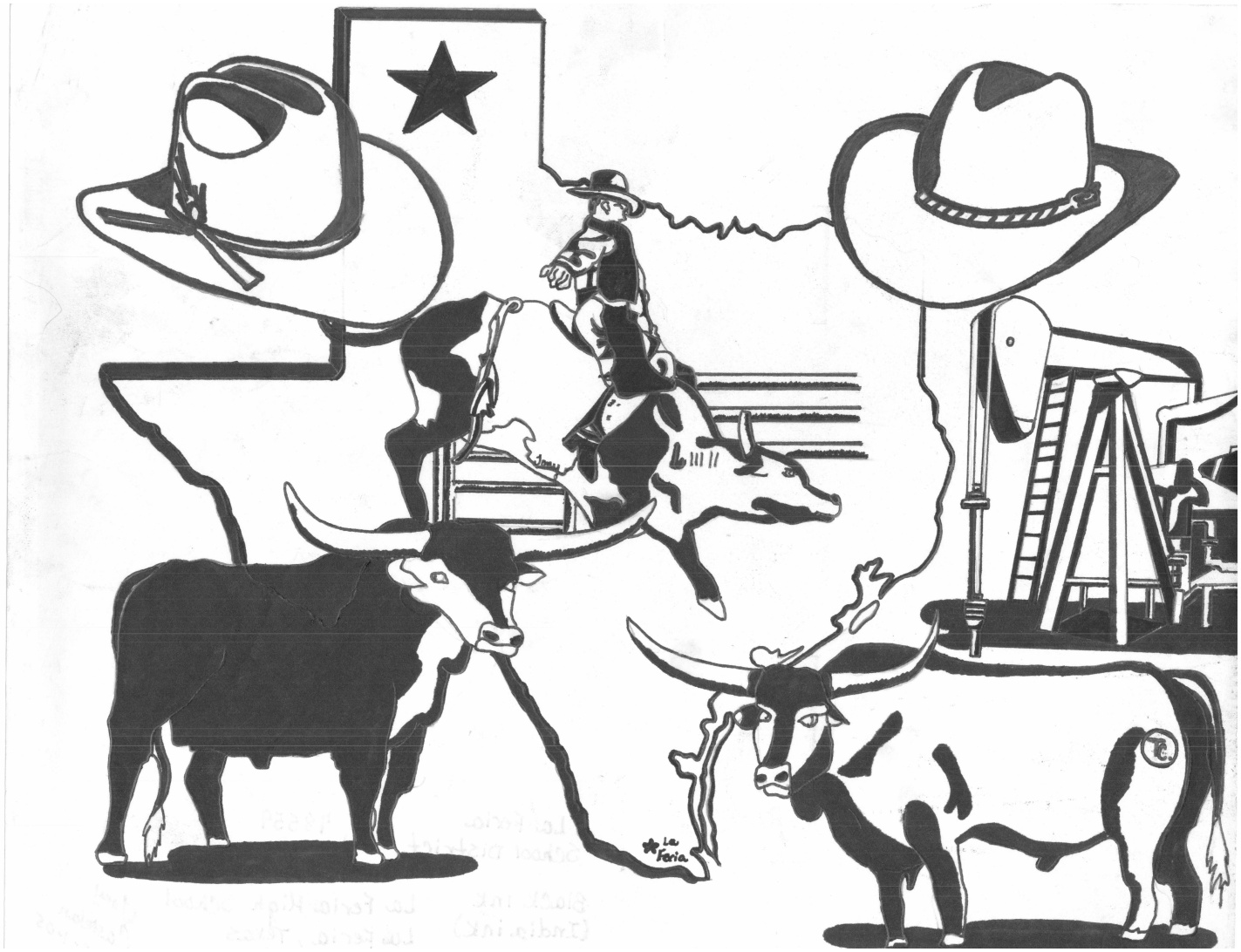
Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §230.11(b)(5)(C)

Countries in which English is the Official Language

The countries listed below have been approved by the State Board for Educator Certification (SBEC) to satisfy the English language proficiency requirement specified in 19 TAC §230.11(b)(5)(C). To be exempted from the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) testing requirement specified in 19 TAC §230.11(b)(5)(B), a certification candidate must have earned an undergraduate or graduate degree from an institution of higher education on the SBEC-approved list of countries.

American Samoa
Anguilla
Antigua and Barbuda
Australia
Bahamas
Barbados
Belize
Bermuda
British Virgin Islands
Cayman Islands
Canada (except Quebec)
Dominica
Gambia
Ghana
Gibraltar
Grand Cayman
Grenada
Guyana
Jamaica
Liberia
Nigeria
Saint Kitts and Nevis
Saint Lucia
Trinidad/Tobago
Turks and Caicos
United Kingdom
U.S. Pacific Trust



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/09/17 - 10/15/17 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/09/17 - 10/15/17 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 10/01/17 - 10/31/17 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 10/01/17 - 10/31/17 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201703981
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 3, 2017

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is November 13, 2017. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on November 13, 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: BADESHA ENTERPRISE LLC dba Grand Central; DOCKET NUMBER: 2017-0816-PST-E; IDENTIFIER: RN102249281; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Charles A. Leonard; DOCKET NUMBER: 2017-1232-WOC-E; IDENTIFIER: RN103410932; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Boyd; DOCKET NUMBER: 2017-0731-PWS-E; IDENTIFIER: RN101387496; LOCATION: Boyd, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(1), by failing to timely report lead and copper tap sample results to the executive director (ED); 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the monitoring period during which the lead action level was exceeded; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report and regarding the failure to conduct routine coliform monitoring; PENALTY: $337; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Kirvin; DOCKET NUMBER: 2017-0622-PWS-E; IDENTIFIER: RN101408953; LOCATION: Kirvin, Freestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and submit the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and 30 TAC §290.122(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 Disinfectant Level Quarterly Operating

Reports; PENALTY: $560; ENFORCEMENT COORDINATOR: James Fisher, (512) 329-2537; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Trinidad; DOCKET NUMBER: 2017-1035-MWD-E; IDENTIFIER: RN101609378; LOCATION: Trinidad, Henderson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010467002, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Daniel J. Salazar; DOCKET NUMBER: 2017-1187-WOC-E; IDENTIFIER: RN106621691; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: E. S. WATER UTILITY CONSOLIDATORS INCORPORATED; DOCKET NUMBER: 2017-0967-PWS-E; IDENTIFIER: RN101253128; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; PENALTY: $756; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: ETOILE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-2066-MLM-E; IDENTIFIER: RN101192987; LOCATION: Etoile, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(a)(4), by failing to locate the top of the waterlines below the frost line and in no case less than 24 inches below ground surface; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Numbers 2 and 3; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(II), (iv), (B)(iii) - (v), (D)(i) and (ii), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(m)(1)(B), by failing to conduct an inspection of the interior of the facility's pressure tank at the Well Number 3 plant every five years; 30 TAC §290.121(a) and (b), by failing to maintain a complete and up-to-date chemical and microbiological monitoring plan at each water treatment plant and at a central location; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible; 30 TAC §290.42(e)(3)(A), by failing to provide disinfection equipment which has a capacity of at least 50% greater than the highest expected dosage to be applied at any time; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(m)(6), by failing to maintain pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272, by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $1,897; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Hempstead Yogi, Limited; DOCKET NUMBER: 2017-0681-MLM-E; IDENTIFIER: RN101234490; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: water amusement park; RULES VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences or establishments where an actual potential contamination hazard exists, as identified in 30 TAC §290.47(f); and TWC, §26.121(d) and 30 TAC §290.42(i), by failing to obtain authorization for the discharge of a pollutant from any point source into or adjacent to any water in the state; PENALTY: $3,735; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Jackie R. Hawkins; DOCKET NUMBER: 2017-1233-WOC-E; IDENTIFIER: RN109739664; LOCATION: Richland Springs, San Saba County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 369-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: James E. Campbell; DOCKET NUMBER: 2017-1186-WOC-E; IDENTIFIER: RN109379651; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200 Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Jim Wells County Fresh Water Supply District 1; DOCKET NUMBER: 2017-0630-PWS-E; IDENTIFIER: RN102673506; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(4) and (5), by failing to meet the conditions for an issued exception; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(z), by failing to create a nitrification action plan for a system distributing chloraminated water; 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; and 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; PENALTY: $385; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: JRM Water L.L.C.; DOCKET NUMBER: 2017-0784-PWS-E; IDENTIFIER: RN102683562; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply;

RULES VIOLATED: 30 TAC §290.44(c), by failing to ensure all waterlines within the distribution system meet the minimum diameter based on the number of connections; 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 §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an inspection of the facility's pressure tank interior once every five years; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards, and that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 92350036 for Fiscal Years 2003 - 2016; PENALTY: $1,106; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: NORTH IH35 INVESTMENTS INCORPORATED; DOCKET NUMBER: 2017-0755-PWS-E; IDENTIFIER: RN101228252; LOCATION: Round Rock, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(B) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2012 - December 31, 2014, monitoring period; PENALTY: $1,018; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: Shalimar Fort Worth, LP; DOCKET NUMBER: 2017-0654-PWS-E; IDENTIFIER: RN101186427; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter and failing to provide public notification and submit a copy of the public notification to the ED; 30 TAC §290.46 (f)(4) and §290.115(e), by failing to provide the results of Stage 2 Disinfection Byproducts (DBP2) sampling to the ED; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED; 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 provide the results of DBP2 sampling; PENALTY: $1,416; ENFORCEMENT COORDINATOR: Paige Bond, (512) 239-2678; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: SHIVAM BUSINESS, INCORPORATED dba Lonestar Exxon; DOCKET NUMBER: 2017-0750-PST-E; IDENTIFIER: RN102259835; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,879; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Sienna Shipyards, LLC; DOCKET NUMBER: 2017-0942-IHW-E; IDENTIFIER: RN105567176; LOCATION: Orange, Orange County; TYPE OF FACILITY: marine vessel sandblasting and painting facility; RULES VIOLATED: 30 TAC §335.4(1) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial waste into or adjacent to water of the state; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Solvay Specialty Polymers USA, L.L.C.; DOCKET NUMBER: 2017-0641-AIR-E; IDENTIFIER: RN107829640; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: chemical producing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 7719A, Special Conditions Number 1, and Federal Operating Permit (FOP) Number O2165, Special Terms and Conditions Number 9, by failing to comply with the maximum allowable annual emissions rate; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O2165, General Terms and Conditions (GTC), and 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 O2165, GTC, 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: $12,638; Supplemental Environmental Project offset amount of $5,055; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(19) COMPANY: SUGARLAND PETROLEUM, INCORPORATED dba Mesa Phillips 66; DOCKET NUMBER: 2017-0747-PST-E; IDENTIFIER: RN104490966; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $6,879; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Valeria Lynn Raub dba Cypress Gardens Mobile Home Subdivision; DOCKET NUMBER: 2017-1047-PWS-E; IDENTIFIER: RN101226066; LOCATION: Tomball, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per

connection; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: $305; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201703978
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 3, 2017

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Enforcement Orders

An agreed order was adopted regarding Qxy llc and Sam Zamer dba Kirby Shell, Docket No. 2016-0027-PST-E on October 4, 2017, assessing $21,880 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Manuel Barrera Jr., Docket No. 2016-1016-MLM-E on October 4, 2017, assessing $13,916 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 Freeport Holdings, LLC dba Nikos Corner, Docket No. 2016-1037-PST-E on October 4, 2017, assessing $10,887 in administrative penalties with $2,177 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding New Kadmus Texas, Inc. dba 154 Exxon Super Mart, Docket No. 2016-1426-PST-E on October 4, 2017, assessing $4,816 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Rainbow Landscape Materials, LLC, Docket No. 2016-1493-WQ-E on October 4, 2017, assessing $16,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 Duran Gravel Company, Inc., Docket No. 2016-1521-WQ-E on October 4, 2017, assessing $27,567 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 D-Bar-B Water-Wastewater Supply Corporation, Docket No. 2016-1545-MWD-E on October 4, 2017, assessing $1,737 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, 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 Lamar County Water Supply District, Docket No. 2016-1712-PWS-E on October 4, 2017, assessing $345 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Indus Interest, LLC dba Big Bens, Docket No. 2016-1823-PST-E on October 4, 2017, assessing $7,813 in administrative penalties with $1,562 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 Basf Total Petrochemicals LLC, Docket No. 2016-1849-AIR-E on October 4, 2017, assessing $13,125 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, 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 Alcoa World Alumina LLC, Docket No. 2016-1944-AIR-E on October 4, 2017, assessing $25,000 in administrative penalties. 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 City of Carbon, Docket No. 2016-2011-PWS-E on October 4, 2017, assessing $315 in administrative penalties. 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 Barnhart Water Supply Corporation, Docket No. 2016-2087-PWS-E on October 4, 2017, assessing $315 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Crowell, Docket No. 2017-0020-PWS-E on October 4, 2017, assessing $690 in administrative penalties. 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.

A default order was adopted regarding Jose Angel Milera, Jr. and 4 J's Trucking, LLC, Docket No. 2017-0043-MLM-E on October 4, 2017, assessing $3,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Crown Cork & Seal Usa, Inc., Docket No. 2017-0048-AIR-E on October 4, 2017, assessing $18,750 in administrative penalties with $3,750 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 GE Betz, Inc., Docket No. 2017-0062-MLM-E on October 4, 2017, assessing $44,438 in administrative penalties. 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 McDonald Transit, Inc., Docket No. 2017-0121-PST-E on October 4, 2017, assessing $9,892 in administrative penalties with $1,978 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tim A. Duncan dba Miller Mobile Home Park and Karen Duncan dba Miller Mobile Home Park, Docket No. 2017-0143-PWS-E on October 4, 2017, assessing $1,699 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edcouch, Docket No. 2017-0180-WQ-E on October 4, 2017, assessing $13,750 in administrative penalties with $2,750 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 Oci Beaumont LLC, Docket No. 2017-0223-AIR-E on October 4, 2017, assessing $42,600 in administrative penalties with $8,520 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J&S Water Company, L.L.C., Docket No. 2017-0256-PWS-E on October 4, 2017, assessing $1,321 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tom Green County, Docket No. 2017-0354-WQ-E on October 4, 2017, assessing $15,000 in administrative penalties with $3,000 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 Aqua Development, Inc., Docket No. 2017-0494-PWS-E on October 4, 2017, assessing $172 in administrative penalties. 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.

TRD-201703991
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Hearing

Cherry Crushed Concrete, Inc.

SOAH Docket No. 582-18-0281

TCEQ Docket No. 2017-0906-AIR

Proposed Permit No. 139955

APPLICATION.

Cherry Crushed Concrete, Inc., 6131 Selinsky Rd, Houston, Texas 77048-2006, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 139955, which would authorize construction of a Concrete Crushing Plant located at 9200 Winfield Road, Houston, Harris County, Texas 77050. This application was submitted to the TCEQ on April 5, 2016. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

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 to issue the permit because it meets all rules and regulations. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office and the TCEQ Houston regional office, 5425 Polk Street, Suite H, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston regional office of the TCEQ. 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=29.902222&lng=-95.256666&zoom=13&type=r>*. For the exact location, refer to the application.

CONTESTED CASE HEARING

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - November 13, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and address other matters as determined by the judge. The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on August 28, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the preliminary hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the preliminary hearing and request to be a party. Only persons named as parties may participate at the contested case hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at *www.tceq.texas.gov/goto/comments,* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you 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, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at *http://www.tceq.texas.gov.*

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at *http://www.tceq.texas.gov/.*

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from Cherry Crushed Concrete, Inc. at the address stated above or by calling Mrs. Elizabeth Stanko, Project Manager at (713) 244-1039.

Issued: September 28, 2017

TRD-201704000
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of City of Brady

SOAH Docket No. 582-18-0306

TCEQ Docket No. 2016-1417-IWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - November 2, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 24, 2017 concerning assessing administrative penalties against and requiring certain actions of City of Brady, for violations in McCulloch County, Texas, of: Tex. Water Code §26.121(a)(1) and 30 Tex. Admin. Code §§305.42(a), 305.65, and 305.125(a).

The hearing will allow City of Brady, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford City of Brady, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **City of Brady** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. City of Brady, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 305; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Lena Roberts, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: October 2, 2017

TRD-201703998
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of

City of Corpus Christi

SOAH Docket No. 582-18-0291

TCEQ Docket No. 2015-1478-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - November 2, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 21, 2017 concerning assessing administrative penalties against and requiring certain actions of the City of Corpus Christi, for violations in Nueces County, Texas, of: Tex. Health & Safety Code §341.031(a) and §341.0315(c) and 30 Tex. Admin. Code §§290.39(l)(5), 290.44(h)(1)(A), (h)(4), and (h)(4)(B), 290.46(d)(2)(A) and (B), 290.46(f)(2), (f)(3)(A)(i)(I), and (f)(3)(B)(v), 290.46(m), (m)(4), and (m)(6), 290.46(s), 290.109(f)(1)(A) and (f)(2), 290.110(b)(4) and (c)(5), 209.110(f)(1)(A), and 290.119(b)(7).

The hearing will allow the City of Corpus Christi, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford the City of Corpus Christi, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of the **City of Corpus Christi** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. The City of Corpus Christi, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Tex. Admin. Code chs. 70 and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201703999
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Juan Carlos Portillo

SOAH Docket No. 582-18-0292

TCEQ Docket No. 2016-1785-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - November 2, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed May 22, 2017 concerning assessing administrative penalties against and requiring certain actions of Juan Carlos Portillo, for violations in Val Verde County, Texas, of: Tex. Water Code §5.702 and 30 Tex. Admin. Code §§290.46(f)(4), 290.51(a)(6), 290.106(c)(6) and (e), 290.118(c)(1) and (e), and 290.122(c)(2)(A) and (f).

The hearing will allow Juan Carlos Portillo, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Juan Carlos Portillo, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **Juan Carlos Portillo** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated

herein for all purposes. Juan Carlos Portillo, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 5, and 30 Tex. Admin. Code chs. 70 and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: October 2, 2017

TRD-201704003
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Stafford Retail Center, Inc. D/B/A Fifth Street Food Mart

SOAH Docket No. 582-18-0293

TCEQ Docket No. 2016-1793-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - November 2, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 14, 2017 concerning assessing administrative penalties against and requiring certain actions of STAFFORD RETAIL CENTER, INC. d/b/a Fifth Street Food Mart, for violations in Fort Bend County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Tex. Admin. Code §§334.50(b)(1)(A), 334.72, and 334.74.

The hearing will allow STAFFORD RETAIL CENTER, INC. d/b/a Fifth Street Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford STAFFORD RETAIL CENTER, INC. d/b/a Fifth Street Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **STAFFORD RETAIL CENTER, INC. d/b/a Fifth Street Food Mart** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. STAFFORD RETAIL CENTER, INC. d/b/a Fifth Street Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: October 2, 2017

TRD-201704004
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Public Meeting for an Air Quality Permit Proposed Permit Number: 146397L001

APPLICATION. Collier Materials, Inc., P.O. Box 86, Marble Falls, Texas 78654-0086, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 146397L001, which would authorize construction of a Rock Crushing Plant located at 4601 FM Road 1980, Marble Falls, Burnet County, Texas 78654. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.64556&lng=-98.3175&zoom=13&type=r. The proposed facility will emit the following contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has completed the technical review of the application and 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 to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address.

The Public Meeting is to be held:

Tuesday, October 24, 2017 at 7:00 p.m.

Holiday Inn Express Marble Falls

714 Corazon Drive

Marble Falls, Texas 78654

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at http://www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit is available for viewing and copying at the TCEQ central office, the TCEQ Austin regional office, and at the Marble Falls Public Library, 101 Main Street, Marble Falls, Burnet County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas. Further information may also be obtained from Collier Materials, Inc. at the address stated above or by calling Mrs. Katy Sipe, Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: September 27, 2017

TRD-201704001
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Receipt of Application and Intent to Obtain New Municipal Solid Waste Permit

Proposed Permit No. 2398

APPLICATION. Lealco, Inc., 7118 U.S. Highway 59 South, Goodrich, Polk County, Texas 77335, owner/operator of a proposed Type V Transfer Station, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit requesting authorization to transfer municipal solid waste which includes wastes resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; construction or demolition waste; special waste that does not interfere with site operations; and other wastes such as Class 2 and Class 3 industrial waste. The Williamson Transfer Station, will be located approximately 0.8 miles northwest of the intersection of CR130 and Chandler Road, Hutto, Williamson County, Texas 78634. The TCEQ received this application on August 11, 2017. The permit application is available for viewing and copying at the Hutto Public Library, 205 West Street, Hutto, Williamson County, Texas 78634, and may be viewed online at http://www.scsengineers.com/State. 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: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.5976&lng=-97.56&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 Texas Commission on Environmental Quality, 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 Lealco, Inc. at the address stated above or by calling Mr. Chris Ruane, Region Engineering Manager at (832) 442-2204.

TRD-201703985
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Reschedule of Hearing

Dowdell Public Utility District

SOAH Docket No. 582-17-4591

TCEQ Docket No. 2017-0436-MWD

Permit No. WQ0011404002

APPLICATION.

Dowdell Public Utility District, c/o Smith, Murdaugh, Little & Bonham, L.L.P., 2727 Allen Parkway, Suite 1100, Houston, Texas 77019, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011404002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. TCEQ received this application on May 29, 2015. The Applicant previously published the Notice of Hearing on July 14, 2017, with the preliminary hearing date of August 28, 2017. This Notice of Reschedule of Hearing is being issued because the original hearing date was cancelled due to the impending impact of Hurricane Harvey on Harris County and southeast Texas.

The facility will be located west of Lozar Drive, approximately 750 feet northwest of the intersection of Lozar Drive and Avalon Aqua Way, in Harris County, Texas 77379. The treated effluent will be discharged to a detention pond system; thence to a 48-inch storm sewer pipe; thence to Harris County Flood Control District (HCFCD) ditch M114-00-00; thence to Willow Creek; thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the detention pond system, limited aquatic life use for HCFCD ditch M114-00-00, and high aquatic life use for Willow Creek. The designated uses for Segment No. 1008 are high aquatic life use, public water supply, and primary contact recreation. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Willow Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must

operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Harris County Public Library, Barbara Bush Branch Library at Cypress Creek Branch, 6817 Cypresswood Drive, Spring, 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=30.0796&lng=-95.5377&zoom=13&type=r>*. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - November 6, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court.

The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 18, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at *http://www.tceq.texas.gov/.*

Further information may also be obtained from Dowdell Public Utility District at the address stated above or by calling Mr. Jeffrey W. Vogler, P.E., Van De Wiele & Vogler, Inc., at (713) 782-0042.

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: September 27, 2017

TRD-201704002

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Notice of Water Rights Application

APPLICATION NO. 13337; Roger A. Kerbow, Applicant, P.O. Box 530735, Grand Prairie, Texas 75053, seeks authorization to maintain an existing reservoir with a maximum capacity of 2.75 acre-feet on an unnamed tributary of Leon River, tributary of Little River, tributary of the Brazos River, Brazos River Basin, Comanche County. Applicant also seeks authorization to use the bed and banks of the unnamed tributary of Leon River to convey groundwater to the reservoir for subsequent diversion and use for livestock and agricultural purposes to irrigate in Comanche County. The application and fees were received on July 13, 2016. Additional information and fees were received on October 26 and October 31, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 5, 2016. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, installing intake screens on any new diversion structure(s) and maintenance of an alternate source. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 13129; The San Antonio River Authority (SARA), P.O. Box 839980, San Antonio, Texas 78283, Applicant, seeks a Water Use Permit to authorize the maintenance of 31 impoundments (recreation and ecosystem restoration weir and riffle structures) on the San Antonio River, San Antonio River Basin for in-place recreation and ecosystem restoration purposes in Bexar County. Applicant indicates the impoundments will be maintained with contract water. No new state water is being appropriated. The application was received on May 21, 2014. Additional information and fees were received on June 5 and July 7, 2015, and August 29, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 19, 2017. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including but not limited to maintaining the alternate source of water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a con-

tested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on October 3, 2017

TRD-201703986
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 4, 2017

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Texas Superfund Registry 2017

BACKGROUND

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published on January 16, 1987, in the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) and listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

SITES LISTED ON THE STATE SUPERFUND REGISTRY

In accordance with THSC, §361.188(a)(1), the state Superfund registry identifying those facilities that are *listed* and have been determined to pose an imminent and substantial endangerment in descending order of Hazard Ranking System (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.

4. James Barr Facility. Located in the 3300 block of Industrial Drive, in the southern part of Pearland, Brazoria County: vacuum truck waste storage.

5. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

6. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

7. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.

8. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

9. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

10. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

11. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

12. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

13. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

14. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east of Dumas on Farm Road 119, Moore County: zinc smelter.

15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.

16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

19. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

20. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

21. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

22. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

23. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

24. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

25. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

26. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

SITES PROPOSED FOR LISTING ON THE STATE SUPERFUND REGISTRY

In accordance with THSC, §361.184(a) those facilities that may pose an imminent and substantial endangerment and that have been *proposed* to the state Superfund registry are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: former coin-operated dry cleaning facility.

2. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: cottonseed delinting, processing.

3. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

4. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

5. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

6. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

7. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

8. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

9. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

10. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.

11. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

12. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.

13. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.

14. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

15. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

16. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

17. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

18. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

19. Scrub-A-Dubb Barrel Company. Located at 1102 North Ash Avenue, Lubbock, Lubbock County: former drum cleaning and reconditioning business.

CHANGES SINCE THE SEPTEMBER 2016 SUPERFUND REGISTRY PUBLICATION

Since the last *Texas Register* publication of the state Superfund registry on September 23, 2016 (41 TexReg 7618), the Camtraco Enterprises, Inc. site was listed on the state Superfund registry. There were no additional sites proposed to or deleted from the state Superfund registry.

SITES DELETED FROM THE STATE SUPERFUND REGISTRY

To date, 54 sites have been *deleted* from the state Superfund registry in accordance with THSC, §361.189 (see also 30 TAC §335.344).

Aluminum Finishing Company, Harris County; Archem Company/Thames Chelsea, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; El Paso Plating Works, El Paso County; EmChem Corporation, Brazoria County; Force Road Oil, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corp., Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; J.C. Pennco Waste Oil Service, Bexar County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Niagara Chemical, Cameron County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; SESCO, Tom Green County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank

Services, Harris County; Woodward Industries, Inc., Nacogdoches and Wortham Lead Salvage, Henderson County.

REMOVAL FROM INCLUSION

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

How to Access Agency Records

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, phone number (512) 239-2900, fax (512) 239-1850, or e-mail *cfrreq@tceq.texas.gov.* CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the CFR. Also, inquiries concerning the agency Superfund program records may be directed to Superfund staff at the Superfund toll free line (800) 633-9363 or e-mail *superfnd@tceq.texas.gov.* Parking for mobility impaired persons is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

TRD-201703969
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 2, 2017

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Julia Shinn at (512) 463-5800.

Deadline: Semiannual Report due July 17, 2017, for Committees

James T. Byers, Montgomery County Tea Party PAC, 10204 Forest Glade Ct., Conroe, Texas 77385

Esmer Lopez, Weslaco Municipal Police Association Political Action Committee, 4804 Mile 9 Rd. N., Mercedes, Texas 78570

Derrick Osobase, Texas Working People CWA Political Action Committee, 4301 W. William Cannon Dr., Ste. B-150, #126, Austin, Texas 78749

Peter L. Rene, Caribbean American Political Action Committee, 3500 Woodchase Dr. #1402, Houston, Texas 77042

Deadline: Semiannual Report due July 17, 2017, for Candidates and Officeholders

Frances V. Dunham, 700 N. St. Mary's Street #1400, San Antonio, Texas 78205

Jess A. Fields Jr., P.O. Box 1776, College Station, Texas 77841

Paul K. Stafford, 3355 Blackburn St. #6305, Dallas, Texas 75204

TRD-201703919
Seana Willing
Executive Director
Texas Ethics Commission
Filed: September 28, 2017

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-9-20616

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals 303-9-20616. TFC seeks a five (5) or ten (10) year lease of approximately 8,816 square feet of office space in Robstown, Nueces County, Texas.

The deadline for questions is October 13, 2017 and the deadline for proposals is November 2, 2017 at 3:00 p.m. The award date is November 22, 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 Gayla Davis, at (512) 475-2438. 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=143994.

TRD-201703934
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 29, 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 September 25, 2017, through September 29, 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, October 6, 2017. The public comment period for this project will close at 5:00 p.m. on Sunday, November 5, 2017.

FEDERAL AGENCY ACTION:

Applicant: Vopak Terminal Deer Park, Inc.

Location: Buffalo Bayou (Houston Ship Channel) Harris County, Texas

LATITUDE & LONGITUDE (NAD 83): 29.744963 -95.097266

Project Description: The applicant proposes perform intermittent silt blade maintenance dredging over a 17-acre area to previously authorized depths per Department of the Army Permit SWG-2007-00247 at Docks 105 within Buffalo Bayou. An estimated 6,925 cubic yards of material will be spread away from the breasting line of Dock 2 and away from the adjacent Federal channel. An estimated 7,801 cubic

yards of material will be spread towards the breasting line of Dock 1. An estimated 4,278 cubic yards of material will be spread away from the breasting line Docks 3, 4, and 5. The total impacts, dredging and placement of material, to waters of the U.S. is 17 acres.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2007-00247. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Shell Pipeline Company LP

Location: Buffalo Bayou (Houston Ship Channel) Harris County, Texas

LATITUDE & LONGITUDE (NAD 83): Beginning Pipeline: 29.732278 -95.124833; Ending Pipeline 29.739583 -95.125611

Project Description: The applicant proposes to decommission two parallel 12-inch pipelines in the Houston Ship Channel. The pipelines were installed by the same horizontal directional drill, currently exist parallel to each other, and are placed 180 feet below the current design depth for the Houston Ship Channel.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-00287. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899, as extended by the Outer Continental Shelf Land Act.

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-201703996
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 4, 2017

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Indian Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2017, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for Indian Health Services.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., 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 https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. 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 Indian Health Services are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.8620, which addresses the reimbursement methodology for Services Provided in Indian Health Service and Tribal Facilities.

Briefing Package. A briefing package describing the proposed payments rates will be available at http://rad.hhs.texas.gov/rate-packets on or after November 2, 2017. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail 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 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 e-mail 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-201703988
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 4, 2017

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the 2017 2nd Quarter Healthcare Common Procedure Coding System Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2017, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for the 2017 2nd Quarter Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., 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 https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. 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 2017 2nd Quarter HCPCS Updates are proposed to be effective January 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments rates will be available at http://rad.hhs.texas.gov/rate-packets on or after November 2, 2017. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail 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 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 e-mail 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-201703990
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 4, 2017

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2017, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., 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 https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. 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 the Medicaid Biennial Calendar Fee Review are proposed to be effective January 1, 2018, for the following services:

"B Codes" (Enteral Supplies);

Family Planning Services (programs include: Medicaid, Healthy Texas Women, and HHSC Family Planning Program);

Home Health Services (excluding physical, occupational and speech therapy);

Long Acting Reversible Contraceptives (LARCs) (programs include: Medicaid, Healthy Texas Women, and HHSC Family Planning Program);

Musculoskeletal System Surgery;

"Q Codes" (Physician Services) - Cardiokymography, Pneumatic Assist Devices (includes associated supplies, batteries, and accessories) and Telehealth Site Fees;

"Q Codes" (Hospital and Rural Hospital Services) - Cardiokymography;

"R Codes" (Transportation of portable x-ray equipment to home or nursing home, per trip);

Radiopharmaceuticals; and

Respiratory System Surgery.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps);

§355.8581, which addresses the reimbursement methodology for Family Planning Services; and

§355.8641, which addresses the reimbursement methodology for the Women's Health Program.

Briefing Package. A briefing package describing the proposed payments rates will be available at http://rad.hhs.texas.gov/rate-packets on or after November 2, 2017. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail 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 e-mail 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-201703989
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 4, 2017

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Cardiac Evaluations

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2017, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for the Medical Policy Review of Cardiac Evaluations (93290 and 93297).

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., 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 *https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.* 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 the Medical Policy Review of Cardiac Evaluations (93290 and 93297) are proposed to be effective January 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments rates will be available at *http://rad.hhs.texas.gov/rate-packets* on or after November 2, 2017. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail 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 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 e-mail 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-201703993
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 4, 2017

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Provenge

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2017, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for the Medical Policy Review of Provenge (Q2043).

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., 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 https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. 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 the Medical Policy Review of Provenge (Q2043) are proposed to be effective January 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments rates will be available at http://rad.hhs.texas.gov/rate-packets on or after November 2, 2017. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail 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 e-mail 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-201703994
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 4, 2017

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Texas Health Steps Therapeutic Dental Anesthesia Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2017, at 1:30 p.m., to receive comment on the proposed Medicaid payment rates for the Medical Policy Review of Texas Health Steps Therapeutic Dental Anesthesia Services (00170-U3).

The public hearing will be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., 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 https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. 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 the Medical Policy Review of Texas Health Steps Therapeutic Dental Anesthesia Services (00170-U3) are proposed to be effective February 1, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8221, which addresses the reimbursement methodology for certified registered nurse anesthetists; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments rates will be available at http://rad.hhs.texas.gov/rate-packets on or after November 2, 2017. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail 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 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 e-mail 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-201703995
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 4, 2017

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Public Notice - Update to the Texas Healthcare Transformation Quality Improvement Program Waiver

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) for an update to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. CMS has approved this waiver through December 31, 2017.

Proposed Updates

Attachment F, Home and Community Based Services (HCBS) Fair Hearings Procedures, will be updated to require individuals to exhaust the managed care organization (MCO) appeal process prior to requesting a state Fair Hearing as outlined in the Code of Federal Regulations (CFR) Title 42, Chapter IV, Subchapter C, Part 431, Subpart E, Fair Hearings for Applicants and Beneficiaries.

Attachment G, HCBS participant safeguards, will be updated to reflect changes based on the passage of Senate Bill 200 and Senate Bill 80, 84th Legislature, 2015:

-Senate Bill 200 required the consolidation of client services at the Department of Aging and Disability Services (DADS) and the Department of State Health Services (DSHS) into HHSC; therefore, Attachment G will update references to DADS and DSHS as needed.

-Senate Bill 1880 ensures the State of Texas' compliance with the CMS requirements for the health and welfare of recipients of HCBS and expanded the authority of legacy Department of Family and Protective Services Adult Protective Services to include additional investigations of HCBS.

To obtain copies of the proposed update, interested parties may contact Sallie Allen by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247; by phone at (512) 424-6969; by fax at (512) 487-3403; or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201703984
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 3, 2017

♦ ♦ ♦

Public Notice - Waiver Amendment to the Texas Home Living

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Texas Home Living (TxHmL) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2022. The proposed effective date for this amendment is March 1, 2018 with no changes to cost neutrality.

This amendment request proposes to make the following changes: The amendment seeks to revise performance measure and sampling methodology language to improve data collection methods and procedures. These revisions include edits to Appendices B, C, D, G, I, as well as new measures in appendices C and G.

TxHmL provides essential community-based services and supports to individuals with Intellectual and Developmental Disabilities (IDD) living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, audiology services, behavioral support, community support, dental treatment, dietary service, employ-

ment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver amendment, including the TxHmL settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the TxHmL settings 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, Waiver Coordinator, Policy Development Support

PO Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the Health and Human Services website at: https://hhs.texas.gov/doing-business-hhs/provider-portals/resources/stakeholder-involvement.

TRD-201703957
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: September 29, 2017

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for GLOBALHEALTH, INC., a foreign Health Maintenance Organization. The home office is in Oklahoma City, Oklahoma.

Application to do business in the state of Texas for NORMANDY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Deerfield Beach, Florida.

Application for HAMILTON INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to BLACKBOARD INSURANCE COMPANY. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201703987
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: October 4, 2017

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Texas Lottery Commission

Scratch Ticket Game Number 2009 "Bling"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2009 is "BLING". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2009 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2009.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2009 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2009), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2009-0000001-001.

H. Pack - A Pack of "BLING" Scratch Ticket Games contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "BLING" Scratch Ticket Game No. 2009.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BLING" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 23 (twenty-three) Play Symbols. The player must scratch the entire play area to reveal 3 WINNING NUMBERS Play Symbols and 10 YOUR NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $30,000 will each appear at least once, except on Tickets winning ten (10) times.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "BLING" Scratch Ticket Game prize of $2.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLING" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLING" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BLING" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BLING" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 6,960,000 Scratch Tickets in the Scratch Ticket Game No. 2009. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2009 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	723,840	9.62
$5	334,080	20.83
$10	352,640	19.74
$20	74,240	93.75
$50	8,555	813.56
$100	2,958	2,352.94
$1,000	16	435,000.00
$30,000	6	1,160,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2009 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2009, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201703983
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 3, 2017

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Public Utility Commission of Texas

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 27, 2017, to amend a certificate of convenience and necessity for a proposed transmission line in Yoakum County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 115-kV Transmission Line in Yoakum County (Mustang to Shell CO2), Docket Number 47585.

The Application: The application of Southwestern Public Service Company is designated as the Mustang to Shell CO2 Transmission Line Project. The facilities include construction of a new single circuit, 115-kV transmission line between the existing Mustang Substation and the existing Shell CO2 substation, both located in Yoakum County. The total estimated cost for the project is approximately $20.2 million.

The proposed project is presented with one route and is estimated to be approximately 9 miles in length. All directly affected landowners whose land will be crossed by the proposed transmission line have provided written agreement to the proposed route. Any of the routes or route segments presented in the application could be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is November 13, 2017. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through

Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47585.

TRD-201703927
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink to Withdraw Services Under 16 Texas Administrative Code §26.208(h) - Docket Number 47598.

The Application: On September 13, 2017, under 16 TAC §26.208(h), CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink filed an application with the Commission to withdraw its Wholesale Tariff. CenturyLink seeks to withdraw the services based on lack of customer demand. CenturyLink explained that the rates, terms and conditions in the Wholesale Tariff are covered in Lake Dallas's standard Interconnection Agreements. The proceedings were docketed and suspended on September 14, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene or file comments is November 13, 2017. All inquiries and filings should reference Docket Number 47598.

TRD-201703949
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of CenturyLink of Louisiana, LLC to Withdraw Services Under 16 Texas Administrative Code §26.208(h) -- Docket Number 47599.

The Application: On September 13, 2017, under 16 TAC §26.208(h), CenturyLink of Louisiana, LLC filed an application with the Commission to withdraw its Wholesale Tariff. CenturyLink seeks to withdraw the services based on lack of customer demand. CenturyLink explained that the rates, terms and conditions in the Wholesale Tariff are covered in CenturyLink Louisiana's standard Interconnection Agreements. The proceedings were docketed and suspended on September 14, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene or file comments is November 13, 2017. All inquiries should reference Docket Number 47599.

TRD-201703964
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of CenturyTel of Port Aransas, Inc. dba CenturyLink to Withdraw Services Under 16 Texas Administrative Code §26.208(h) - Docket Number 47600.

The Application: On September 13, 2017, under 16 TAC §26.208(h), CenturyTel of Port Aransas, Inc. dba CenturyLink filed an application with the Commission to withdraw its Wholesale Tariff. CenturyLink seeks to withdraw the services based on lack of customer demand. CenturyLink explained that the rates, terms and conditions in the Wholesale Tariff are covered in Port Aransas's standard Interconnection Agreements. The proceedings were docketed and suspended on September 14, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene or file comments is November 13, 2017. All inquiries should reference Docket Number 47600.

TRD-201703965
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of CenturyTel of San Marcos, Inc. d/b/a CenturyLink to Withdraw Services Under 16 Texas Administrative Code §26.208(h) - Docket Number 47601.

The Application: On September 13, 2017, under 16 TAC §26.208(h), CenturyTel of San Marcos, Inc. d/b/a CenturyLink filed an application with the Commission to withdraw its Wholesale Tariff. CenturyLink seeks to withdraw the services based on lack of customer demand. CenturyLink explained that the rates, terms and conditions in the Wholesale Tariff are covered in San Marcos's standard Interconnection Agreements. The proceedings were docketed and suspended on September 14, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888)

782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene or file comments is November 13, 2017. All inquiries should reference Docket Number 47601.

TRD-201703966
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 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 (commission) on September 28, 2017, Mustang Special Utility District's notice of intent to provide retail water service to a decertified area.

Docket Style And Number: Mustang Special Utility District's Notice of Intent to Provide Retail Water Service to Area Decertified From Terra Southwest Inc. in Denton County, Docket Number 47653.

The Application: Under Texas Water Code §13.254(e) and 16 Texas Administrative Code §24.113(o), Mustang Special Utility District filed a notice of intent to provide water service to an area decertified from Terra Southwest, Inc.'s water certificate of convenience and necessity No. 10608 in Denton County.

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 47653.

TRD-201703979
Adrian Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 3, 2017

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Request for Comments

Staff of the Public Utility Commission of Texas (commission) requests stakeholder comments on Entergy Texas, Inc.'s (ETI) August 24 draft report on the costs and benefits of ETI's membership in the Midcontinent Independent System Operator, Inc. (MISO). ETI's report was filed on August 24, 2017, in Project No. 46397, and is available from the commission's interchange system at *interchange.puc.texas.gov.* Staff requests these comments consistent with the commission's order in Docket No. 40346 and with the commission's discussion at the September 28, 2017, open meeting.

Staff requests comments on ETI's draft report and ETI's continued membership in MISO. Commenters should indicate whether or not an additional technical workshop is necessary to allow further discussion on ETI's draft report. Initial comments should be filed with the commission's Central Records office by 3:00 p.m. on Monday, **November 13, 2017.** Comments may be filed by submitting 16 copies to the commission's Filing Clerk at the following address:

Public Utility Commission of Texas

Central Records

P.O. Box 13326

1701 N. Congress Ave.

Austin, Texas 78711-3326.

All comments should reference Project No. 46397. Commission Staff will review the initial comments received to determine the need for reply comments and a technical workshop. Appropriate deadlines will be set based on commission Staff's review. Questions concerning this notice should be directed to Kennedy Meier at (512) 936-7265 or *Kennedy.Meier@puc.texas.gov* or Stephen Mack at (512) 936-7442 or *Stephen.Mack@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-201703971
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2017

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Supreme Court of Texas

In the Supreme Court of Texas

Misc. Docket No. 17-9129

ORDER AMENDING STANDARDS FOR ATTORNEY CERTIFICATION IN FAMILY LAW AND REAL ESTATE LAW

ORDERED that:

1. The Court approves amendments to the Standards for Attorney Certification by the Texas Board of Legal Specialization in Family Law and Real Estate Law. The amendments to the Real Estate Law Standards include the addition of a new specialization in Property Owners Association Law. The amendments are effective immediately.

2. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal;

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

_____

Nathan L. Hecht, Chief Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

TEXAS BOARD OF LEGAL SPECIALIZATION

STANDARDS FOR ATTORNEY CERTIFICATION

PART II
SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

SECTION II
FAMILY LAW

(Area ID: FM / Year Started: 1975)

A. **PURPOSE.** The purpose of these Standards is to recognize those attorneys having special competence in Family Law. In making the determination of special competence, TBLS will consider the following:

1. The substance and complexity of the tasks submitted to show the required substantial involvement in the specialty area;
2. The professional accomplishments of the attorney in the specialty area;
3. The skill and ability of an attorney in the specialty area;
4. The knowledge of the attorney as shown on the specialty area examination; and
5. The character and fitness of the attorney.

B. **DEFINITION.** Family law is the practice of law dealing with, by way of definition not limitation, matters involving:

- the Texas Family Code, Titles 1, 2, 4 or 5;
- Texas Penal Code, Chapter 25 (offenses against the family);
- the law of homestead and other exempt property; the taxation law of divorce and inter-spousal transactions;
- torts relevant to family law matters;
- the trial of cases arising out of the above matters; and
- appeals arising out of the above matters.

C. **SUBSTANTIAL INVOLVEMENT.** To demonstrate substantial involvement and special competence in Texas family law, applicant must, at a minimum, meet the following requirements.

1. **Certification.**
   a. Percentage of Practice Requirement. Applicant must have devoted a minimum of 35% of his or her time practicing family law in Texas during each year of the 3 years immediately preceding application as defined in Section II, B of the Specific Area Requirements for Family Law.
   b. Task Requirements. Applicant must provide information concerning specific tasks he or she has performed in Texas family law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.
      (1) Applicant must meet each of the following 3 categories within the 5 years

immediately preceding application:

(a) Participated as lead counsel (or as an attorney with significant and substantial involvement in the case, including actively participating in court appearances and hearing preparation) for a party or child(ren) in a total of 9 contested final trials or binding arbitrations in Texas family law cases:
   i. in which oral testimony was taken;
   ii. in which issues were determined by a finder of fact in a court of record or in a binding arbitration, excluding default judgments;
   iii. at least 4 of the trials must have involved issues of property division; and
   iv. at least 4 trials must have involved appointment or modification of conservatorship.

(b) Participated as lead counsel (or as an attorney with significant and substantial involvement in the case, including actively participating in court appearances and hearing preparation) for a party or child(ren) in 30 contested court appearances involving issues pertaining to Texas Family Code, Titles 1, 2, 4, or 5, handled and disposed of prior to and without the necessity of a contested final hearing or trial of the matters on the merits. Contested court appearances may include, but are not limited to, temporary order hearings, discovery hearings, motions for summary judgment hearings, and other hearings if deemed sufficient for qualification by the advisory commission.

(c) Satisfied 2 of the following 3 categories:
   i. Within seven years preceding application, applicant must have handled the trial as lead counsel (or as an attorney with significant and substantial involvement in the case, including actively participating in court appearances and hearing preparation) for a party or child(ren) in one Texas jury trial involving family law OR 2 Texas non-family law jury trials at the county court at law, state district court level, or federal district court level submitted to the jury for decision.
   ii. Within five years preceding application, applicant must have served as lead counsel for a party or child(ren) and filed a brief on the merits in the appeal of one civil case involving family law to a Texas court of appeals or the Supreme Court of Texas. TBLS will consider the nature, complexity, and duration of a mandamus or writ of habeas corpus in determining whether it qualifies for this category.
   iii. Within five years preceding application, applicant must have represented a party or child(ren), or served as a mediator or arbitrator in a cumulative total of 25 Texas mediations, arbitrations, and/or collaborative law cases involving family law. TBLS will consider the nature, complexity, and duration of the mediations, arbitrations, and/or collaborative law cases in determining whether they qualify in this category.

2. **Other Considerations.** TBLS is dedicated to maintaining the highest standards in qualifying applicants for Board Certification. The members of the advisory commission embody those high standards and their judgment and discretion are a critical part of the evaluation process. In addition to the total number of matters in each category, the advisory commission can consider other factors brought to their attention. The advisory commission has discretion to recommend approval or disapproval of applicants to the TBLS Board regardless of whether the numbers in each category are met, based on circumstances such as the nature, complexity, and duration of the tasks handled by the applicant as well as the character and integrity of the applicant.
3. **Recertification.** Applicant must have devoted a minimum of 35% of his or her time practicing family law in Texas during each year of the 5 year period of certification as defined in Section II, B of the Specific Area Requirements for Family Law except as provided for in Part I–General Requirements, Section VI, C,1(b).

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in family law. These persons must be substantially involved in family law, and be familiar with applicant's family law practice.
1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving family law matters within the 3 years immediately preceding application.
2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving family law matters since certification or the most recent recertification.
3. **Reference Types.** Applicant must submit the following types of references:
   a. Four Texas attorneys who practice in the applicant's geographic area and who are substantially involved in family law. Applicant must been an opposing counsel to one of these attorneys either in litigation, hearing, or negotiation of a family law matter.
   b. One judge of any court of record in Texas whom applicant has appeared before as lead counsel in the trial of a family law matter.

TEXAS BOARD OF LEGAL SPECIALIZATION

STANDARDS FOR ATTORNEY CERTIFICATION

PART II
SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

SECTION VIII
REAL ESTATE LAW

(Area ID: RC – Commercial Real Estate Law / Year Started: 1983)
(Area ID: RF – Farm and Ranch Real Estate Law / Year Started: 1983)
(Area ID: RR – Residential Real Estate Law / Year Started: 1983)
(Area ID: RP – Property Owners Association Law / Year Started: 2017)

A. DEFINITIONS.

1. **Real Estate Law.** Real estate law is the rendering of advice and services concerning the laws applicable to land and the improvements and appurtenances (including air and subsurface estates) to land. It also includes the acquisition, transfer, development, financing and use of land; and includes without limitation, knowledge of the legal restrictions and constraints imposed privately and by local, state and federal governments upon land and the improvements to land.
2. **Specialization Subcategories.** Certification is available for 4 subcategories of real estate law defined below:
   a. **Residential Real Estate Law.** Legal practice including advice and services in connection with the acquisition, ownership, leasing, financing, use, transfer and disposition of residential real property.
   b. **Commercial Real Estate Law.** Legal practice involving advice and services in connection with the acquisition, ownership, leasing, financing, use, transfer and disposition of real property other than residential, farm, ranch, or oil, gas and mineral property.
   c. **Farm and Ranch Real Estate Law.** Legal practice involving advice and services in connection with the acquisition, ownership, financing, use, transfer and disposition of farm and ranch property, including a basic knowledge of mineral rights.
   d. **Property Owners Association Law.** Real property law practice involving advice and services in connection with common-interest developments, their mandatory-membership associations of real property owners, and the individual owners of real property in common-interest developments. **A common-interest development** is a real estate development with restrictive covenants that tie ownership of a unit or lot to membership in a property owners association to which the owners are obligated to pay assessments. Common-interest developments, such as condominiums and subdivisions, may have residential, nonresidential, or mixed uses. The property owners association typically maintains common

property, provides services, and enforces restrictions burdening the common-interest development.

B. **SUBSTANTIAL INVOLVEMENT.** Applicant must show substantial involvement and special competence in the specialization subcategory for which applying by providing such information as may be required by TBLS. Applicant may seek certification in one or more specialization subcategories of Texas real estate law.

1. **Certification.**

a. Percentage of Involvement Requirement.

(1) Applicant must have devoted a minimum of 30% of his or her total time practicing Texas real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 1 of the Specific Area Requirements for Real Estate Law.

(2) In addition to devoting the minimum percentage of total time to Texas real estate law as indicated in Section VIII, B, 1, a (1) above, applicant must have devoted the required percentage of practice to each specialization subcategory of Texas real estate law in which certification is being sought.

a. **Residential Real Estate Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas residential real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(a) of the Specific Area Requirements for Real Estate Law.

b. **Commercial Real Estate Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas commercial real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(b) of the Specific Area Requirements for Real Estate Law.

c. **Farm and Ranch Real Estate Law.** Ten percent (10%) of applicant's total time must have been devoted to the practice of Texas farm and ranch real estate law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(c) of the Specific Area Requirements for Real Estate Law.

d. **Property Owners Association Law.** Twenty (20%) of applicant's total time must have been devoted to the practice of Texas property owners association law during each year of the 3 years immediately preceding application as defined in Section VIII, A, 2(d) of the Specific Area Requirements for Real Estate Law.

b. Task Requirements. Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in each specialization subcategory in which certification is being sought. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) All applicants must submit a resume or job summary reflecting activities in real estate law for at least 5 years immediately preceding application.

(2) All applicants must list the number of matters handled in the categories listed below within the 3 years immediately preceding application for each specialization subcategory of Texas real estate law in which certification is being sought:

(a) Purchase and Sale,

(b) Loan Transactions/Financing,
(c) Equity Financing,
(d) Government Agency Financing,
(e) Construction and Development,
(f) Easements, including Utility Easements,
(g) Title Searches and Examinations,
(h) Title Insurance,
(i) Condemnation Matters,
(j) Leases,
(k) Landlord/Tenant Problems,
(l) Foreclosures and Other Remedial Actions by Creditors,
(m) Taxation Aspects of Real Estate Transactions,
(n) Environmental and Land Use Matters,
(o) Oil and Gas, and Other Mineral Matters,
(p) Zoning, Restrictions, and Land Use Planning,
(q) Subdivisions and Condominiums,
(r) State and Federal Land Regulations,
(s) Legislation,
(t) Property Owners Associations, or
(u) Other Real Estate Law Matters or Transactions.

(3) **Applicants in Residential, Commercial, or Farm and Ranch Real Estate Law.** An applicant for certification in these specialization subcategories of Texas real estate law must also provide a detailed explanation that would clearly demonstrate substantial involvement within the 3 years immediately preceding application for each specialization subcategory of Texas real estate law in which certification is being sought.

(4) (a) **Applicants in Property Owners Association Law.** Applicant must demonstrate a substantial breadth of experience in the practice of Property Owners Association Law. Typical activities in this specialty area include: (i) serving as counsel to property owners associations, their officers and directors, their members, and their managers on matters pertaining to the common-interest development and its governing association; (ii) drafting, amending, and interpreting documents that create and govern the development and its association; (iii) representing parties in assessment collection actions, enforcement of statutes and governing documents, and other litigation and dispute resolution relating to the common-interest development and its association; and (iv) serving as counsel to real estate developers in the creation of common-interest developments and property owners associations.

To demonstrate substantial breadth of experience, applicant must provide a written description of at least 20 substantive tasks or services performed by applicant in at least three of the categories listed below during each year of the 3 years immediately preceding application. The written description for each of the 60 or more substantive tasks or services must identify (i) the task category from the list below, (ii) when performed, and (iii) the type of client represented by applicant, such as owners, developers, lenders, property owners associations, association

officers and directors, association managers, or political subdivisions.

1. Documents. Draft, review, interpret, or amend development and governing documents pertaining to common interest developments and property owners associations.
2. Assessments. Issues pertaining to assessments, such as lien priorities, demands, payment plans, foreclosure, and redemption.
3. Rules. Issues pertaining to enforcement of rules and restrictions.
4. Contracts. Negotiating, enforcing, and terminating contracts to which property owners associations are party.
5. Entity. The creation, merger, or termination of property owners associations, and transfer of control from developer to owners.
6. Governance. Issues related to meetings, records, and elections of property owners associations.
7. Compliance. Compliance with applicable laws and governing documents.
8. Litigation. Serving as legal counsel or expert witness on issues of Property Owners Association Law (i) in a forum of alternate dispute resolution, such as mediation or arbitration, (ii) at a trial or on appeal, or (iii) in an administrative hearing.
9. Lending. Financing development or construction of the common interest development, mortgage financing on individual units or lots, borrowing by a property owners association.
10. Insurance. Dealing with insurance and bonds pertaining to a common interest development or property owners association.
11. Legislation. Drafting and negotiating proposed legislation specific to common interest developments and property owners association.
12. Education. Providing graduate school, law school, or continuing legal education in the field of Property Owners Association Law.
13. Any other substantive task or service that does not fit in any of the categories described above.

(b) **Certification in Property Owners Association Law Without Examination.** An applicant for certification in this specialization subcategory of property owners association law who meets the following requirements may be eligible for certification without examination:

1. has been licensed for 10 years,
2. is currently certified by TBLS in residential real estate law or commercial real estate law,
3. meets the minimum percent of practice for the specialization subcategory for each of the three years

immediately preceding application as set forth in Section VIII, B, 1, a, (2)d.

4. satisfies the task requirements for the specialization subcategory during the three years immediately preceding application as set forth in Section VIII, B, 1, b, (1)(2) and (4)(a), and
5. applies for certification no later than 3 years after the effective date of this specialization subcategory.

2. **Recertification.**
   a. Applicant must have devoted a minimum of 30% of his or her time practicing Texas real estate law during each year of the 5-year period of certification as defined in Section VIII, A, 1 of the Specific Area Requirements for Real Estate Law except as provided for in Part I–General Requirements, Section VI, C, 1(b).
   b. Applicant may seek recertification in one or more specialization subcategories of Texas real estate law. In addition to devoting the minimum percentage of total time to Texas real estate law as indicated in Section VIII, B, 2, a above, applicant must have devoted the required percentage of practice to each specialization subcategory in which recertification is being sought.
      (1) **Residential Real Estate Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas residential real estate law during each year of the 5 year period of certification as defined in Section VIII, A, 2(a) of the Specific Area Requirements for Real Estate Law.
      (2) **Commercial Real Estate Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas commercial real estate law during each year of the 5 year period of certification as defined in Section VIII, A, 2(b) of the Specific Area Requirements for Real Estate Law.
      (3) **Farm and Ranch Real Estate Law.** Ten percent (10%) of applicant's total time must have been devoted to the practice of Texas farm and ranch real estate law during each year of the 5 year period of certification as defined in Section VIII, A, 2(c) of the Specific Area Requirements for Real Estate Law.
      (4) **Property Owners Association Law.** Twenty percent (20%) of applicant's total time must have been devoted to the practice of Texas property owners association law during each year of the 5-year period of certification as defined in Section VIII, A, 2(d) of the Specific Area Requirements for Real Estate Law.

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in the specialization subcategory of real estate law in which applicant is seeking certification or recertification. These persons must be substantially involved in the specialization subcategory of real estate law, and be familiar with applicant's practice in the specialization subcategory of real estate law.

1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving matters in the specialization subcategory of real estate law within the 3 years immediately preceding application.
2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving matters in the specialization subcategory of real estate law since certification or the most recent recertification.
3. **Reference Types.** Applicant must submit the names of 5 Texas attorneys who are

substantially involved in the specialization subcategory of real estate law in which applicant is seeking certification or recertification.

TRD-201703928
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: September 29, 2017

♦ ♦ ♦

Texas Water Development Board

Applications for the Month of September, 2017

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62756, a request from the San Antonio Water System, P.O. Box 2449, San Antonio, Texas 78298-2449, received June 16, 2017, for $10,500,000 in financing from the Drinking Water State Revolving Fund for construction of water system improvements.

Project ID #73763, a request from the City of Blanco, P.O. Box 750, Blanco, Texas 78606, received March 31, 2017, for $3,150,000 in financing from the Clean Water State Revolving Fund for planning, design, and construction of a new wastewater treatment plant.

Project ID #62748, a request from the City of Blanco, P.O. Box 750, Blanco, Texas 78606, received March 31, 2017, for $3,150,000 in financing from the Drinking Water State Revolving Fund for planning, design, and construction of improvements to water treatment facilities.

Project ID #73767, a request from the City of Savoy, 405 E. Hayes Street, Savoy, Texas 75479-2313, received May 8, 2017, for $2,755,000 in financing from the Clean Water State Revolving Fund for planning, design, and construction of wastewater treatment plant improvements.

TRD-201703958
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: September 29, 2017

♦ ♦ ♦

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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