
TEXAS REGISTER

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*Sabrina Vogt
11th Grade*

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.

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(512) 463-5561
FAX (512) 463-5569

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

Secretary of State –
Carlos H. Cascos

Director – Robert Sumners

Staff

Leti Benavides
Dana Blanton
Audrey Bradshaw
Deana Lackey
Jill S. Ledbetter
Michelle Miner
Joy L. Morgan
Barbara Strickland
Tami Washburn

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THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-0090-KP

Requestor:

The Honorable Micheal E. Jimerson

Rusk County and District Attorney

115 North Main Street, Suite 302

Henderson, Texas 75652

Re: Whether the Rusk County School District tax violates article VIII, section 1-e of the Texas Constitution (RQ-0090-KP)

Briefs requested by February 16, 2016

RQ-0091-KP

Requestor:

The Honorable Ana Markowski Smith

Val Verde County Attorney

207 East Losoya Street

Del Rio, Texas 78840

Re: Whether a school district board of trustees may fill a vacancy through special election on a uniform election date more than 180 days from the onset of the vacancy (RQ-0091-KP)

Briefs requested by February 24, 2016

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

TRD-201600331

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: January 26, 2016



Opinions

Opinion No. KP-0058

The Honorable Dan Flynn

Chair, Committee on Pensions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Proper procedure for a state agency when a court recognizes a new constitutional right and compliance with the ruling requires additional state funds (RQ-0039-KP)

S U M M A R Y

When a state agency faces a shortage of appropriated funds due to an unexpected occurrence, the agency may consider statutory mechanisms that may be available to address fiscal emergencies, including those found in chapters 317 and 401 of the Government Code.

Opinion No. KP-0059

The Honorable Chris Taylor

Tom Green County Attorney

122 West Harris

Criminal Justice Center

San Angelo, Texas 76903

Re: Authority of a county commissioners court to establish requirements for indigent health care under the Texas Indigent Health Care and Treatment Act and relevant federal law (RQ-0041-KP)

S U M M A R Y

State statutory and administrative law prohibits a county commissioners court from adopting county requirements that categorically restrict eligibility for county indigent health care contrary to state and federal law. Whether an alien who is an eligible county resident under the Texas Indigent Health Care and Treatment Act may receive county indigent health care will depend on the relevant provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 governing the specific benefits at issue.

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

TRD-201600341

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: January 26, 2016





Josephine Palitza, 11th Grade

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 35. REIMBURSEMENT ADJUSTMENTS FOR POTENTIALLY PREVENTABLE EVENTS

1 TAC §354.1445, §354.1446

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1445, concerning Potentially Preventable Readmissions; and §354.1446, concerning Potentially Preventable Complications.

BACKGROUND AND JUSTIFICATION

Texas Government Code §536.151 and §536.152 require HHSC to implement a reporting process and reimbursement adjustments to hospitals based on performance of potentially preventable readmissions (PPRs) and potentially preventable complications (PPCs). HHSC first adopted §354.1445 and §354.1446 to implement the statutory directive, at least with respect to reimbursement reductions, in 2013. See 38 TexReg 2315 (2013), *amended by* 39 TexReg 6403 (2014).

HHSC proposes to amend these two rules for three reasons.

First, the amendments clarify a hospital's ability to request its underlying data used in HHSC's analysis that determines penalties and incentive payments for the hospital. The proposed amendments specify the additional information a hospital can expect in the underlying data, including readmission data on other hospitals.

Each year, hospitals are provided a confidential report based on their performance of PPRs and PPCs. The report states that hospitals may request the underlying data from HHSC via e-mail. In regards to PPRs, hospitals are held accountable for readmissions to their own hospital and to different hospitals within the 15-day readmission window. Currently, the underlying data does not separately identify the names of other hospitals where readmissions occurred. In a recent survey from HHSC, hospitals indicated that this information, including patient-level identifiers, is crucial to identify opportunities to close gaps in care, assist with care coordination, identify trends, foster collaborative efforts in

their communities, develop innovative methods for prevention, and reduce readmission rates.

Second, the amendments identify a methodology for incentives for HHSC-defined safety-net hospitals. The 2016-2017 General Appropriations Act, House Bill 1, 84th Legislature, Regular Session, 2015 (Article II, Special Provisions Section 59(b)), directs HHSC to provide incentive payments to safety-net hospitals in the amount of \$150,378,593 (all funds) in fiscal year 2016 and \$148,641,716 (all funds) in fiscal year 2017. It requires HHSC to establish a program to use ten percent of these additionally appropriated funds to distribute to these hospitals based on quality metrics. Total reimbursement for each hospital must not exceed its hospital-specific limit, but HHSC must expend ten percent of these funds to provide additional increases to safety-net that exceed existing quality metrics, which may result in exceeding the hospital-specific limit. To the extent possible, HHSC must ensure that any funds included in Medicaid managed care capitation rates are distributed by the managed care organizations to the hospitals.

Third, the amendments further refine the methodology, such as clarifying methodology, definitions, and the Present on Admission screening adjustment described in §354.1446.

SECTION-BY-SECTION SUMMARY

Proposed §354.1445(b) adds definitions for the terms "managed care organization" and "safety-net hospital" and makes nonsubstantive corrections.

Proposed §354.1445(c) allows use of weighting factors other than cost of PPR in calculating the PPR actual-to-expected ratio.

Proposed §354.1445(e)(1) and (2) describes how a hospital may request the underlying data used to analyze the hospital's performance and the information the underlying data contains.

Proposed §354.1445(h) describes the methodology for targeted incentive payments to safety net hospitals.

Proposed §354.1446(b) adds definitions for the terms "managed care organization" and "safety-net hospital."

Proposed §354.1446(e)(1) and (2) describes how a hospital may request the underlying data used to analyze the hospital's performance and the information the underlying data contains.

Proposed §354.1446(g)(4) omits the start date of the Present on Admission (POA) adjustment and changes HHSC's use of the adjustment criteria from mandatory to optional.

Proposed §354.1446(h) describes the methodology for targeted incentive payments to safety net hospitals.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be a fiscal impact to state government of \$6,434,700 General Revenue (GR) (\$15,037,859 All Funds (AF)) for State Fiscal Year (SFY) 2016; \$6,434,700 GR (\$14,864,172 AF) for SFY 2017; and \$6,434,700 GR (\$14,850,450 AF) for each year from SFY 2018 through SFY 2020. Costs and revenues of local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the amended rules, as there are no affected hospitals that qualify as small businesses or micro-businesses.

PUBLIC BENEFIT

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be increased funds for hospitals that achieve a high quality of care. Hospitals will also be able to use the underlying data to identify opportunities to close gaps in care and assist with care coordination.

Ms. Rymal has also determined that for each of the first five years the rules are in effect, there will be no costs to persons required to comply with the rules as proposed. There is no anticipated negative impact on a local economy.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Janna Doan, Program Specialist, 6330 Highway 290 East, Suite 100, Austin, Texas 78723; by fax to (512) 380-4380; or by e-mail to Janna.Doan@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled from 11:00 a.m. to 12:00 p.m. on February 19, 2016, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §536.152, which provides HHSC with the authority to adjust payments to hospitals that exceed quality measures. In addition, the rules are proposed to implement Texas Government Code §536.151 and §536.152, which provide for the collection and reporting of PPR and PPC information and for reimbursement adjustments.

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

§354.1445. *Potentially Preventable Readmissions.*

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to meet outcome and process measures relative to all Texas Medicaid and CHIP hospitals regarding the rates of potentially preventable events.

(b) Definitions.

(1) Actual-to-Expected Ratio--A ratio that measures the impact of potentially preventable readmissions (PPRs) by deriving an actual hospital rate compared to an expected hospital rate based on a methodology defined by HHSC. HHSC may use cost of PPR as a factor in weighting PPRs and in calculating PPR Actual-to-Expected Ratio.

(2) Adjustment time period--The state fiscal year (September through August) that a hospital's claims are adjusted in accordance with subsection (f) of this section. Adjustments will be done on an annual basis.

(3) All Patient Refined Diagnosis[-]Related Group (APR[-]DRG)--A diagnosis and procedure code classification system for inpatient services.

(4) Candidate admission--An admission that is at risk of a PPR.

(5) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period and measured using APR DRG [all patient refined diagnosis related group (APR-DRG)] or its replacement classification system, severity of illness, patient age, and the presence of a major mental health or substance abuse comorbidity.

(6) Claims during the reporting time period--Includes Medicaid traditional fee-for-service (FFS), Children's Health Insurance Program or CHIP, and managed care inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting period;

(B) were adjudicated and approved for payment during the reporting period and the six-month grace period that immediately followed, except for claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not claims for individuals classified as undocumented immigrants; and

(E) were not subject to other exclusions as determined by HHSC.

(7) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. Chapter 7, Title XXI) and Chapters 62 and 63 of the Texas Health and Safety Code.

(8) Clinically related--A requirement that the underlying reason for readmission be plausibly related to the care rendered during or immediately following the initial admission. A clinically related readmission occurs within a specified readmission time interval resulting from the process of care and treatment during the initial admission or from a lack of post admission follow-up, but not from unrelated events occurring after the initial admission.

(9) HHSC--The Health and Human Services Commission or its designee.

(10) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Texas Health and Safety Code, including a general or special hospital as defined by §241.003, Texas Health and Safety Code.

(11) Initial admission--A candidate admission followed by one or more readmissions that are clinically related.

(12) Managed care organization (MCO)--A provider or organization under contract with HHSC to provide services to Medicaid or CHIP recipients using a health care delivery system or dental services delivery system in which provider or organization coordinates the patient's overall care.

(13) [~~42~~] Medicaid program--The medical assistance program established under Chapter 32, Texas Human Resources Code.

(14) [~~43~~] Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of these events, which are more fully defined in §354.1070 of this title.

(15) [~~44~~] Potentially preventable readmission (PPR)--A return hospitalization of a person within a period specified by HHSC that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by HHSC.

(16) [~~45~~] Readmission chain--A sequence of PPRs that are all clinically related to the Initial Admission. A readmission chain may contain an Initial Admission and only one PPR, or may contain multiple PPRs following the Initial Admission.

(17) [~~46~~] Reporting time period--The period of time that includes hospital claims that are assessed for PPRs. This may be a state fiscal year (September through August) or other specified time frame as determined by HHSC. PPR Reports will consist of statewide and hospital-specific reports and will be done at least on an annual basis, using the most complete data period available to HHSC.

(18) Safety-net hospital--As defined in §355.8052 of this title (relating to Inpatient Hospital Reimbursement).

(c) Calculating a PPR rate. Using claims during the reporting time period and HHSC-designated software and methodology, HHSC calculates an actual PPR rate and an expected PPR rate for each hospital in the analysis. The methodology for inclusion of hospitals in the analysis will be described in the statewide and hospital-specific reports. [HHSC may use cost of PPR as a factor in weighting PPRs, and in calculating PPR Actual-to-Expected Ratio.]

(1) The actual PPR rate is the number of readmission chains divided by the number of candidate admissions.

(2) The expected PPR rate is the expected number of readmission chains divided by the number of candidate admissions. The expected number of readmission chains is based on the hospital's case-mix relative to the case-mix of all hospitals included in the analysis during the reporting period.

(3) HHSC may weight PPRs based on expected resource use.

(d) Comparing the PPR performance of all hospitals included in analysis. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPR rates.

(e) Reporting results of PPR rate calculations. HHSC provides a confidential report to each hospital included in the analysis regarding the hospital's performance with respect to potentially preventable readmissions, including the PPR rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(1) A hospital may request the underlying data used in the analysis to generate the report via an email request to the HHSC email address found on the report.

(2) The underlying data contains patient-level identifiers, information on all hospitals where the readmissions occurred, and other information deemed relevant by HHSC.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPR ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -1%;

(2) A hospital with an actual-to-expected PPR ratio greater than 1.25 is subject to a reimbursement adjustment of -2%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section will apply to all Medicaid fee-for-service claims, based on patient discharge date, for the adjustment time period after the confidential report on which the reimbursement adjustments are based is made available to hospitals.

(2) The reimbursement adjustments for a hospital will cease in the adjustment time period that is after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

(h) Targeted incentive payments for safety-net hospitals.

(1) HHSC determines annually whether a safety-net hospital may receive an incentive payment for performance on PPR incidence.

(2) The appropriated funds for the targeted incentive payments are split in half, 50 percent for PPRs and 50 percent for potentially preventable complications.

(3) The dataset used in the incentive analysis is the same as the dataset used in the PPR reimbursement adjustments.

(4) Hospitals that are eligible for a targeted incentive payment must meet the following requirements:

(A) be a safety-net hospital;

(B) have an actual-to-expected ratio of at least 10 percent lower than the statewide average (actual-to-expected ratio is less than or equal to 0.90);

(C) have not received a penalty for either PPRs or potentially preventable complications; and

(D) are not low-volume, as defined by HHSC.

(5) Calculation of targeted incentive payments.

(A) Calculate base allocation. Each eligible hospital is awarded a base allocation not to exceed \$100,000.

(B) Calculate variable allocation. Each eligible hospital is awarded a variable allocation, which is calculated from remaining funds after distribution of base allocations to all eligible hospitals. The variable allocation has the following components:

(i) Hospital size score. Each eligible hospital's size divided by the average size of the whole group of hospitals within each incentive pool. Size is calculated based on total inpatient facility claims paid to each eligible hospital. Each eligible hospital's size calculation is capped at 2.00.

(ii) Hospital Performance score. Each eligible hospital's performance divided by the average performance of the whole group of hospitals within each incentive pool. Performance is calculated by actual to expected ratio.

(iii) Composite score. Each eligible hospital receives a composite score, which is the hospital's size score multiplied by the hospital's performance score.

(iv) Each hospital's composite score divided by the sum of all eligible hospitals' composite scores is multiplied by the remaining incentive funds, after distribution of base allocations.

(C) Calculate final allocation: The final allocation to each eligible hospital is equal to the eligible hospital's base allocation plus the eligible hospital's variable allocation.

(6) Each eligible hospital's PPR incentive payment will be divided between FFS and MCO reimbursements based on the percentage of its total paid FFS and MCO Medicaid inpatient hospital reimbursements for the reporting time period accruing from FFS.

(7) PPR incentive payments may be made as lump sum payments or tied to particular claims or recipients, at HHSC's discretion.

(8) HHSC will post the methodology for calculating and distributing incentives on its public website.

(9) Targeted incentive payments for safety-net hospitals are not included in the calculation of a hospital's hospital-specific limit.

§354.1446. Potentially Preventable Complications.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to achieve outcome and process measures relative to all Texas Medicaid and CHIP hospitals that address the rates of potentially preventable events.

(b) Definitions.

(1) Actual to Expected Ratio--The ratio of actual potentially preventable complications (PPCs) within an inpatient stay compared with expected PPCs within an inpatient stay, where the expected number depends on the all patient refined[-]diagnosis related group at the time of admission (APR[-]DRG or its replacement classification system) is adjusted for the patient's severity of illness. HHSC, at its discretion, determines the relative weights of PPCs when calculating the actual to expected ratio. Expected PPC results calculation is based on the statewide norms and is calculated from Medicaid traditional fee-for-service (FFS), Children's Health Insurance Program or CHIP, and, if available, managed care data.

(2) Adjustment time period--The state fiscal year (September through August) that a hospital's claims are adjusted in accordance with subsection (f) or (g)(4) of this section. Adjustments will be done on an annual basis.

(3) All Patient Refined Diagnosis[-]Related Group (APR[-]DRG)--A diagnosis and procedure code classification system for inpatient services.

(4) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period based on diagnosis and severity of illness. "Higher" case-mix refers to sicker patients who require more hospital resources.

(5) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. Chapter 7, Title XXI) and Chapters 62 and 63 of the Texas Health and Safety Code.

(6) Inpatient claims during the reporting time period--Includes Medicaid traditional FFS, CHIP, and, if available, managed care data for inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting time period;

(B) were adjudicated and approved for payment during the reporting time period and the six-month grace period that immediately followed, except for such claims that had zero inpatient days;

(C) were not inpatient stays for patients who are covered by Medicare;

(D) were not claims for patients diagnosed with major metastatic cancer, organ transplants, human immunodeficiency virus (HIV), or major trauma; and

(E) were not subject to other exclusions as determined by HHSC.

(7) HHSC--The Health and Human Services Commission or its designee.

(8) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Texas Health and Safety Code, including a general or special hospital as defined by §241.003, Texas Health and Safety Code.

(9) Managed care organization (MCO)--Managed care is a health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization. MCO refers to such a provider or organization under contract with HHSC to provide services to Medicaid recipients.

(10) [(9)] Medicaid program--The medical assistance program established under Chapter 32, Texas Human Resources Code.

(11) [(10)] Norm--The Texas statewide average or the standard by which hospital PPC performance is compared.

(12) [(11)] Potentially preventable complication (PPC)--A harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to an inpatient acute care hospital; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital stay rather than from a natural progression of an underlying disease.

(13) [(12)] Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events, which are more fully defined in §354.1070 of this title.

(14) [(13)] Present on Admission (POA) Indicators--A coding system that requires hospitals to accurately submit principal and secondary diagnoses that are present at the time of admission. POA codes are essential for the accurate calculation of PPC rates and consist of the current coding set approved by CMS.

(15) [(14)] Reporting time period--The period of time that includes hospital claims that are assessed for PPCs. This may be a state fiscal year (September through August) or other specified time frame as determined by HHSC. PPC Reports will consist of statewide and hospital-specific reports and will be done at least on an annual basis, using the most complete data period available to HHSC.

(16) Safety-net hospital--As defined in §355.8052 of this title (relating to Inpatient Hospital Reimbursement).

(c) Calculating a PPC rate. Using inpatient claims during the reporting time period and HHSC-designated software and methodology, HHSC calculates an actual PPC rate and an expected PPC rate for each hospital included in the analysis. The methodology for inclusion of hospitals in the analysis will be described in the statewide and hospital-specific reports. HHSC will determine at its discretion the relative weights of PPCs when calculating the actual to expected ratio.

(d) Comparing the PPC performance of all hospitals included in the analysis. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPC rates.

(e) Reporting results of PPC rate calculations. HHSC provides a confidential report to each hospital included in the analysis regarding the hospital's performance with respect to potentially preventable complications, including the PPC rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(1) A hospital may request the underlying data used in the analysis to generate the report via an email request to the HHSC email address found on the report.

(2) The underlying data contains patient-level identifiers and other information deemed relevant by HHSC.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPC ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -2%;

(2) A hospital with an actual-to-expected PPC ratio greater than 1.25 is subject to a reimbursement adjustment of -2.5%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid fee-for-service claims beginning November 1, 2013 and after.

(2) The reimbursement adjustments will occur after the confidential report on which the reimbursement adjustments are based is made available to hospitals.

(3) The reimbursement adjustments for a hospital will cease in the adjustment time period that is after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

(4) Based on HHSC-approved POA data screening criteria, HHSC may implement automatic payment reductions to hospitals who fail POA screening. The POA screening criteria and methodology will be described in the statewide and hospital specific reports. At its discretion, HHSC applies the following adjustments based on POA screening criteria: [The POA screening process will begin during the FY15 reporting time period and will apply to the corresponding adjustment time period as follows:]

(A) Failure to meet POA screening criteria, first reporting period violation: 2% reduction applied to all Medicaid fee-for-service claims in the corresponding adjustment period.

(B) Failure to meet POA screening criteria, two or more violations in a row: 2.5% applied all Medicaid fee-for-service claims in the corresponding adjustment period.

(C) If a hospital passes POA screening criteria during a reporting time period, any future violations of the POA screening criteria will be considered a first violation.

(5) The reimbursement adjustments based on POA screening criteria will cease when the hospital passes HHSC-approved POA screening criteria for an entire reporting time period, at which the hospital will be subject to reimbursement adjustments, if applicable, based on criteria outlined in subsection (f) of this section.

(6) Hospitals that receive a reimbursement adjustment based on POA screening criteria outlined in paragraph (4) of this subsection will not concurrently receive reductions outlined in subsection (f) of this section.

(h) Targeted incentive payments for safety-net hospitals.

(1) HHSC determines annually whether a safety-net hospital may receive an incentive payment for performance on PPC incidence.

(2) The appropriated funds for the targeted incentive payments are split in half, 50 percent for PPCs and 50 percent for potentially preventable readmissions.

(3) The dataset used in the incentive analysis is the same as the dataset used in the PPC reimbursement adjustments.

(4) Hospitals that are eligible for a targeted incentive payment must meet the following requirements:

(A) be a safety-net hospital;

(B) have an actual-to-expected ratio of at least 10 percent lower than the statewide average (actual-to-expected ratio is less than or equal to 0.90);

(C) have not received a penalty for either PPCs or potentially preventable readmissions; and

(D) are not low-volume, as defined by HHSC.

(5) Calculation of targeted incentive payments.

(A) Calculate base allocation. Each eligible hospital is awarded a base allocation not to exceed \$100,000.

(B) Calculate variable allocation. Each eligible hospital is awarded a variable allocation, which is calculated from remaining funds after distribution of base allocations to all eligible hospitals. The variable allocation has the following components:

(i) Hospital size score. Each eligible hospital's size divided by the average size of the whole group of hospitals within each incentive pool. Size is calculated based on total inpatient facility claims paid to each eligible hospital. Each eligible hospital's size calculation is capped at 2.00.

(ii) Hospital Performance score. Each eligible hospital's performance divided by the average performance of the whole group of hospitals within each incentive pool. Performance is calculated by actual to expected ratio.

(iii) Composite score. Each eligible hospital receives a composite score, which is the hospital's size score multiplied by the hospital's performance score.

(iv) Each hospital's composite score divided by the sum of all eligible hospitals' composite scores is multiplied by the remaining incentive funds, after distribution of base allocations.

(C) Calculate final allocation. The final allocation to each eligible hospital is equal to the eligible hospital's base allocation plus the eligible hospital's variable allocation.

(6) Each eligible hospital's PPC incentive payment will be divided between FFS and MCO reimbursements based on the percentage of its total paid FFS and MCO Medicaid inpatient hospital reimbursements for the reporting time period accruing from FFS.

(7) PPC incentive payments may be made as lump sum payments or tied to particular claims or recipients at HHSC's discretion.

(8) HHSC will post the methodology for calculating and distributing incentives on its public website.

(9) Targeted incentive payments for safety-net hospitals are not included in the calculation of a hospital's hospital-specific limit.

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 January 25, 2016.

TRD-201600284

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 424-6900



CHAPTER 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS SUBCHAPTER G. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §375.701

The Texas Health and Human Services Commission (HHSC) proposes new §375.701, concerning Local Governmental and Community Input.

BACKGROUND AND JUSTIFICATION

The Office of Immigration and Refugee Affairs within HHSC is the single point of contact for federally funded refugee cash and medical assistance and social services in Texas. Refugee resettlement and placement is primarily a process between the U.S. Department of State, national resettlement agencies, and their local resettlement agency affiliates. HHSC contracts with the local resettlement agencies in Texas to provide refugee resettlement services, including refugee cash assistance under the State Plan for the Refugee Program.

Senate Bill (SB) 1928, 84th Legislature, Regular Session, 2015, enacted Texas Government §531.0411, which requires HHSC to adopt rules requiring local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas. The proposed new rule in 1 TAC Chapter 375, concerning Refugee Cash Assistance and Medical Assistance Programs, adds requirements for local resettlement agencies engaged in the refugee resettlement and placement process in Texas.

The new rule requires local resettlement agencies to:

- 1) Convene meetings at least quarterly at which local resettlement agencies consult with local governmental entities and officials, and other community stakeholders, on proposed refugee placement.
- 2) Respond within five business days to requests from a local governmental entity or community stakeholders to meet, in addition to the quarterly meetings, regarding the resettlement process.
- 3) Consider input from these meetings when developing an annual refugee placement report to their national organizations for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 4) Provide HHSC, local governmental entities and officials and local community stakeholders with a copy of each proposed annual report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 5) Submit a final annual report to their national organizations and HHSC summarizing how this input contributed to the development of their annual refugee placement report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 6) Provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

7) Respond within five business days to requests for information related to the resettlement process by local governmental entities and officials or community stakeholders, to the extent not otherwise prohibited by state or federal law.

Local refugee resettlement agencies are already required by their national organizations and the U.S. Department of State to engage in community consultation and to provide quarterly community consultations reports. See: 8 U.S.C. §1522(a)(2)(C)(ii) and (b)(7). The reports serve as a record of the consultations and describe both best practices and issues that prevent adequate resettlement or result in changes in placement plans for the area. SB 1928 provides more specificity and structure around the existing federal requirements. As a result, any costs incurred by local resettlement agencies to comply with the proposed new rule will be minimal.

SECTION-BY-SECTION SUMMARY

Proposed §375.701(a) describes the terms used in the subchapter.

Proposed §375.701(b) describes the requirements for local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas.

Proposed §375.701(c) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder to meet with the resettlement agency regarding refugee placement.

Proposed §375.701(d) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder for information related to the resettlement process.

Proposed §375.701(e) describes the requirement for local resettlement agencies to consider all feedback obtained from the meetings held under subsections (b) and (c) of this section for purposes of their proposed annual report on the placement of refugees.

Proposed §375.701(f) describes to whom the local resettlement agencies must provide a copy of their proposed annual report on the placement of refugees.

Proposed §375.701(g) describes the reporting requirements for the local resettlement agencies.

Proposed §375.701(h) describes the requirement for the local resettlement agencies to provide HHSC with their refugee placement recommendations.

Proposed §375.701(i) describes how local resettlement agencies contracted by HHSC must comply with the requirements described in this subchapter.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there will be no impact to costs and revenues of state and local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined there will be no adverse economic effect on small businesses or micro-businesses, as no local resettlement agencies affected qualify as small businesses or micro-businesses.

PUBLIC BENEFIT

Charles Smith, Chief Deputy Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved documentation and oversight regarding the placement of refugees in local communities.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule. The proposed rule will not affect a local economy and there is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Helen Oh, Program Specialist, 909 W. 45th Street, Mail Code 2010, Austin Texas 78751; by fax to (512) 206-5812; or by e-mail to helen.oh@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for February 19, 2016, from 9:45 a.m. to 10:45 a.m. (CST) in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §752.004, which authorize HHSC to apply for and distribute funds to agencies responsible for providing services to refugees; and Texas Government Code §531.0411 which requires the Executive Commissioner of HHSC to adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information.

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

§375.701. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply:

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first

day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) HHSC--Texas Health and Human Services Commission, or its designee.

(3) Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(4) National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies;

and

(2) community stakeholders, including:

(A) major providers under the local health care system;

and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within five business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within five business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than 15 business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than 3 business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section before preparing a proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of the proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of the report for the purposes of 8 U.S.C. Section 1522(b)(7)(E).

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements for the Refugee Cash Assistance Program), Subchapter C of this chapter (relating to Program Administration for the Refugee Cash Assistance Program), and Subchapter E of this chapter (relating to Refugee Medical Assistance), a contract with a local resettlement agency to provide Refugee Cash Assistance services must comply with the requirements of this subchapter.

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 January 20, 2016.

TRD-201600241

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 424-6900



CHAPTER 376. REFUGEE SOCIAL SERVICES SUBCHAPTER J. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §376.1001

The Texas Health and Human Services Commission (HHSC) proposes new §376.1001, concerning Local Governmental and Community Input.

BACKGROUND AND JUSTIFICATION

The Office of Immigration and Refugee Affairs within HHSC is the single point of contact for federally funded refugee cash and medical assistance and social services in Texas. Refugee reset-

tlement and placement is primarily a process between the U.S. Department of State, national resettlement agencies, and their local resettlement agency affiliates. HHSC contracts with the local resettlement agencies in Texas to provide refugee resettlement services, including refugee social services under the State Plan for the Refugee Program.

Senate Bill (SB) 1928, 84th Legislature, Regular Session, 2015, enacted Texas Government §531.0411, which requires HHSC to adopt rules requiring local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas. The proposed new rule in 1 TAC Chapter 376, concerning Refugee Social Services, adds requirements for local resettlement agencies engaged in the refugee resettlement and placement process in Texas.

The new rule requires local resettlement agencies to:

- 1) Convene meetings at least quarterly at which local resettlement agencies consult with local governmental entities and officials, and other community stakeholders, on proposed refugee placement.
- 2) Respond within five business days to requests from a local governmental entity or community stakeholders to meet, in addition to the quarterly meetings, regarding the resettlement process.
- 3) Consider input from these meetings when developing an annual refugee placement report to their national organizations for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 4) Provide HHSC, local governmental entities and officials and local community stakeholders with a copy of each proposed annual report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 5) Submit a final annual report to their national organizations and HHSC summarizing how this input contributed to the development of their annual refugee placement report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 6) Provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.
- 7) Respond within five business days to requests for information related to the resettlement process by local governmental entities and officials or community stakeholders, to the extent not otherwise prohibited by state or federal law.

Local refugee resettlement agencies are already required by their national organizations and the U.S. Department of State to engage in community consultation and to provide quarterly community consultations reports. See: 8 U.S.C. §1522(a)(2)(C)(ii) and (b)(7). The reports serve as a record of the consultations and describe both best practices and issues that prevent adequate resettlement or result in changes in placement plans for the area. SB 1928 provides more specificity and structure around the existing federal requirements. As a result, any costs incurred by local resettlement agencies to comply with the proposed new rule will be minimal.

SECTION-BY-SECTION SUMMARY

Proposed §376.1001(a) describes the terms used in the subchapter.

Proposed §376.1001(b) describes the requirements for local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas.

Proposed §376.1001(c) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder to meet with the resettlement agency regarding refugee placement.

Proposed §376.1001(d) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder for information related to the resettlement process.

Proposed §376.1001(e) describes the requirement for local resettlement agencies to consider all feedback obtained from the meetings held under subsections (b) and (c) of this section for purposes of their proposed annual report on the placement of refugees.

Proposed §376.1001(f) describes to whom the local resettlement agencies must provide a copy of their proposed annual report on the placement of refugees.

Proposed §376.1001(g) describes the reporting requirements for the local resettlement agencies.

Proposed §376.1001(h) describes the requirement for the local resettlement agencies to provide HHSC with their refugee placement recommendations.

Proposed §376.1001(i) describes how local resettlement agencies contracted by HHSC must comply with the requirements described in this subchapter.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there will be no impact to costs and revenues of state and local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined there will be no adverse economic effect on small businesses or micro-businesses, as no local resettlement agencies affected qualify as small businesses or micro-businesses.

PUBLIC BENEFIT

Charles Smith, Chief Deputy Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved documentation and oversight regarding the placement of refugees in local communities.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule. The proposed rule will not affect a local economy and there is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Helen Oh, Program Specialist, 909 W. 45th Street, Mail Code 2010, Austin Texas 78751; by fax to (512) 206-5812; or by e-mail to helen.oh@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for February 19, 2016, from 9:45 a.m. to 10:45 a.m. (CST) in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §752.004, which authorize HHSC to apply for and distribute funds to agencies responsible for providing services to refugees; and Texas Government Code §531.0411 which requires the Executive Commissioner of HHSC to adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information.

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

§376.1001. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply:

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) HHSC--Texas Health and Human Services Commission, or its designee.

(3) Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(4) National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have

an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies;

and

(2) community stakeholders, including:

(A) major providers under the local health care system;

and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within five business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within five business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than 15 business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than 3 business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section before preparing a proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of the proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of the report for the purposes of 8 U.S.C. Section 1522(b)(7)(E).

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements), a contract with a local resettlement agency to provide Refugee Social Services must comply with the requirements of this subchapter.

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 January 20, 2016.

TRD-201600242

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 424-6900



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code Chapter 80, §§80.3, 80.30, 80.32, 80.36, 80.41, 80.71, 80.73 and 80.90 relating to the regulation of the manufactured housing program. The rules are revised for clarification purposes.

Section 80.3(f): Revised to clarify the installer is also eligible to request an industry inspection per §1201.355(b) of the Standards Act.

Section 80.30(f): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.30(g): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.32(u): The new subsection clarifies how long a person has to exercise their right of rescission without penalty or charge.

Section 80.36(a): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.36(d): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.41(d)(6)(B): The new subparagraph enables the continuing education provider to submit their renewal application and fee and continue operating. This will be most beneficial in the event that a renewal is pending and the regularly scheduled board meetings are postponed and or rescheduled, or canceled due to lack of a quorum.

Section 80.41(f)(1): The revision will assist in preventing former license holders whose license was revoked, suspended, and/or

denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

Section 80.71(d): The new subsection clarifies that the Department may serve the notice of hearing on the respondent to the last known address as shown by the Department's records.

Section 80.71(f): The new subsection clarifies the process when a default is granted by the administrative law judge without issuance of a default proposal for decision.

Section 80.73(e): Clarifies the timeframe in which the Department requires the licensee to submit the completed service or work orders.

Section 80.73(f): Revised to remind license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

Section 80.90(a)(6): Revised to include personal property in the designation for use as a dwelling that requires evidence of a satisfactory habitability inspection by the Department.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and to comply with the Manufactured Housing Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as

necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.3. *Fees.*

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

(f) Industry Request. The manufacturer, ~~[or]~~ retailer, or installer may request a consumer complaint home inspection. The request must be accompanied by the required fee of \$150.00.

(g) - (n) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600207

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-2206



SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §§80.30, 80.32, 80.36

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.30. *All Licensees' Responsibilities.*

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

(f) Any advertisement (including social media) by a retailer, broker, or installer (other than a sign/display advertisement at a licensed location, point of sale literature, or a price tag) must conspicuously disclose the license number of the person who is advertising.

(g) Any advertisement (including social media) by a salesperson must conspicuously disclose the name and license number of their sponsoring retailer identified on their valid salespersons license.

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

§80.32. *Retailers' Responsibilities and Requirements.*

(a) - (t) (No change.)

(u) A person may exercise their right of rescission of contract for sale, exchange, or lease-purchase of home pursuant to §1201.1521 of the Standards Act within three (3) business days without penalty or charge.

(v) ~~[(u)]~~ The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the applicable sales agreement is signed.

(w) ~~[(v)]~~ The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's home site.

§80.36. *Retailers' Rebuilding Responsibilities and Requirements.*

(a) Any home that is salvaged ~~[which has sustained sufficient damage to be declared salvage]~~ as defined in §1201.461 of the Standards Act, may be rebuilt/repared for purposes of issuance of a manufactured Statement of Ownership and Location at the option of the Department after inspection in accordance with Department procedures. Notification in writing to the Department at its Austin ~~headquarters~~ ~~[headquarter's office]~~ shall be required before rebuilding/repair begins.

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

(d) A manufactured home which does not meet the definition of salvage as defined in §1201.461 of the Standards Act, ~~[has not sustained sufficient damage to be declared salvage]~~ may be refurbished to its original structural configuration so that it is habitable as defined by §1201.453 of the Standards Act.

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600208

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-2206



SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.41. *License Requirements.*

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

(d) Continuing Education.

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

(6) Once the Department determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the Board for consideration. The Department

will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(A) Approvals shall be for a period not to exceed two years. The Department may, at no cost, attend or send a representative to attend any approved portion of the continuing education program to determine that the courses are being taught in accordance with the terms of approval.

(B) Should the two-year approval time for a continuing education provider expire in between regularly scheduled board meetings, the executive director may issue approval to continue providing services until the next board meeting upon receipt of the required renewal application, fee, and necessary documentation of education material.

(C) ~~[(B)]~~ The Department may revoke or suspend approval of a continuing education program if the Department determines that any of the courses are not being taught in accordance with the terms of approval or that any of the courses are not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Department, the Department order of suspension or revocation shall become final.

(e) (No change.)

(f) License Application or Renewal Denial.

(1) In the evaluation of an applicant for a license, ~~other than a salesperson's license,~~ the Director shall consider whether the applicant or any related person involved with the applicant has previously:

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

(2) - (6) (No change.)

(g) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600209

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-2206



SUBCHAPTER E. ENFORCEMENT

10 TAC §80.71, §80.73

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the

Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.71. Rules for Hearings.

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

(d) The Department may serve the notice of hearing on the respondent at his or her last known address as shown by the Department's records.

(e) ~~[(d)]~~ If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with Government Code, Chapter 2001, also known as the Administrative Procedures Act, the hearing may proceed in that party's absence and a proposal for decision may be entered by default, accepting all facts and conclusions of law as deemed admitted.

(f) If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues a default order dismissing the case and returning the file to the Department for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Executive Director may issue a final order deeming the allegations in the Notice of Hearing as true.

(g) ~~[(e)]~~ Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the Department within ten (10) business days of the Proposal for Decision, with replies to be filed ten (10) business days after the filing of exceptions.

(h) ~~[(f)]~~ When an administrative hearing is held for any matter in which the Department seeks to take action against a licensee for violating the Standards Act or these rules, whether such action is an action to assess administrative penalties, to require corrective action, to require cessation of improper activities, to suspend or revoke a license, or any combination thereof, the Department shall assess the costs of the proceeding against any party that fails to appear at a duly noticed administrative hearing. The costs assessed shall be the greater of \$100 or the actual costs charged to the Department by the State Office of Administrative Hearings, the Office of the Attorney General, any court reporter, or any other third party providing services in connection with such hearing.

(i) ~~[(g)]~~ The Department will seek the recovery of its costs from any party against whom it initiates an action if that action results in the entry of a final order taking any administrative action against that party, including the assessment of administrative penalties, requiring corrective action, requiring cessation of improper activities, suspension or revocation of a license, or any combination thereof.

§80.73. Procedures for Handling Consumer Complaints.

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

(e) When service or repairs are completed following any notice or orders from the Department pursuant to §1201.356(a) of the Standards Act, the manufacturer, retailer, and/or installer shall forward to the Department copies of service or work orders reflecting the date the work was completed, or other documentation to establish that the warranty service or repairs have been completed. A consumer is not required to sign the service or work order. These service or work orders must be received by the Department no later than [withi]n five (5)

calendar days ~~from~~ [after] the expiration of the period of time specified in the warranty order issued by the Department. Corrective action taken is subject to re-inspection.

(f) If service or repairs cannot be made within the specified time frame, the license holder shall notify the Department in writing prior to the expiration of the specified time on the warranty order [~~frame~~ by certified mail]. The notice shall list those items which have been, or will be, completed within the time frame and shall show good cause why the remainder of the service or repairs cannot be made within the specified time frame. The license holder shall request an extension for a specific time. Original deadline to complete warranty work may apply if the request for extension is denied. If the Department fails to respond in writing to the request within five (5) business days of the date of receipt of the notice of request for extension, the extension has been granted.

(g) - (h) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600210

Joe A. Garcia

Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 6, 2016
For further information, please call: (512) 475-2206



SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.90

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.90. *Issuance of Statements of Ownership and Location.*

(a) Application Requirements. In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

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

(6) When a manufactured home is to be designated for use as a dwelling and/or personal property after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

(b) - (i) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600211

Joe A. Garcia

Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 6, 2016
For further information, please call: (512) 475-2206



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.18

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §1.18 concerning the status of the Education Research Center Advisory Board. Specifically, the proposed amendment to this section reflects changes in Texas Education Code, §1.006(b). The Education Research Center Advisory Board is now considered a governmental body for the purposes of Chapters 551 and 552 of the Texas Government Code.

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Julie A. Eklund, Assistant Commissioner, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, julie.eklund@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment reflects changes to Texas Education Code, §1.006(b) as amended by the 84th Legislature (S.B. 685).

The amendment affects Texas Administrative Code, Title 19, Chapter 1, Subchapter A, §1.18(c)(1).

§1.18. *Operation of Education Research Centers.*

(a) - (b) (No change.)

(c) Advisory Board.

(1) The Commissioner of Higher Education shall create and maintain an advisory board to review and approve, as it deems appropriate, research involving access to confidential information and to adopt policies and rules governing the protection of such information in ERC operations. The Advisory Board is considered to be [not] a governmental body for purposes of Chapters 551 and 552 of the Texas Government Code.

(2) - (8) (No change.)

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

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600287

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER K. FORMULA ADVISORY COMMITTEE - COMMUNITY AND TECHNICAL COLLEGES

19 TAC §§1.156, 1.158, 1.161

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §§1.156, 1.158, and 1.161 concerning the Formula Advisory Committee - Community and Technical Colleges. Specifically, the proposed amendment to §1.156 adds Texas Education Code, §61.059(b-1) as part of the statutory authority for Subchapter K. Specifically, the proposed amendment to §1.158 allows the formula advisory committee to appoint workgroups or subcommittees (which are currently allowed). Specifically, the proposed amendment to §1.161 corrects the citation regarding the state's higher education master plan from §61.051(a-2) to 61.051(a-1).

Dr. Julie Eklund, Assistant Commissioner, Coordinating Board, has determined that for each year of the first five years the sections are in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, david.young@thechb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education. Please note that our general rules governing all advisory committees require that subcommittees or work groups be in compliance with Texas Government Code Chapter 2110 - specifically no more than 24 members.

The amendments affect Texas Administrative Code, Title 19, Chapter 1, Agency Administration, Subchapter K, Formula Advisory Committee - Community and Technical Colleges.

§1.156. Authority and Specific Purposes of the Community and Technical Colleges Formula Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

(b) (No change.)

§1.158. Committee Membership and Officers.

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

(e) The committee may appoint subcommittees or workgroups as necessary to complete the work. The subcommittees or workgroups may include members from the formula advisory committee and other institutional representatives as appropriate.

(f) - (g) (No change.)

§1.161. Tasks Assigned to the Committee.

Tasks assigned to the committee include:

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

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1) [(a-2)]; and

(4) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600288

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER L. FORMULA ADVISORY COMMITTEE - GENERAL ACADEMIC INSTITUTIONS

19 TAC §1.164, §1.169

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §1.164 and §1.169 concerning the Formula Advisory Committee - General Academic Institutions. Specifically, the proposed amendment to §1.164 adds Texas Education Code, §61.059(b-1), as part of the statutory authority for Subchapter L. The proposed amendment to §1.169 corrects the citation regarding the state's higher education master plan from §61.051(a-2) to §61.051(a-1).

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Plan-

ning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, david.young@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

The amendments affect Texas Administrative Code, Title 19, Chapter 1, Agency Administration, Subchapter L, Formula Advisory Committee - General Academic Institutions.

§1.164. *Authority and Specific Purposes of the General Academic Institutions Formula Advisory Committee.*

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

(b) (No change.)

§1.169. *Tasks Assigned the Committee.*

Tasks assigned to the committee include:

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

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1) [(a-2)]; and

(4) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600289

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER M. FORMULA ADVISORY COMMITTEE - HEALTH-RELATED INSTITUTIONS

19 TAC §1.176

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §1.176, concerning the Formula Advisory Committee - Health-Related Institutions. Specifically, the proposed amendment corrects the citation regarding the state's higher education master plan from §61.051(a-2) to §61.051(a-1).

Dr. Julie Eklund, Assistant Commissioner, Coordinating Board, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply

with the section as proposed. There is no impact on local employment.

Comments on the proposed amendment may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, david.young@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

The amendment affects Texas Administrative Code, Title 19, Chapter 1, Agency Administration, Subchapter M, Formula Advisory Committee - Health-Related Institutions.

§1.176. *Tasks Assigned the Committee.*

Tasks assigned to the committee include:

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

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1) [(a-2)]; and

(4) (No change.)

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

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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §§4.82, 4.83, 4.85

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.82, 4.83 and 4.85, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges. The intent of these amendments is to clarify the parameters of dual credit partnerships between secondary schools and Texas public colleges and universities.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five

years there will be no fiscal implications for state or local governments as a result of amending the rules.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of rules governing dual credit partnerships between secondary schools and Texas public colleges and universities. There are no significant economic costs anticipated to persons and institutions who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amended sections are proposed under the Texas Education Code, Chapter 28, Subchapter A, §28.009 and Chapter 130, Subchapter A, §130.001 which authorize the Coordinating Board to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

The amended sections affect the implementation of Texas Education Code, §28.009 and §130.008.

§4.82. Authority.

Texas Education Code, [§]§28.009(b) and [; 29.182; 29.184; 61.027; §130.001(b)(3) - (4); 130.008; 130.090; and 135.06(d)] provide the Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

§4.83. Definitions.

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

(1) Academic dual credit course--Semester credit course included or allowed under the provisions of the Lower-Division Academic Course Guide Manual (ACGM) designed for college transfer to institutions of higher education in completion of associate and baccalaureate degree programs, or contained in the lower division of the approved undergraduate course inventory of a public university.

(2) [(+) Board--The Texas Higher Education Coordinating Board.

(3) [(2)] College--Public two-year associate degree-granting institutions and public universities.

(4) College Board Advanced Placement--College-level courses and exams available to secondary students under the auspices of the College Board. A College Board-approved Advanced Placement (AP) Program must adhere to the AP course descriptions, include administration of official AP exams, foster teacher professional development, and provide access to AP courses for all students who are willing to enroll in the rigorous academic curriculum of AP courses as prescribed by the College Board.

(5) [(3)] Commissioner--The Commissioner of Higher Education.

(6) [(4)] Dual credit--A process by which a high school student enrolls in a college course and receives simultaneous academic credit for the course from both the college and the high school. While

dual credit courses are often taught on the secondary school campus to high school students only, applicable sections of these rules, §4.84(a) and §4.85(a), (b), (g), (h), (i) of this title (relating to Dual Credit Partnerships), also apply when a high school student takes a course on the college campus and receives both high school and college credit. Dual credit is also referred to as concurrent course credit; the terms are equivalent. However, dual (or concurrent) enrollment refers to a circumstance in which a student is enrolled in more than one educational institution (including a high school and a college).

(7) End-of-Course--Assessment instruments adopted by the Texas Education Agency for secondary-level courses in Algebra I, biology, English I, English II, and United States History.

[(5) College Board Advanced Placement--College-level courses and exams available to secondary students under the auspices of the College Board. A College Board-approved Advanced Placement (AP) Program must adhere to the AP course descriptions; include administration of official AP exams; foster teacher professional development, and provide access to AP courses for all students who are willing to enroll in the rigorous academic curriculum of AP courses as prescribed by the College Board.]

(8) [(6)] Public two-year associate degree-granting institution--A community college, a technical college, or a state college.

(9) State of Texas Assessments of Academic Readiness--The criterion-referenced assessment instruments required under Texas Education Code, §39.023, designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science in grades three through twelve.

(10) [(7)] Texas Assessment of Knowledge and Skills--The criterion-referenced assessment instruments required under Texas Education Code, §39.023, designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science in grades three through twelve.

(11) Workforce education dual credit course--Career technical/workforce course contained in the Workforce Education Course Manual (WECM) for which semester credit hours are awarded and applies toward the completion of a certificate or applied associate degree.

§4.85. Dual Credit Requirements.

(a) Eligible Courses.

(1) (No change.)

(2) Courses offered for dual credit by public universities must be lower division in the approved undergraduate course inventory of the university.

(3) (No change.)

(b) Student Eligibility.

(1) A high school student is eligible to enroll in workforce education dual credit courses as defined in §4.83 of this title (relating to Definitions) contained in a Level 1 certificate program, or a program leading to a credential of less than a Level 1 certificate, at a public junior college or public technical institute and shall not be required to provide demonstration of college readiness.

(2) [(+) A high school student is eligible to enroll in academic dual credit courses as defined in §4.83 if the student demonstrates college readiness by:

(A) [demonstrates college readiness by] achieving the minimum passing standards on the reading section, under the provisions of the Texas Success Initiative as set forth in §4.57 of this title (relating to College Ready and Adult Basic Education (ABE) Standards),

and/or any other [on] relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this title (relating to Assessment Instrument); or

(B) performing at or above the standards [demonstrates that he or she is exempt] under the provisions of the Texas Success Initiative as set forth in §4.54(a)(1)(A), (B), and (3)(B) of this title (relating to Exemptions, Exceptions, and Waivers) on the ACT, SAT, English III STAAR end-of-course assessment (EOC), or Algebra II EOC.

[(2) A high school student is also eligible to enroll in academic dual credit courses that require demonstration of TSI college readiness in reading, writing, and/or mathematics under the following conditions:]

[(A) Courses that require demonstration of TSI college readiness in reading and/or writing:]

[(i) if the student achieves a Level 2 final recommended score, as defined by the Texas Education Agency (TEA), on the English II State of Texas Assessment of Academic Readiness End of Course (STAAR EOC); or]

[(ii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the reading test; or]

[(iii) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in English or an English score of 435 on the ACT-Aspire.]

[(B) Courses that require demonstration of TSI college readiness in mathematics:]

[(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra I STAAR EOC and passing grade in the Algebra II course; or]

[(ii) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra II STAAR EOC; or]

[(iii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the mathematics test; or]

[(iv) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics or a mathematics score of 431 on the ACT-Aspire.]

[(3) A high school student is eligible to enroll in workforce education dual credit courses contained in a Level 1 certificate program, or a program leading to a credential of less than a Level 1 certificate, at a public junior college or public technical institute and shall not be required to provide demonstration of college readiness or dual credit enrollment eligibility.]

(3) [(4)] A high school student is eligible to enroll in workforce education dual credit courses as defined in §4.83 contained in a Level 2 certificate or applied associate degree program if the student demonstrates college readiness by [under the following conditions]:

(A) achieving the minimum passing standards on the reading section, under the provisions of the Texas Success Initiative as set forth in §4.57 of this title (relating to College Ready and Adult Basic Education (ABE) Standards), and/or any other relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this title (relating to Assessment Instrument); or

(B) performing at or above the standards under the provisions of the Texas Success Initiative as set forth in §4.54(a)(1)(A), (B), and (3)(B) of this title on the ACT, SAT, English III STAAR EOC, or Algebra II EOC.

[(A) Courses that require demonstration of TSI college readiness in reading and/or writing:]

[(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the English II STAAR EOC; or]

[(ii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the reading test; or]

[(iii) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in English or an English score of 435 on the ACT-Aspire.]

[(B) Courses that require demonstration of TSI college readiness in mathematics:]

[(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra I STAAR EOC and passing grade in the Algebra II course; or]

[(ii) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra II STAAR EOC; or]

[(iii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the mathematics test; or]

[(iv) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics or a mathematics score of 431 on the ACT-Aspire.]

(4) [(C)] A student who is exempt from taking TAKS or STAAR EOC assessments may be otherwise evaluated by an institution to determine eligibility for enrolling in workforce education dual credit courses.

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

(c) - (f) (No change.)

(g) Academic Policies and Student Support Services.

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

(3) Student advising requirements as defined in §130.104 and/or §51.9685 apply to high school students enrolled in dual credit programs.

(h) - (i) (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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SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.278

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.278, concerning Approval of Off-Campus and Self-Supporting Courses and Program for Public Institutions. The intent of these amendments is to clarify the approval authority of higher education regional councils over dual credit partnerships between secondary schools and Texas public colleges and universities.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of the approval authority of higher education regional councils over dual credit partnerships between secondary schools and Texas public colleges and universities. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amended section is proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.0512, which authorizes the Coordinating Board to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Chapter 130, Subchapter A, §130.001 and Chapter 28, Subchapter A, §28.009, which provide for the offering of dual credit courses by public institutions of higher education.

The amended section affects the implementation of Texas Education Code, §§61.0512, 130.880, and 28.009.

§4.278. *Function of Regional Councils.*

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

(e) A public community college may enter into an agreement to offer dual credit courses with a high school located in the service area of another public community college without additional regional council approval. [~~up to a maximum of three courses per student per academic year, except to the extent approved by the Commissioner of Texas Education Agency. This provision does not apply to students enrolled in approved early college high school programs.~~]

(f) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(g) - (h) (No change.)

(i) Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school without additional regional council approval. [~~that makes such a request, and regional council approval is not required in order to offer requested lower-division, dual credit courses.~~]

(j) (No change.)

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

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to Chapter 13, Subchapter A, §13.1, concerning Definitions. Specifically, the proposed amendments expand the definition of functional categories to include scholarships and fellowships, depreciation, and auxiliary enterprises. The citation for the definition of General Academic Institutions is corrected from Texas Education Code, §61 to §61.003(3). The term "Higher Education Assistance Fund (HEAF)" is changed to "Higher Education Fund (HEF)" to conform to the General Appropriations Act. The definition of independent institutions of higher education is expanded to include the citation Texas Education Code, §61.003(15), which lists the criteria for being an independent institution of higher education, and the citation regarding exemption from taxation is corrected from Article V of the Texas Constitution to Article VIII. The definition of Institution of Higher Education or Institution is expanded to include public state colleges to conform to Texas Education Code, §61.003(8). In the definition of Local Funds, "educational general" is changed to "educational and general" to conform to the Texas Education Code. The definition of Non-Degree-Credit Developmental Courses is deleted because this term is not used in Chapter 13. Definition numbers 22, 23, and 24 are renumbered to 21, 22, and 23, respectively, because definition number 21, Non-Degree-Credit Developmental Courses, is deleted.

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, david.young@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.065, which provides the Coordinating Board and the Comptroller of Public Accounts with the authority to prescribe

a uniform system of financial accounting and reporting for institutions of higher education.

The amendments affect Texas Administrative Code, Title 19, Chapter 13, Financial Planning, Subchapter A, Definitions.

§13.1. Definitions.

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

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

(10) Functional categories (as defined by National Association of college and University Business Officers)--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, scholarships and fellowships, depreciation, auxiliary enterprises, and hospital [as defined by NACUBO].

(11) General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), [Chapter 61, Texas Education Code,] or created and so classified by law.

(12) - (13) (No change.)

(14) Higher Education [~~Assistance~~] Fund (HEF) [~~(HEAF)~~]-A fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(15) Independent institution of higher education--A private or independent college or university as defined in Texas Education Code, §61.003(15), that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article VIII [~~V~~], §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(16) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003.

(17) - (18) (No change.)

(19) Local Funds--Tuition, certain fees, and other educational and general revenue appropriated by the legislature.

(20) (No change.)

~~[(21) Non-Degree-Credit Developmental Courses--Courses intended for remedial or compensatory education that bear only institutional credit and are not counted toward the total for a degree or certificate program.]~~

(21) [~~(22)~~] Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

(22) [~~(23)~~] Public Junior College, Public Technical Institute, Public State College, or Public Two-Year College--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.

(23) [~~(24)~~] Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct

instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

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

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SUBCHAPTER C. BUDGETS

19 TAC §§13.42, 13.43, 13.47

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) proposes amendments to §§13.42, 13.43, and 13.47, concerning Budgets. Specifically, the proposed amendments change "Higher Education Assistance Fund (HEAF)" to "Higher Education Fund (HEF)", "HEAF" to "HEF", and "HEAF-backed" to "HEF-backed" to conform to the General Appropriations Act.

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the sections are in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, david.young@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.065, which provides the Coordinating Board and the Comptroller of Public Accounts with the authority to prescribe a uniform system of financial accounting and reporting for institutions of higher education.

The amendments affect Texas Administrative Code, Title 19, Chapter 13, Financial Planning, Subchapter C, Budgets.

§13.42. Budget Approval.

(a) The governing board of each institution shall approve an itemized current operating budget on or before September 1 of each year.

(b) The governing boards of The University of Texas System and the Texas A&M University System shall approve Permanent University Fund (PUF) and Available University (AUF) budgets on or before September 1 of each year.

(c) The governing board of each institution eligible to receive HEF [~~HEAF~~] appropriations shall approve a HEF [~~HEAF~~] budget on or before September 1 of each year.

§13.43. *Distribution of Budgets.*

Copies of the current operating funds, PUF/AUF, and HEF [HEAF] budget shall be furnished to the Board and Legislative Budget Board electronically and bound paper copies to the Governor's Budget and Planning Office and Legislative Reference Library by December 1 of each fiscal year. Copies shall be maintained in the institution's library.

§13.47. *Format for Higher Education [Assistance] Fund (HEF) [(HEAF)] Budget.*

The HEF [HEAF] budget shall:

(1) include all projects approved for funding with HEF [HEAF] bonds by component institution,

(2) include all debt service payments on HEF-backed [HEAF-backed] bonds by component institution, and

(3) include all capital equipment and library books to be purchased during the fiscal year with HEF [HEAF] funds.

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 15. NATIONAL RESEARCH
UNIVERSITIES
SUBCHAPTER C. NATIONAL RESEARCH
UNIVERSITY FUND

19 TAC §15.43

The Texas Higher Education Coordinating Board (Coordinating Board) proposes to amend §15.43, concerning the eligibility criteria to receive distributions from the National Research University Fund. The intent of the amendments is to clarify: the academic achievement of a freshman class, faculty distinctions are counted for each of two years measured, and faculty awards of distinction are counted only in the year the award was given.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of how criteria of eligibility for the National Research University Fund are measured. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher

Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 62, Subchapter G, §62.146, which authorized the Coordinating Board to prescribe standard methods of reporting for determining the eligibility of institutions to receive distributions from the National Research University Fund.

The amendments affect the implementation of Texas Education Code, Chapter 62, Subchapter G, National Research University Fund.

§15.43. *Eligibility.*

(a) (No change.)

(b) A general academic teaching institution is eligible to receive an initial distribution from the Fund appropriated for each state fiscal year if:

(1) the institution is designated as an emerging research university under the coordinating board's accountability system;

(2) in each of the two state fiscal years preceding the state fiscal year for which the appropriation is made, the institution expended at least \$45 million in restricted research funds; and

(3) the institution satisfies at least four of the following six criteria:

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

(C) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the entering freshman class of the institution demonstrated high academic achievement as reflected in the following criteria:

(i) - (ii) (No change.)

(iii) The composition of the institution's first-time entering freshman class demonstrates progress toward [achieving the goals of the Board's Closing the Gaps report by] reflecting the population of the state or the institution's region with respect to underrepresented students and shows a commitment to improving the academic performance of underrepresented students. One way in which this could be accomplished is by active participation in one of the Federal TRIO Programs, such as having one or more McNair Scholars in a particular cohort.

(D) (No change.)

(E) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the faculty of the institution was of high quality as reflected in the following:

(i) The cumulative number of tenured/tenure-track faculty who have achieved national or international distinction through recognition as a member of one of the National Academies (including National Academy of Science, National Academy of Engineering, Academy of Arts and Sciences, and Institute of Medicine) or are Nobel Prize recipients is equal to or greater than 5 for each year; or

(ii) The annual number of tenured/tenure-track faculty who have received during a given academic year awards of [been awarded] national or international distinction [during a specific state fiscal year] in any of the following categories is equal to or greater than 7 for each year.

(I) - (XXV) (No change.)

(iii) (No change.)

(F) (No change.)

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

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CHAPTER 26. PROGRAMS OF STUDY

SUBCHAPTER I. HOSPITALITY AND TOURISM PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.261 - 26.267

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.261 - 26.267 concerning Programs of Study, Hospitality and Tourism Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Hospitality and Tourism Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Hospitality and Tourism Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.261. Authority and Specific Purposes of the Hospitality and Tourism Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Hospitality and Tourism Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.262. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.263. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.264. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.265. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.266. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Hospitality and Tourism Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Hospitality and Tourism Programs of Study Curricula; and

(3) Any other issues related to the Hospitality and Tourism Programs of Study Curricula as determined by the Board.

§26.267. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER J. HUMAN SERVICES PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.281 - 26.287

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.281 - 26.287 concerning Programs of Study, Human Services Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Human Services Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a re-

sult of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Human Services Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.281. Authority and Specific Purposes of the Human Services Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Human Services Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.282. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.283. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the

institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.284. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.285. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.286. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Human Services Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Human Services Programs of Study Curricula; and

(3) Any other issues related to the Human Services Programs of Study Curricula as determined by the Board.

§26.287. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER K. INFORMATION TECHNOLOGY PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.301 - 26.307

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.301 - 26.307 concerning Programs of Study, Information Technology Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Information Technology Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Information Technology Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005.

§26.301. Authority and Specific Purposes of the Information Technology Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Information Technology Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.302. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.303. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.304. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.305. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.306. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Information Technology Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Information Technology Programs of Study Curricula; and

(3) Any other issues related to the Information Technology Programs of Study Curricula as determined by the Board.

§26.307. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER L. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.321 - 26.327

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.321 - 26.327 concerning Programs of Study, Law, Public Safety, Corrections, and Security Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Law, Public Safety, Corrections, and Security Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Law, Public Safety, Corrections, and Security Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop

programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.321. Authority and Specific Purposes of the Law, Public Safety, Corrections, and Security Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Law, Public Safety, Corrections, and Security Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.322. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.323. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.324. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.325. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.326. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Law, Public Safety, Corrections, and Security Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Law, Public Safety, Corrections, and Security Programs of Study Curricula; and

(3) Any other issues related to the Law, Public Safety, Corrections, and Security Programs of Study Curricula as determined by the Board.

§26.327. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER M. MANUFACTURING PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.341 - 26.347

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.341 - 26.347 concerning Programs of Study, Manufacturing Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Manufacturing Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Manufacturing Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.341. Authority and Specific Purposes of the Manufacturing Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Manufacturing Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.342. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.343. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.344. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.345. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.346. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Manufacturing Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Manufacturing Programs of Study Curricula; and

(3) Any other issues related to the Manufacturing Programs of Study Curricula as determined by the Board.

§26.347. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114

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SUBCHAPTER N. MARKETING PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.361 - 26.367

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.361 - 26.367 concerning Programs of Study, Marketing Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Marketing Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Marketing Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005.

§26.361. Authority and Specific Purposes of the Marketing Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Marketing Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.362. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.363. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.364. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.365. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.366. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Marketing Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Marketing Programs of Study Curricula; and

(3) Any other issues related to the Marketing Programs of Study Curricula as determined by the Board.

§26.367. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.381 - 26.387

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.381 - 26.387 concerning Programs of Study, Science, Technology, Engineering, and Mathematics Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Science, Technology, Engineering, and Mathematics Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Science, Technology, Engineering, and Mathematics Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which

provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.381. Authority and Specific Purposes of the Science, Technology, Engineering and Mathematics Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Science, Technology, Engineering and Mathematics Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.382. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.383. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.384. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.385. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.386. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Science, Technology, Engineering and Mathematics Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Science, Technology, Engineering and Mathematics Programs of Study Curricula; and

(3) Any other issues related to the Science, Technology, Engineering and Mathematics Programs of Study Curricula as determined by the Board.

§26.387. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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 January 25, 2016.

TRD-201600311

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER P. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.401 - 26.407

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.401 - 26.407 concerning Programs of Study Transportation, Distribution and Logistics Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Transportation, Distribution and Logistics Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Transportation, Distribution and Logistics Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.401. Authority and Specific Purposes of the Transportation, Distribution, and Logistics Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Transportation, Distribution, and Logistics Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.402. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.403. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.404. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.405. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.406. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Transportation, Distribution, and Logistics Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Transportation, Distribution, and Logistics Programs of Study Curricula; and

(3) Any other issues related to the Transportation, Distribution, and Logistics Programs of Study Curricula as determined by the Board.

§26.407. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations 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 January 25, 2016.

TRD-201600312

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

**SUBCHAPTER AA. COMMISSIONER'S
RULES CONCERNING EARLY CHILDHOOD
EDUCATION PROGRAMS**

19 TAC §102.1003

The Texas Education Agency (TEA) proposes new §102.1003, concerning the high-quality prekindergarten grant program. The proposed new section would outline the requirements of a new grant program authorized by House Bill (HB) 4, 84th Texas Legislature, Regular Session, 2015.

Texas Education Code (TEC), §29.165, as added by HB 4, 84th Texas Legislature, 2015, requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program.

Proposed new 19 TAC §102.1003, High-Quality Prekindergarten Grant Program, would outline school district and charter school eligibility for grant funding and qualifications for students eligible to receive instruction under the grant program. The proposed new section would require school districts and charter schools to meet the Texas Prekindergarten Guidelines (updated 2015). It would also require districts and charter schools to measure the progress of each student in meeting the recommended outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool selected from the commissioner's list of approved prekindergarten instruments in order to be eligible to receive grant funding under this program.

The proposed new section would outline the requirements teachers must meet in order to provide instruction in a high-quality prekindergarten program. The proposal would also identify in rule the family engagement strategies that districts and charter schools would be required to address in a family engagement plan in order to be eligible to receive grant funding under this program. The proposed new section would also identify reporting requirements related to the grant program.

As required by statute, the proposed new section would require school districts and charter schools to report each year to the TEA through the Public Education Information Management System (PEIMS) the curriculum used in the high-quality prekindergarten program classes and a description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes. Additionally, a school district would be required to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data from the results of program evaluations available to parents.

The proposed new section would require school districts and charter schools to maintain documentation of compliance with

grant requirements in a format prescribed by the TEA through the request for application.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the new section is in effect there will be no costs for state or local government as a result of enforcing or administering the new section.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to provide districts with an opportunity to expand or enhance high-quality prekindergarten programs for qualifying students. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins February 5, 2016, and ends March 7, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A public hearing was held on December 1, 2015, to solicit input on information to include in the new rule. A request for an additional public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 5, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §29.1532, as amended by House Bill (HB) 4, 84th Texas Legislature, 2015, which adds a requirement that school districts that offer prekindergarten classes, including a high-quality prekindergarten program class, report a description and the results of each type of assessment instrument if the district elects to administer an assessment instrument to students enrolled in district and campus prekindergarten program classes and report curricula used in the district's prekindergarten program classes; TEC, §29.165, as added by HB 4, 84th Texas Legislature, 2015, which requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program; TEC, §29.166, as added by HB 4, 84th Texas Legislature, 2015, which addresses the student qualifications and general school district and charter eligibility for funding under this grant program; TEC, §29.167, as added by HB 4, 84th Texas Legislature, 2015, which requires school districts and charter schools to select and implement a curriculum for a high-quality prekindergarten grant program that includes the prekindergarten guidelines established by the TEA, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative. This section also outlines requirements that each teacher of a prekindergarten program class must meet, including employment as a prekindergarten teacher in a school district that has received approval

from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom, and allows for equivalent qualifications; TEC, §29.168, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district or charter school to develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The local family engagement plan must be based on the family engagement strategies established by the TEA in collaboration with other state agencies; TEC, §29.169, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data from the results of program evaluations available to parents; and TEC, §29.172, as added by HB 4, 84th Texas Legislature, 2015, which permits the commissioner of education to adopt rules necessary to implement this grant program.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §§29.1532, 29.165-29.169, and 29.172, as amended and added by HB 4, 84th Texas Legislature, 2015.

§102.1003. High-Quality Prekindergarten Grant Program.

(a) From funds appropriated for this purpose, all eligible school districts and open-enrollment charter schools may receive grant funding for each qualifying student in average daily attendance in a high-quality prekindergarten program in the district or charter school.

(1) The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant. Funding under this program for each qualifying student in attendance for the entire instructional period on a school day shall not exceed \$1,500.

(2) Each applicant seeking funding through the high-quality prekindergarten grant program authorized by the Texas Education Code (TEC), §29.165, must submit an application in a format prescribed by the Texas Education Agency (TEA) through a request for application (RFA).

(3) Each applicant must meet all the requirements established under the TEC, Chapter 29, Subchapter E-1.

(b) An eligible applicant receiving funds under this program must provide educational services to qualifying students. A student qualifies for additional funding under this grant program if the student is four years of age on September 1 of the year the student begins the program and:

(1) is unable to speak and comprehend the English language;

(2) is educationally disadvantaged;

(3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by the Texas Family Code, §262.201.

(c) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten grant program that addresses all of the Texas Prekindergarten Guidelines (updated 2015) in the following domains:

- (1) social and emotional development;
- (2) language and communication;
- (3) emergent literacy reading;
- (4) emergent literacy writing;
- (5) mathematics;
- (6) science;
- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.

(d) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall measure:

(1) the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

- (A) social and emotional development;
- (B) language and communication;
- (C) emergent literacy reading;
- (D) emergent literacy writing; and
- (E) mathematics; and

(2) the preparation of each student for kindergarten using a kindergarten readiness instrument for reading.

(e) To be eligible to receive grant funding under this program, each teacher of a high-quality prekindergarten grant program must be certified under the TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

- (1) a Child Development Associate (CDA) credential;
- (2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (3) at least eight years' experience of teaching in a nationally accredited child care program;
- (4) a graduate or undergraduate degree in early childhood education or early childhood special education; or
- (5) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of continuing professional education (CPE) over a consecutive five-year period;

(B) teachers who have not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class complete the first 30 hours before the end of the 2016-2017 school year and complete the additional CPE hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom;

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph are completed in face-to-face training opportunities that include experiential learning, practical application, and direct interaction with master teachers; and

(D) training used to meet the requirement in subparagraph (A) or (B) of this paragraph addresses all ten domains in the Texas Prekindergarten Guidelines (updated 2015).

(f) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(ii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iii) equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to visit the school in advance of the prekindergarten school year;

(iv) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(v) providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vi) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(vii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(viii) encouraging families to reflect on family experiences and practices in helping children; and

(ix) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(g) In a format prescribed by the TEA, a school district or an open-enrollment charter school that receives funding under this grant shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(2) report a description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (d) of this section; and

(3) report:

(A) a description of each kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (d) of this section; and

(B) the results for 100% of the district's or charter school's kindergarten students on the kindergarten readiness instrument.

(h) A school district or an open-enrollment charter school that receives funding under this grant shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by measuring student progress; and

(2) make data from the results of program evaluations available to parents.

(i) A school district or an open-enrollment charter school that receives funding under this grant may only use the funding to improve the quality of the district's or charter school's high-quality prekindergarten program. Program funds must be used in accordance with the requirements stated in the RFA.

(j) A school district or an open-enrollment charter school that receives funding under this grant shall maintain locally and provide at the TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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 January 25, 2016.

TRD-201600318

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 6, 2016

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



CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2015-2016 Student Attendance Accounting Handbook*.

The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published

on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2015-2016 school year.

Significant changes to the *2015-2016 Student Attendance Accounting Handbook* from the *2014-2015 Student Attendance Accounting Handbook* include the following.

Section 3

The term "district students" would be replaced with "early college high school students and students taking dual credit courses" in the section on waivers related to students taking dual credit courses at institutions of higher education with calendars beginning before the fourth Monday in August.

An update would be made to the section regarding a student's entitlement to attend school in a particular school district while in the Department of Family and Protective Services conservatorship.

The age for allowing a district to withdraw a student would be updated from 18 to 19. Additionally, updates would be made to the age for compulsory attendance.

In the section relating to requirements for a student to be considered present for FSP purposes, updates would be made regarding activities under a service plan under the Texas Family Code, Chapter 263, Subchapter B.

A recommendation would be added for districts and charter schools to consider building into the calendar an additional 840 minutes, which is equivalent to two days, in the event of school closures due to bad weather or safety issues.

Section 5

The requirement for a practicum course to include classroom instruction to average one class period each day for every school week would be removed.

The title of the career and technical education (CTE) Problems and Solutions subsection would be updated to remove the phrase "Formerly CTE Independent Study."

Section 7

The subsection on prekindergarten eligibility based on a student being limited English proficient would be updated to allow districts to begin the preregistration process after April 1 of each year.

Section 11

The eligibility requirements, document requirements, and limitations for dual credit courses would be updated in the subsection regarding student eligibility for dual credit courses.

Updates would be made to the requirements for students in the Optional Flexible School Day Program to generate full-day funding for attendance.

Throughout the Handbook

References to school days would be converted to minutes in accordance with House Bill 2610, 84th Texas Legislature, 2015.

References to the Prekindergarten Early Start Grant Program would be removed.

The proposed amendment would place the specific procedures contained in the *2015-2016 Student Attendance Accounting Handbook* in the Texas Administrative Code. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the Public Education Information Management System (PEIMS).

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

FISCAL NOTE. Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

PUBLIC BENEFIT/COST NOTE. Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins February 5, 2016, and ends March 7, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 5, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015, which authorizes that each school year each school district and charter school provides for at least 75,600 minutes of instruction, including intermissions and recesses, for students. In addition, the commissioner may approve the instruction of students for fewer than 75,600 minutes if a calamity causes the school closing; TEC, §25.0812, as added by HB 2610, 84th Texas Legislature, 2015, which requires that school districts and charter schools may not schedule the last day of school for students before May 15; TEC, §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program (FSP) funding for the state virtual school network, including rules regarding attendance accounting; and TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action

and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the FSP.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015; 25.0812, as added by HB 2610, 84th Texas Legislature, 2015; 30A.153; and 42.004.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2015-2016 [~~2014-2015~~] are described in the official Texas Education Agency (TEA) publication 2015-2016 [~~2014-2015~~] *Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the 2015-2016 [~~2014-2015~~] *Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the 2015-2016 [~~2014-2015~~] *Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 January 25, 2016.

TRD-201600319

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 6, 2016

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



19 TAC §129.1031

The Texas Education Agency (TEA) proposes new §129.1031, concerning reporting off-campus programs. The proposed new section would reflect changes in statute made by House Bill (HB) 2812, 84th Texas Legislature, 2015.

HB 2812, 84th Texas Legislature, 2015, amended the Texas Education Code (TEC), §42.005, and added the TEC, §42.0052, to allow time spent in an approved off-campus instructional program to count toward minutes required to determine average daily attendance.

The current attendance accounting rules allow students who are participating in a dual credit program to count time spent in the

dual credit course toward average daily attendance. Proposed new 19 TAC §129.1031, Reporting Off-Campus Programs, would allow time spent in an off-campus instructional program offered by an accredited institution of higher education to count toward average daily attendance, even if the student is not earning dual credit for participation in the program. The intent of the law, as expressed when the bill was amended on the senate floor, was to allow students to earn state funding if they are taking a college course similar to a dual credit course even if that course is not earning high school credit. Consequently, the requirements of the proposed new section are similar to those for dual credit courses, except that students do not have to earn high school credit to be counted for state funding purposes.

The proposed new section would require school districts and open-enrollment charter schools to follow current reporting requirements outlined in the student attendance accounting handbook. The proposed new section would require school districts and open-enrollment charter schools to maintain attendance information for students who are participating in approved off-campus instructional programs.

FISCAL NOTE. Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section.

PUBLIC BENEFIT/COST NOTE. Dr. Dawn-Fisher has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to increase the number of course options available for students and allow more access to higher education opportunities for students who are near completing high school requirements but who have not yet graduated. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins February 5, 2016, and ends March 7, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 5, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §42.005(h), which states that the time students spend in an off-campus instructional program approved under the TEC, §42.0052, shall be counted as part of the minimum number of instructional hours needed for a student to be considered a full-time student in average daily attendance under the TEC, Chapter 42; the TEC, §42.0052(a), which grants the commissioner the authority to approve off-campus instructional programs provided by an entity other than a school district

or open-enrollment charter school as a program in which participation by a student of a school district or charter school may be counted for the purpose of determining average daily attendance under the TEC, §42.005(h); the TEC, §42.0052(b), which grants the commissioner the authority to adopt rules regarding verification and reporting procedures concerning time spent by students participating in these off-campus instructional arrangements; and the TEC, §12.106(c), which provides for open-enrollment charter schools to receive funding and authorizes the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools under certain conditions through the TEC, Chapter 42.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §42.005(h) and §42.0052, as added by HB 2812, 84th Texas Legislature, 2015, and §12.106(c).

§129.1031. Reporting Off-Campus Programs.

(a) In accordance with the Texas Education Code, §42.0052, a board of trustees of a school district or a governing body of a charter holder may adopt a policy that allows a student to participate in an off-campus instructional program. The program must be provided only by an institution of higher education that is accredited by one of the regional accrediting associations specified in §74.25 of this title (relating to High School Credit for College Courses).

(b) To be eligible, a student must:

(1) be in Grade 11 or 12;

(2) have demonstrated college readiness as outlined in the requirements for participation in dual credit programs in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook);

(3) meet any eligibility requirements adopted by the institution of higher education specified in §74.25 of this title; and

(4) have the approval of the high school principal or other school official designated by the school district or open-enrollment charter school.

(c) Funding eligibility for a student participating in an off-campus program will include time instructed in the off-campus program. A campus may choose an alternate attendance-taking time for a group of students that is scheduled to be off-campus during the regular attendance-taking time. The alternate attendance-taking time will be in effect for the period of days or weeks for which the group is scheduled to be off-campus during the regular attendance-taking time (for example, for the semester or for the duration of employment). This alternate attendance-taking time may not be changed once it is selected for a particular group of students. If attendance is taken at an off-campus location, the school district must ensure that attendance is taken in accordance with the student attendance accounting handbook adopted under §129.1025 of this title.

(d) For a school district or an open-enrollment charter school to receive Foundation School Program funding for a student participating in an off-campus program under this section, the district or charter school must have documentation of an agreement between the district or charter school and the college.

(e) The off-campus program approved under this section must comply with rules adopted by the Texas Higher Education Coordinating Board in the Texas Administrative Code, Title 19, Part 1, with respect to teacher qualifications.

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 January 25, 2016.

TRD-201600320

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.31, concerning Definitions.

The amendment proposed to §661.31 is intended to clarify the definition of "direct supervision" by specifying that the professional land surveyor is to be in the firm's office or in the field. This will allow the land surveyor to be familiar with the project he/she is supervising and better able to provide direction and instructions.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro-businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered

to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by e-mail at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

§661.31. Definitions.

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

(1) Act--The Professional Land Surveying Practices Act and Amendment.

(2) Board seal--The seal of the Board shall be as authorized by the Board.

(3) Certificate of registration and certificate of licensure--A license to practice professional land surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

(4) Construction estimate--"Construction estimate," as [As] used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

(5) Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(6) Direct supervision--Being on site either in the Firm of-fice or in the field in order [To be able] to recognize and respond to any problem that may arise; give instruction for the solution to a problem; give instructions for such research of adequate thoroughness to support the determination of the location of the boundaries of the land being surveyed; have knowledge and give instruction for [have knowledge of the research and the] collection[.] of relevant data; the placement of all monuments; the preparation and delivery of all Documents.

(7) Firm--Any business entity including but not limited to a partnership, limited partnership, association, corporation, limited liability company, limited liability partnership and/or other entity conducting business under an assumed name.

(8) Offer of surveying services--Any form of advertisement which contains the firm contact information and offers land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.

(9) Renewal--The payment of a fee annually as set by the Board within the limits of the law for the certificate of registration or the certificate of licensure.

(10) Report--Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

(11) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the Board and not affecting the private rights or procedures.

(12) Seal--An embossed or stamped design authorized by the Board that authenticates, confirms, or attests that a person is autho-

rized to offer and practice land surveying services to the public in the State of Texas and has legal consequence when applied.

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 January 25, 2016.

TRD-201600321

Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-5263



SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.55

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.55, concerning Registration of Land Surveying Firms.

The proposed amendment to §661.55(g) clarifies that the statement signed on behalf of the firm is to be submitted to the Board and requires the responsible party signing the oath to indicate their position with the firm. The proposed new subsection, §661.55(h), would require the submission of a newly signed oath if the responsible party leaves the firm.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro-businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by e-mail

at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

No other sections are affected by the proposal.

§661.55. *Registration of Land Surveying Firms.*

(a) A Firm shall not offer land surveying services until the Firm applies for and receives a Firm Registration Certificate with the Board, which identifies:

(1) The business and legal names and addresses of the association, partnership, or corporation;

(2) The names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any Firm employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by a Firm shall notify the Board in writing within five (5) business days prior to leaving employment or no later than five (5) business days after leaving employment.

(d) The Board may refuse to issue or renew and may suspend or revoke the registration of a firm and may impose an administrative penalty against the owner of a firm for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity at the time of the violation.

(e) The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any Firm offering surveying services that fails to comply with this section.

(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following and submit it to the Board: I, _____, _____, (state position with Firm) on behalf of _____, Business Entity Certificate Number _____, hereby affirm that this Business Entity will always place the interest of the public above all others in our practice of Professional Land Surveying and this Business Entity will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board.

(h) If the responsible party leaves the Firm, a new oath must be signed and submitted to 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.

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TRD-201600322

Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-5263

◆ ◆ ◆
22 TAC §661.57

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.57, concerning Land Surveying Firms Compliance.

The proposed amendments to §661.57(2) clarify that the surveyor of record should be an active license holder who is on site at the Firm's office and each branch location.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro-businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by e-mail at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

§661.57. *Land Surveying Firms Compliance.*

A Firm shall not offer to perform or perform land surveying services for the public unless registered with the Board pursuant to the requirements of §661.55 of this title (relating to Registration of Land Surveying Firms).

(1) A Firm shall not offer land surveying services to the public unless the offer of services contains the Certificate of Registration firm number.

(2) A Firm shall designate a surveyor of record who is on site for the primary and for each branch office. The surveyor of record must be an active license holder who is employed full-time by the Firm and who is on site at the Firm's office, and shall perform or directly supervise all survey work and activities that require a license. The surveyor of record shall not be designated as the surveyor of record for more than one primary or branch office.

(3) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(4) No surveying services are to be offered to or performed for the public in Texas by a Firm while that Firm does not have a current Certificate of Registration.

(5) A firm that offers or is engaged in the practice of surveying in Texas and is not registered with the Board or has previously been registered with the Board and whose registration has expired shall be considered to be in violation of the Act and Board rules and will be subject to administrative penalties as set forth in §1071.451 and §1071.452 of the Act and §661.99 of this title (relating to Sanctions and Penalty Schedule).

(6) The Board may revoke a certificate of registration that was obtained in violation of the Act and/or Board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the Firm.

(7) If a Firm has notified the Board that it is no longer offering service to the public or performing surveying services for the public, including the absence of a regular, full-time employee who is an active professional surveyor licensed in Texas, the Certificate of Registration will expire.

(8) In addition to any other penalty provided in this section, the Board shall have the power to fine, refuse to issue or renew and/or revoke the registration of a firm where one or more of its officers, directors, partners, members, or managers have been found guilty of any conduct which would constitute a violation of the Board's Act or Rules.

(9) A Firm shall cooperate in Board investigations concerning complaints against a current or former Registered Professional Land Surveyor or Licensed State Land Surveyor employed by the Firm, by making all files and other pertinent records available to the surveyor so that he or she may respond to the complaint.

(10) Any firm furnishing contract land surveying crews must have a RPLS as a full-time employee in that firm and as reflected in its registration form filed with the Board. A full-time employee is an individual employed by a company in an ongoing position with a minimum of 35 scheduled work hours per week, 52 weeks per year.

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 January 25, 2016.

TRD-201600323

Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-5263

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SUBCHAPTER E. CONTESTED CASES

22 TAC §661.99

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.99, concerning Sanctions and Penalty Matrix.

The proposed amendment to §661.99 adds a penalty matrix and reflects language adopted after the major rule revision in August 2013.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

§661.99. Sanctions and Penalty Matrix [Schedule].

The Board, the Executive Director, Investigator, Administrative Law Judge, or the participants in an Informal Settlement Conference may arrive at a greater or lesser sanction and penalty than suggested in this Rule. The minimum administrative penalty is \$100 per violation. The maximum administrative penalty shall be \$1500 per violation. [has promulgated Rules which are of such importance to insure that all land surveying services are conducted in the best interest of the public and all those who rely on those services; any violation of any rule will cause the Executive Director to issue a reprimand and a \$1,500 penalty for each violation. The Executive Director, after an Informal Settlement Conference, may arrive at a lesser sanction and penalty than suggested in this Rule and may also require additional educational courses.] In addition to the sanctions and penalties noted below [assessed by the Executive Director], the Board may order restitution, suspension, probation and/or additional educational courses. Allegations and disciplinary actions will be set forth in the final Board Order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;
- (2) the economic damage to property caused by the violation;

- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require. Suggested

Sanctions:
Figure: 22 TAC §661.99(6)

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 January 25, 2016.

TRD-201600324
Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 6, 2016
For further information, please call: (512) 239-5263



CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

The Texas Board of Professional Land Surveying (Board) proposes repealing §663.14, concerning Criminal Convictions, proposes replacing §663.14 with new §663.11, and also proposes amending §663.19, concerning Survey Drawing/Written/Description/Report.

The purpose of repealing §663.14 and replacing it with §663.11 is to renumber the section. Section 663.14 currently falls under the subchapter labeled Professional and Technical Standards. Criminal Convictions are not a standard and so the rule should be moved outside that subchapter.

The proposed amendment to §663.19, Survey Drawing/Written/Description/Report, would remove the "/", a typographical error, from between "Written" and "Description". The proposed amendment to paragraph §663.19(e) would require the land surveyor to not only describe the monuments found or placed but to also describe how the monument is traceable to the responsible registrant or employer.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the proposed sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. These proposals are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposals do 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.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at natalie.jackson@txls.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.11

New §663.11 is proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

§663.11. Criminal Convictions.

(a) Pursuant to Title 2, Occupations Code, Chapter 53, the following apply for registered professional land surveyors and applicants.

(1) The registrant shall notify the Board in writing within 90 days of any conviction of any crime under the laws of the "United States, or any state, territory or country thereof, which is a felony or a misdemeanor, whether related to the practice of surveying or not.

(2) The applicant will be required to state on a form provided by the board, whether he or she has ever been convicted of a felony or a misdemeanor.

(3) Registrants or applicants are required to provide a summary of the conviction in sufficient detail to allow the Board to determine if it is applicable to the practice of professional land surveying or application for registration.

(4) If the Board determines the conviction is applicable, the Board staff will obtain sufficient details of the conviction to allow the Board to determine the effect of the conviction on the registrant's practice of surveying or the applicant's eligibility for registration.

(b) In determining whether a criminal conviction is applicable to a registrant's surveying practice or an applicant's application, the Board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for practicing surveying;

(3) the extent to which a registrant might offer an opportunity to engage in further criminal activity of the same type as that which the individual had been previously involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a professional land surveyor.

(c) In addition to the factors that may be considered under subsection (b) of this section, the Board shall consider the following:

(1) extent and nature of the individual's past criminal activity;

(2) the age of the individual at the time the crime was committed, and the amount of time that has elapsed since the last criminal activity;

(3) the conduct and work activity of the individual prior to the following the criminal activity;

(4) evidence of rehabilitation; and

(5) other evidence of fitness to practice as a professional land surveyor.

(d) Crimes relating to the practice of surveying include, but are not limited to the following:

(1) criminal negligence in the practice of surveying;

(2) soliciting, offering, giving or receiving any form of bribe in the practice of surveying;

(3) the unauthorized use of property, funds or proprietary information belonging to another in the practice of surveying;

(4) acts relating to the acquisition, use or dissemination of confidential information related to surveying; and

(5) any violation as an individual or as a consenting party of any provision of the Professional Land Surveying Practices Act (Title 6, Occupations Code, Subtitle C).

(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing:

(1) the reason for rejecting the application;

(2) notice of the administrative procedure used to conduct an informal conference and contested case hearing to show compliance with all requirements of the law for registration as a professional surveyor; and

(3) notice that upon exhausting of the administrative appeal, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final.

(f) The Board shall revoke the certificate of registration of any registrant incarcerated or jailed as a result of conviction for a felony. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision regardless of the date of the original conviction.

(g) The Board may revoke the certificate of registration of any registrant convicted of a misdemeanor or a felony if the crime directly relates to the duties and responsibilities as a professional surveyor.

(1) Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for registration. The application criteria are established in subsections (b) and (c) of this section.

(2) Any registrant whose certificate of registration has been revoked under the provisions of this subsection and who has exhausted administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision or the decision is not subject to appeal.

(h) A person is convicted when an adjudication of guilt on an offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from probation or community supervision; or

(2) the accusation, complaint, information or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense.

(i) Imposition of deferred adjudication community supervision is not a conviction.

(j) Persons enrolled or planning to enroll in an educational program in preparation for applying to become a Registered Professional Land Surveyor may request a history evaluation to determine their eligibility for registration. It is the responsibility of the petitioner to obtain and send to the Board for each criminal offense in his or her criminal history (the entire court record), including final court orders noting sentencing information, conditions of probation, revocation of or release from probation, and any other information relating to the petitioner's criminal history, or requested by the Board, along with any recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The petitioner shall also furnish documentation acceptable to the Board of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted, placed on deferred adjudication, community supervision and/or deferred disposition. The petitioner shall submit a fee of \$50 for the purpose of responding to the 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 January 27, 2016.

TRD-201600352
Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 6, 2016
For further information, please call: (512) 239-5263



SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.14

The repeal of §663.14 is proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

§663.14. Criminal Convictions.

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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Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 6, 2016
For further information, please call: (512) 239-5263



22 TAC §663.19

Amended §663.19 is proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

§663.19. Survey Drawing/Written [/] Description/Report.

(a) All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed; such relationship shall be shown on the survey drawing, if a drawing is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all monuments found or placed.

(c) Courses shall be referenced by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.

(d) The survey drawing shall bear the Firm name and Firm Registration Number, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Oath), and date surveyed.

(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing including how it is marked in a way that is traceable to the responsible registrant or associated employer. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) A reference shall be cited on the drawing and prepared description to the record instrument that defines the location of adjoining boundaries.

(g) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(h) If a land surveyor provides a written narrative in lieu of a drawing/sketch to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of 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 January 25, 2016.

TRD-201600325



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4906, §5.4907

The Texas Department of Insurance proposes the repeal of 28 TAC §5.4906 and §5.4907, which concern the certificate of compliance approval program and the certificate of compliance transition program for the Texas Windstorm Insurance Association (association), respectively. Subsequent legislation has rendered these sections obsolete.

EXPLANATION. The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, or repaired, or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted various windstorm building codes for the association's plan of operation.

Title 28 TAC §5.4906 and §5.4907 refer to programs through which structures could gain TDI approval without being inspected or complying with the applicable windstorm building code, under certain statutory exceptions. At the time §5.4906 was adopted, Insurance Code §2210.251(f) and §2210.258 provided that a residential structure insured by the association as of September 1, 2009, could continue coverage through the association, provided that any construction, alteration, remodeling, enlargements, repairs, or additions begun on or after June 19, 2009, complied with the applicable windstorm building code. Section 5.4906 applies to residential structures insured by the association under a policy that was issued in accordance with TDI's approval process regulations initiated April 12, 2006, and that continued to be eligible for that coverage on September 1, 2009. The section reminds persons that the declination and flood insurance requirements in the Insurance Code and the association's underwriting requirements apply to structures in the certificate of compliance approval program.

Section 5.4907 was also adopted under the authority of Insurance Code §2210.251 and §2210.258. Section 5.4907 describes the certificate of compliance transition program, which provided that between September 1, 2009, and August

31, 2011, residential structures could obtain coverage through the association without complying with the applicable windstorm building code. Under the program, the association could provide coverage to noncompliant residential structures for which private market windstorm and hail insurance coverage had been discontinued within the 12 months before the date of the application to the association; that had not been constructed, altered, remodeled, enlarged, repaired, or added to since June 19, 2009; and that met other requirements.

HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013) rendered §5.4906 and §5.4907 obsolete. HB 3 established the alternative certification program, which made noncompliant residential structures eligible for association coverage provided that at least one qualifying structural building component had been inspected and found to comply with applicable building code standards. SB 1702 repealed the alternative certification program but enabled noncompliant residential structures insured in the private market on or after June 19, 2009, to obtain insurance through the association, even if they had been constructed, altered, remodeled, enlarged, repaired, or added to on or after that date. The provisions of SB 1702 were to expire on December 31, 2015, but SB 498, 84th Legislature, Regular Session (2015) extended the provisions indefinitely.

In the absence of §5.4906 and §5.4907, noncompliant residential structures that became eligible for association coverage under former versions of Insurance Code §2210.251(f) and §2210.258 are still eligible. Policyholders will continue to pay a premium surcharge of 15 percent for each noncompliant residential structure under Insurance Code §2210.259(a). Currently, 36,990 structures in Texas are in this category.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Sam Nelson, director, Inspections Office, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local government. If adopted, the proposal would impose no additional requirements that affect state or local government. This proposal repeals sections that were made obsolete by HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013).

PUBLIC BENEFIT AND COST NOTE. Mr. Nelson has also determined that for each year of the first five years the proposed repeal will be in effect, there will be public benefits resulting from the proposal and there will be no costs to persons required to comply with the proposal. The public benefit of the proposed repeal will be that it will update TDI rules to be consistent with existing law on exceptions to the windstorm building code compliance requirements. This should reduce potential confusion on the part of agents and policyholders.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small or micro businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 mil-

lion in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

This proposal does not have any economic impact on small or micro businesses, so no economic impact statement or regulatory flexibility analysis is required.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, so it does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5:00 p.m., Central Time on March 7, 2016. Send one copy either by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comments by mail to Sam Nelson, Director, Inspections Office, Mail Code 105-5G, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to Sam.Nelson@tdi.texas.gov. If you wish to request a public hearing on this proposed repeal, you must submit a request separately by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written comments and testimony presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the repeal of 28 TAC §5.4906 and §5.4907. The repeals are proposed under Insurance Code §36.001 and §2210.008.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code §§2210.251, 2210.258, and 2210.259

§5.4906. Certificate of Compliance Approval Program.

§5.4907. Certificate of Compliance Transition Program.

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600217

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 676-6584



CHAPTER 21. TRADE PRACTICES SUBCHAPTER V. PHARMACY BENEFITS

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 21, Subchapter V, relating to Pharmacy Benefits. Specifically, TDI proposes amending §§21.3001 - 21.3004, 21.3010, 21.3011, 21.3020, 21.3022, and 21.3023; repealing §21.3005 and §21.3021; and adding new §§21.3030 - 21.3034.

The proposed amendments to §§21.3001 - 21.3004, 21.3010, 21.3011, 21.3020, 21.3022, and 21.3023 are necessary to make nonsubstantive changes to the rule text for consistency with current TDI rule-drafting style; correct typographical, grammatical, and punctuation errors; simplify and clarify certain provisions; update Insurance Code citations; and conform TDI rules to current law.

The proposed amendment to §21.3002(7) is necessary to conform to Insurance Code §1369.151, which states the subchapter is applicable to state employees, Medicaid, and Child Health Insurance Program (CHIP) plans. The proposed amendment to §21.3003 is necessary to conform to Insurance Code §1369.153, which designates what content must be located on the front and back of an identification card. The proposed amendment to §21.3020(7) is necessary to conform to Insurance Code §1369.052 and §1369.053, which state that the subchapter is applicable to individual, small group, and large group health benefit plans, but is not applicable to CHIP and Medicaid Managed Care Organizations, respectively. The amendment to §21.3022 is necessary to conform to Insurance Code §1369.0541, which specifies conditions under which modifications of drug coverage may occur and adds notice requirements.

The proposed repeal of §21.3005 is necessary because it applies to identification cards that were in effect on September 1, 1999, and is no longer applicable.

The proposed repeal of §21.3021 is intended to streamline the rules implementing Insurance Code Chapter 1369, Subchapter B. The requirements contained in §21.3021 are proposed to be included in §21.3030(a) in implementing Insurance Code §1369.054.

Proposed new §§21.3030 - 21.3034 are necessary to implement the portions of HB 1624, 84th Legislature, Regular Session (2015) (HB 1624) that added Insurance Code §§1369.0542 - 1369.0544, which require health benefit plan issuers to post on their website formulary information for each health benefit plan they issue.

EXPLANATION. HB 1624 relates to the transparency of certain information related to health benefit plan coverage. During the legislative session, interested parties asserted that health benefit plan issuers do not post complete or easily accessible prescription drug formularies online. The parties noted that there is often no information available to health insurance shoppers about cost-sharing for prescription drugs under the plans until after they purchase a plan.

HB 1624 requires a health benefit plan issuer to display formulary information on a public website maintained by the issuer as required by the commissioner of insurance by rule. The bill requires a direct electronic link to the formulary information to be displayed in a conspicuous manner in the electronic summary of benefits and coverage portion of each plan issued by a health benefit plan issuer on the issuer's website, and it requires the information to be publicly accessible to enrollees, prospective

enrollees, and others without necessity of providing a password, user name, or personally identifiable information. The bill also requires a health benefit plan issuer to make plan-specific formulary information available, including disclosures relating to the cost-sharing amount for each drug, prior authorization requirements, a description of how the drug will be included or excluded from the deductible, and an explanation of coverage of each formulary drug.

HB 1624 requires the commissioner to develop and adopt by rule requirements to promote consistency and clarity in the disclosure of formularies to facilitate comparison shopping among health benefit plans. Proposed new §§21.3030 - 21.3034 implement this requirement. For example, §21.3033 requires a health benefit plan issuer to create a "Summary of Formulary Benefits" designed to help consumers understand the prescription drug benefits offered under the specific plan they are reviewing so they can compare the benefits to those offered by other plans. The information is intended to help consumers compare both the value and scope of the formulary benefits.

TDI posted an informal draft of the rule text on its website on October 2, 2015, and invited public comment. TDI hosted a stakeholder meeting on October 20, 2015, and invited further public comment. TDI accepted and considered all comments received, revised the draft, and makes this proposal.

HB 1624 added Insurance Code §§1369.0542 - 1369.0544, relating to formulary disclosures, and Insurance Code §§1451.501 - 1451.505, relating to health care provider directories. This proposal addresses only the Insurance Code sections relating to formulary disclosures, as new or amended sections are not necessary to implement the Insurance Code sections relating to health care provider directories.

Proposed Amendments. Amendments to Subchapter V divide the subchapter into four new divisions for ease of reference and organizational purposes. New Division 1, titled "General Provisions," encompasses existing §21.3001 and relates to applicability and severability. New Division 2, titled "Identification Cards," encompasses existing §§21.3002 - 21.3004 and relates to pharmacy cards and standard identification cards. Division 2 will not include §21.3005, as that section is proposed for repeal. New Division 3, titled "Off-Label Drugs," encompasses existing §§21.3010 - 21.3011 and relates to coverage of off-label drugs. New Division 4, titled "Prescription Drug Formulary Coverage and Disclosure Requirements," encompasses existing §§21.3020 - 21.3023 related to continuation of benefits and adverse determination of nonformulary prescription drugs, and newly proposed §§21.3030 - 21.3034 related to required drug formulary disclosures. Provisions contained in repealed §21.3021 are incorporated in §21.3030(a).

Proposed amendments throughout Subchapter V remove the word "group" where it precedes "health benefit plan" to conform with Insurance Code §1369.151. In addition to the substantive amendments and additions, the proposed amendments also contain conforming changes for clarity and agency style, and amendments update Insurance Code citations.

The following explanation provides an overview and description of additional reasoned justification for the proposed amendments to the rules.

§21.3001. *Applicability and Severability.* A proposed amendment to §21.3001 deletes the word "scope" from the title of the section and replaces it with "applicability." Proposed amendments to §21.3001(a)(1) - (3) add language to clarify which

sections in Subchapter V apply to which subchapters of Insurance Code Chapter 1369 and delete text referencing Insurance Code articles that have been recodified.

§21.3002. *Definitions; Pharmacy Identification Cards.* The proposed amendment to §21.3002(1) deletes and replaces current text with new text that defines "administrator" as it is defined in Insurance Code §4151.001(1).

The proposed amendment to §21.3002(7) replaces current text with new text that defines "health benefit plan" as it is described in Insurance Code §1369.151, and includes a health benefit plan providing coverage for pharmacy benefits. The amendment also adds the phrase "exempt from state regulation under" to part of the definition, so that part of the definition now reads, "This definition includes the term, 'plan,' as defined in Insurance Code §4151.001(4), but does not include a self-funded employee welfare benefit plan exempt from state regulation under ERISA, 29 U.S.C. §1002(1)(A)."

The proposed amendment to §21.3002(9) replaces current text with new text that defines "issuer" as those entities described in Insurance Code §1369.151, but not those excluded by Insurance Code §1369.152.

The proposed amendment to §21.3002(10) adds new text "exempt from state regulation under" to clarify the definition of "pharmacy benefit manager." The definition now reads, "As defined in Insurance Code §4151.151, but does not include a pharmacy benefit manager for a self-funded employee welfare benefit plan exempt from state regulation under ERISA, 29 U.S.C. §1002(1)(A)."

§21.3003. *Standard Identification Cards.* The proposed amendment to §21.3003(b) adds the requirement that the information listed in §21.3003(b)(1) - (7) be included on the front of each identification card. The proposed amendment to §21.3003(b)(2) incorporates language from current §21.3003(b)(3) and provides an option to include either the name or logo of the issuer, the administrator, or the pharmacy benefit manager on the front of the card.

Current §21.3003(b)(4) is redesignated §21.3003(b)(3) and current §21.3003(b)(5) is redesignated §21.3003(b)(4). The proposed amendment to current §21.3003(b)(6) moves the text to proposed new §21.3003(c) and redesignates current §21.3003(b)(7) as §21.3003(b)(5), and current §21.3003(b)(8) as §21.3003(b)(6). The proposed amendments to new §21.3003(7) add the requirement that for a plan issued under Insurance Code Chapters 843 or 1301, the letters "TDI" or "DOI" be prominently displayed on the front of each identification card.

Proposed new §21.3003(c) requires the issuer of a health benefit plan to include the information described in current §21.3003(b)(6) on the identification card of each enrollee, but does not specify which side of the card. Current §21.3003(c) is redesignated §21.3003(d).

§21.3004. *Issuance of Standard Identification Cards.* Proposed amendments to §21.3004(c) - (d) remove references to §21.3005, as this proposal repeals §21.3005 in its entirety.

§21.3005. *Previously Issued Identification Cards.* The proposal repeals §21.3005, as both subsections relate to updating information on enrollee identification cards in effect on September 1, 1999, and therefore, are no longer relevant.

§21.3010. Definitions; Coverage of Off-Label Drugs. Proposed amendments to §21.3010 make changes for clarity and agency style and update Insurance Code citations.

§21.3011. Minimum Standards of Coverage for Off-Label Drug Use. Proposed amendments to §21.3011 make changes for clarity and agency style and update Insurance Code citations.

§21.3020. Definitions; Prescription Drug Formulary. Proposed amendments to §21.3020 make changes for clarity and agency style, update Insurance Code citations, and remove the word "group" preceding "health benefit plan" to comply with Insurance Code §1369.052. Proposed revisions to this section also add definitions for terms used in proposed new §§21.3030 - 21.3033.

A proposed amendment to §21.3020(1) deletes the current definition for the term "adverse determination" and replaces it with a reference to the definition for the term as defined in Insurance Code §4201.002.

Proposed new §21.3020(2) adds the term "allowed amount" and defines it as "the amount the health benefit plan issuer allows as reimbursement for a health care service, supply, or prescription drug, including reimbursement amounts for which a patient is responsible due to deductibles, copayments, or coinsurance." Current §21.3020(2) is redesignated §21.3020(4).

Proposed new §21.3020(3) adds the term "commonly prescribed drug list" and defines it as "a list of the 150 most frequently prescribed drugs published annually by the New York State Board of Pharmacy, available at <https://apps.health.ny.gov/pdpw/Drug-Info/DrugInfo.action>." Current §21.3020(3) is redesignated §21.3020(5).

A proposed amendment to current §21.3020(4) redesignates it §21.3020(6) and amends the definition of "delegated entity" to clarify that third-party administrators are those defined in Insurance Code §4151.001(1) and pharmacy benefits are those defined in Insurance Code §4151.151.

A proposed amendment to current §21.3020(5) redesignates it §21.3020(9) and amends the defined term to include the words "or formulary."

A proposed amendment to current §21.3020(6) redesignates it §21.3020(10).

Proposed new §21.3020(7) adds the term "direct electronic link" and defines it as "a hyperlink that, when clicked, delivers a user directly to the applicable website destination." Proposed amendments to current §21.3020(7) redesignate it §21.3020(11), remove the word "group" from the defined term, and define it as an insurance policy or evidence of coverage as described in Insurance Code §1369.052, but not those described in Insurance Code §1369.053, that provides coverage for a discrete package of benefits, paired with specific cost-sharing parameters.

Proposed new §21.3020(8) adds the term "drug" and defines it by referencing the definition for the term in the Texas Pharmacy Act, Occupations Code §551.003. A proposed amendment to current §21.3020(8) redesignates it §21.3020(12).

Proposed amendments to current §21.3020(9) - (13) redesignate them §21.3020(15) - (18).

Proposed new §21.3020(14) adds the term "off-label drug use" and defines it as "the use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition, but is used to treat another medical condition or at different

dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling."

Proposed new §21.3020(19) adds the term "summary health plan document" and defines it as "a document summarizing the coverage provided under a health benefit plan, including a summary of benefits and coverage, as required under 42 U.S. Code §300gg-15 and 45 CFR §147.200; and a disclosure of terms and conditions of a policy, as required under §3.3705(b) of this title (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations), or an evidence of coverage, as required under §11.1600(b) of this title (relating to Information to Prospective and Current Contract Holders and Enrollees)."

§21.3021. Required Disclosure of Drug Formulary. The proposal repeals §21.3021 in order to group all the formulary disclosure requirements in §§21.3030 - 21.3033. The requirements under §21.3021 are included under §21.3030(a) and Insurance Code §1369.054.

§21.3022. Continuation of Benefits. Proposed amendments to §21.3022 remove the word "group" preceding "health benefit plan" to comply with Insurance Code §1369.052.

The proposed amendments also add new text to specify conditions under which health benefit plans may make modifications to drug coverage under Insurance Code §1369.0541. Specifically, the proposed amendment to §21.3022(a) clarifies that modifications to drug coverage are not permitted until the plan's renewal date. The proposed amendment to §21.3022(b) replaces existing text with new text describing the conditions under which a health benefit plan issuer may make modifications to drug coverage. The proposed amendment to §21.3022(c) replaces existing text with new text describing some modifications of drug coverage for the purposes of the section.

§21.3023. Nonformulary Prescription Drugs; Adverse Determination. Proposed amendments to §21.3023 correct typographical, grammatical, and punctuation errors; make changes to conform rule text to current TDI drafting style; update Insurance Code citations; and remove the word "group" preceding "health benefit plan" to comply with Insurance Code §1369.052.

§21.3030. Availability of Formulary Information. Proposed new §21.3030(a) incorporates provisions from repealed §21.3021 and requires an issuer of a health benefit plan or its delegated entity to include plain language disclosures related to formularies in the coverage documentation provided to enrollees, which is consistent with Insurance Code §1369.054. Proposed new §21.3030(b) requires an issuer of a health benefit plan to make a paper copy of the formulary information, which is required under proposed new §21.3032 and §21.3033, available to a current or prospective enrollee on request. Proposed new §21.3030(c) permits a health benefit plan issuer to exclude the plan-level cost-sharing information on the paper copy as long as the enrollee can obtain the information by calling a toll-free number. Proposed new §21.3030(d) requires the paper copy to use at least 10-point font.

§21.3031. Formulary Information on Issuer's Website. Proposed new §21.3031 describes how the issuer of a health benefit plan displays the formulary information required under new proposed §21.3032 and §21.3033.

Proposed new §21.3031(a) requires a health benefit plan issuer to display the formulary information on a website that is publicly accessible without requiring the use of paid software, a pass-

word, user name, or personally identifiable information. Proposed new §21.3031(a)(1) - (2) state that formulary information must be electronically searchable by drug name and use at least 10-point font.

Proposed new §21.3031(b) requires that each health plan document include a direct link to the website containing the formulary information and describes the direct-link requirements.

Proposed new §21.3031(c) permits an issuer of a health benefit plan to develop a web-based tool to display plan-specific cost-sharing information required under §21.3032(c). Proposed new §21.3032(c)(1) - (4) describe the required elements that the web-based tool must contain. Section 21.3031(c)(1) requires the web-based tool to be publicly accessible to enrollees, prospective enrollees, and others without the use of a password or user name. Section 21.3031(c)(2) requires the tool to allow consumers to electronically search formulary information by the name under which the health benefit plan is marketed. Section 21.3031(c)(3) requires the tool to contain plan-specific cost-sharing information for each drug. Section 21.3031(c)(3)(A) - (C) describe the plan-specific cost-sharing information the health benefit plan issuer must include. Section 21.3031(c)(4) requires that the tool include a direct electronic link to a chart displaying each formulary that applies to each health benefit plan issued by the health benefit plan issuer and include a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

§21.3032. Formulary Disclosure Requirements. Proposed new §21.3032(a) requires the information provided under the section to include each prescription drug dispensed in a pharmacy or administered by a physician, and must differentiate between drugs covered under the plan's pharmacy benefits and medical benefits. Proposed new §21.3032(b)(1) - (4) describe the coverage information that must be included for each drug.

Proposed new §21.3032(c) requires the formulary information to include plan-specific cost-sharing information for each drug. Proposed new §21.3032(c)(1) requires the formulary information to indicate whether the drug is subject to a pharmacy or medical deductible and the amount of the deductible. Proposed new §21.3032(c)(2) requires the formulary information to include the cost-sharing amount for each drug under the pharmacy or medical benefit in a retail, mail order, or physician-administered setting, if applicable, after the enrollee has met any deductible requirement. Proposed new §21.3032(c)(2)(A) - (B) describe the cost-sharing information that must be included.

Proposed new §21.3032(d) requires the cost-sharing amounts to reflect the cost to the consumer for a month-long supply of the prescribed drug, unless otherwise noted, and it describes the requirements for calculating the cost-sharing amount for the drug.

Proposed new §21.3032(e) requires a legend on each page of the formulary information, and it describes required elements of the legend.

§21.3033. Facilitating Comparison Shopping. Proposed new §21.3033(a) requires that the formulary information must include a summary titled "Summary of Formulary Benefits." The summary is designed to help current and prospective enrollees understand the prescription drug benefits offered under the plan and to compare the benefits in one plan to those offered by other plans. Proposed new §21.3033(a)(1) - (5) describe the title of

each section of the summary, the elements the summary must include, and the order in which to include them.

Proposed new §21.3033(a)(1) requires a section in the summary titled "How to Find Information on the Cost of Prescription Drugs," which explains how a consumer can determine cost-sharing from the plan's summary health plan document, formulary information, and web-based tool, if applicable.

Proposed new §21.3033(a)(2) requires a section in the summary titled "Formulary by Health Benefit Plan," which includes a chart displaying each formulary that applies to each health benefit plan issued by the issuer and a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the health benefit plan is issued.

Proposed new §21.3033(a)(3) requires a section in the summary titled "Drugs by Cost-Sharing Tier," which includes information on drugs by cost-sharing tier, if applicable. Proposed new §21.3033(a)(3)(A) - (B) describe the cost-sharing tier information an issuer must include.

Proposed new §21.3033(a)(4) requires a section titled "Coverage for Commonly Prescribed Drugs," which includes information on coverage for commonly prescribed drugs. Proposed new §21.3033(a)(4)(A)(i) - (ii) describe the information to include if drugs from the commonly prescribed drug list are included in the formulary. Proposed new §21.3033(a)(4)(B) describes the information to include if drugs from the commonly prescribed drug list are not included in the formulary.

Proposed new §21.3033(a)(5) requires a section in the summary titled "How Prescription Drugs are Covered under the Plan," which includes information on how prescription drugs are covered under the plan. Proposed new §21.3033(a)(5)(A) - (F) describe the information an issuer must include in the summary.

Proposed new §21.3033(a)(5)(A) requires a section in the summary titled "Formulary Composition," which explains the method the health benefit plan issuer uses to determine the prescription drugs to include or exclude from the formulary, whether the formulary is open or closed, and a statement on how often the issuer reviews the formulary.

Proposed new §21.3033(a)(5)(B) requires a section in the summary titled "Right to Appeal," which explains an enrollee's right to appeal a denial of a medically necessary drug that is not covered under the formulary.

Proposed new §21.3033(a)(5)(C) requires a section in the summary titled "Continuation of Coverage," which explains the consumer's right to continued coverage consistent with proposed amended §21.3022 and Insurance Code §1369.055 and §1369.0541.

Proposed new §21.3033(a)(5)(D) requires a section in the summary titled "Off-Label Drug Use," which explains coverage for off-label drug use.

Proposed new §21.3033(a)(5)(E) requires a section in the summary titled "Cost-Sharing," which explains how cost-sharing is determined under the plan, including: information on deductibles; formulary tiers or cost-sharing levels if the formulary is multitier; the difference between preferred and nonpreferred drugs, if applicable; differences in coverage for in-network and out-of-network pharmacies; and the difference in coverage between retail pharmacy and mail-order pharmacy, if applicable.

Proposed new §21.3033(a)(5)(F) requires a section in the summary titled "Medical Management Requirements," which explains each type of medical management requirement used by the health benefit plan, including prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, as applicable.

Proposed new §21.3033(b) requires the summary information under proposed new subsection (a) to be located on the first page of the formulary document under the title "Summary of Formulary Benefits."

§21.3034. Effective Date. Proposed new §21.3034 states the effective dates of proposed new §§21.3030 - 21.3033. Proposed new §21.3034(a) provides the effective date for plans being marketed in the individual market, and proposed new §21.3034(b) provides the effective date for plans being marketed in the group market.

FISCAL NOTE. Rachel Bowden, program specialist, Regulatory Initiatives Office, has determined that, for each year of the first five years the proposed amendments, repeals and new rules are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Bowden has determined that for each year of the first five years the proposed amendments, repeals and new rules are in effect, there are public benefits anticipated as a result of the administration and enforcement of the rules, and there will also be potential costs for persons required to comply with the proposal. TDI drafted the proposed rules to maximize public benefits consistent with the authorizing statutes while mitigating costs.

Anticipated Public Benefits.

The anticipated public benefits are the implementation of rules necessary to comply with HB 1624 and increased transparency of formulary information for consumers so they can easily compare and shop among plans. Health benefit plan issuers will publish formulary information that is plan specific, discloses cost-sharing information, and contains a summary of formulary benefits.

Anticipated Costs.

Proposed new §21.3030, Availability of Formulary Information. There are compliance costs associated with proposed §21.3030. The probable cost components for compliance include the cost of printing, copying, and mailing formularies on request to prospective or current enrollees. TDI estimates the average price of a standard business-size envelope is between \$.07 and \$.17, and a business catalog-size envelope is between \$.31 and \$.40. TDI further estimates that the cost of printing or copying is between \$.08 and \$.12 per page. According to the United States Postal Service, the price to mail a domestic first class letter (one ounce) is \$.49. The price of each additional ounce is \$.21. It is not feasible for TDI to estimate the total increased printing, copying, and mailing costs attributable to compliance with the proposed section because it is unknown at this time how many prospective or current enrollees will request a paper copy of the formulary information, or how many formularies prospective or current enrollees will request.

Proposed new §21.3031, Formulary Information on Issuer Website and §21.3032, Formulary Disclosure Requirements.

The compliance costs associated with the proposed rules in §21.3031 and §21.3032 are largely statutory, and these sections of the rules will not increase the cost of compliance with Insurance Code §§1369.0542 - 1369.0544 beyond those required by statute. The statutory costs include development of a web page to house the required formulary information, a direct link to the web page from the issuer's health plan documents, and compilation of the required formulary disclosures. Health benefit plan issuers may also incur costs if they choose to develop a web tool to display the cost-sharing amount for each drug.

Proposed new §21.3033, Facilitating Comparison Shopping. There are also compliance costs associated with proposed §21.3033. The probable cost components associated with compliance include compiling the required information to create a "Summary of Formulary Benefits" document, reviewing the summary, and posting the summary online. TDI has identified four categories of labor reasonably necessary to perform the tasks and estimates a total of 40 to 120 hours combined labor time to complete the tasks. The total cost will vary depending on how many variations of the summary are required, how the hours are dispersed across the labor categories, and by the health benefit plan issuer's existing information systems and staffing.

An issuer may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The four categories of labor and their mean hourly wage described in the latest State Occupational Employment and Wage Estimates for Texas published by the United States Department of Labor (May 2014) at http://www.bls.gov/oes/current/oes_tx.htm are as follows: general and operations manager, \$59.16; computer programmer, \$38.85; compliance officer, \$33.06; and administrative assistant, \$25.52.

Health benefit plan issuers may incur additional costs for printing, copying, and mailing the summary to prospective and current enrollees on request. These costs are the same as the costs assessed to comply with §21.3032 (relating to Formulary Disclosure Requirements), discussed above.

Stakeholder Feedback on Costs.

TDI requested cost information by public comment during the posting of the informal draft of the rule text and at the October 20, 2015, stakeholder meeting. TDI received general input that the cost of implementing the statutory requirements proposed in new §§21.3030 - 21.3033 will be costly to implement. TDI is not able to modify the statutory requirements, and the proposed new rules implementing the statutory requirements do not increase the cost of compliance with the statute. In order to mitigate the cost of compliance, TDI proposed a phased-in implementation period in §21.3034.

TDI also received general input regarding the cost of implementing the proposed rule requirements in §21.3030 and §21.3033. Based on this information, TDI proposes §21.3030(c) to permit a paper copy of the formulary information to exclude plan-level cost-sharing information and reduced the number of reporting requirements in §21.3033 to minimize potential costs.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

Economic Impact Statement.

As required by Government Code §2006.002(c), TDI has determined that the proposed amendments, repeals and new rules

will have an adverse economic effect on small or micro businesses that must comply with the rules. The adverse economic impact will result from the cost components associated with printing and mailing paper copies of the formulary information in §21.3030, and creating and making available a summary of formulary benefits in §21.3033. The cost of compliance with these proposed rules will not vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs in the Public Benefit and Cost Note portion of this proposal are equally applicable to large businesses and small or micro businesses.

Regulatory Flexibility Analysis.

Government Code §2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Government Code §2006.002(c)(1) requires that the analysis consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses.

TDI considered the following three additional regulatory alternatives: (i) not proposing the new rules requirements at §21.3030 or §21.3033; (ii) proposing different requirements for small and micro businesses; and (iii) exempting small and micro businesses. For the following reasons, TDI rejected each of these alternatives as not being sufficiently consistent with the purpose of the statute.

Not proposing the new rules requirements at §21.3030 or §21.3033. The primary objective of the proposal is to provide consumers with complete and easily accessible formulary information consistent with HB 1624. The proposed rules promote consistency and clarity in the disclosure of formularies to facilitate consumer comparison shopping among health benefit plans and make the disclosures available to all consumers regardless of Internet access. Not proposing rules would conflict with the intent of the statute.

Proposing Different Requirements for Small and Micro Businesses. As previously noted, a purpose of the proposal is to provide consistent formulary disclosures to facilitate comparison shopping for health insurance. The formulary disclosures would not be consistent if small or micro business health benefit plan issuers reported different or less information than large businesses. Proposing different requirements for small or micro businesses would frustrate the intent of the statute.

Exempting small and micro businesses. Finally, TDI has determined that exempting small and micro business health benefit plan issuers from the requirements of the proposed rules would also conflict with the intent of the statute and would not improve the ability of patients to make appropriate and cost-effective health care decisions. For example, consumers already enrolled in a health benefit plan issued by a small or micro business issuer would not be able to compare their current formulary with the formularies offered by other small or micro business issuers of health plans in the market. Similarly, prospective consumers would also not be able to comparison shop.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal. This proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action

and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI invites comments on the proposed rules. If you wish to comment on this proposal, your comments must be postmarked no later than 5 p.m., Central time, on March 7, 2016. Please send comments by mail to Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to chiefclerk@tdi.texas.gov. Please simultaneously submit an additional copy of the comments by mail to Rachel Bowden, Regulatory Initiatives Office, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to ihlcomments@tdi.texas.gov.

TDI will hold a hearing on the proposed rules from 9:30 a.m. to noon, Central time, on February 24, 2016, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701. TDI will consider all written comments received before the deadline and all written and oral comments on these proposed rules presented at the hearing.

DIVISION 1. GENERAL PROVISIONS

28 TAC §21.3001

STATUTORY AUTHORITY. The amendments to §21.3001 are proposed under Insurance Code §§1369.005, 1369.057, 1369.151, 1369.154, and 36.001. Section 1369.005 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter A; §1369.057 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter B; §1369.151 extends the applicability of Insurance Code Chapter 1369, Subchapter D to include state employee, Medicaid, and CHIP plans; §1369.154 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §21.3001 affect the following statutes: Insurance Code §§36.001, 1369.005, 1369.057, 1369.151, and 1369.154.

§21.3001. Applicability [Scope] and Severability.

(a) Applicability [Scope]. This subchapter implements the provisions of Insurance Code Chapter 1369 [Articles 21-07-6, Sec. 19A; 21-52J; 21-53L; and 21-53M] as follows:

(1) Division 2 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter D [Sections 21-3002 - 21-3005 of this subchapter implement the provisions of Insurance Code Articles 21-07-6, Sec. 19A, and 21-53L], and relates [relate] to pharmacy identification cards.

(2) Division 3 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter A [Sections 21-3010 - 21-3014 of this subchapter implement the provisions of Insurance Code Article 21-53M], and relates [relate] to coverage of off-label drugs.

(3) Division 4 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter B [Sections 21-3020 - 21-3023 of this subchapter implement the provisions of Insurance Code Article 21-52J], and relates [relate] to the use of a drug formulary by a [group] health benefit plan.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statute

[statutes] of this state, is unconstitutional, or for any other reason is invalid, the remaining provisions [shall] remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the provision remains [shall remain] in full effect as to other persons or circumstances.

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 January 20, 2016.

TRD-201600229

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 676-6584



DIVISION 2. IDENTIFICATION CARDS

28 TAC §§21.3002 - 21.3004

STATUTORY AUTHORITY. The amendments to §§21.3002 - 21.3004 are proposed under Insurance Code §§843.209, 1369.052, 1369.151, 1369.153, 1369.154, 1369.154, §1301.162, and 36.001. Section 843.209 requires that HMO identification cards indicate that the HMO is regulated under the Insurance Code; §1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.151 extends the applicability of Insurance Code Chapter 1369, Subchapter D to include state employee, Medicaid, and CHIP plans; §1369.153 designates identification card content that must be located on the front of the card; §1369.154 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter D; §1301.162 requires that identification cards issued by insurers regulated by the Insurance Code display the first date on which an individual became insured under the plan or a toll-free number a physician or health care provider may use to obtain that date; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §§21.3002 - 21.3004, affect the following statutes: Insurance Code Chapters 843 and 1301; and §§36.001, §1301.162, 1369.052, 1369.151, 1369.153, 1369.154, 1451.001(1) and (4), and 4151.151.

§21.3002. *Definitions; Pharmacy Identification Cards.*

The following words and terms, when used in this division, [§§21.3002 - 21.3005 of this subchapter shall] have the following meanings, unless the context clearly indicates otherwise:

(1) **Administrator**--As defined in Insurance Code §4151.001(1), for plans subject to Insurance Code Chapter 1369, Subchapter D [Article 21-07-6, §1(1); but does not include an administrator for a self-funded employee welfare benefit plan covered by the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1002(1)(A)].

(2) **Drug**--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(3) **Drug formulary**--A list of drugs for which a health benefit plan provides coverage, approves payment, or encourages or offers incentives for physicians or other health care providers to prescribe.

(4) **Effective date**--The date that the health benefit plan's current prescription drug benefit levels became effective, or the date the subscriber's coverage first became effective, whichever is later.

(5) **Enrollee**--A person covered by a health benefit plan.

(6) **Enrollee identification card**--A printed card issued to enrollees of a health benefit plan that includes all necessary information to allow an enrollee to access all coverage under the health benefit plan.

(7) **Health benefit plan**--As described in Insurance Code §1369.151 [Article 21-53L], including a health benefit plan providing coverage for pharmacy benefits only, but not those described in Insurance Code §1369.152. This definition includes the term, "plan," as defined in Insurance Code §4151.001(4) [Article 21-07-6, §1(6)], but does not include a self-funded employee welfare benefit plan exempt from state regulation under [covered by] ERISA, 29 U.S.C. §1002(1)(A).

(8) **Identification code**--Any unique code used [utilized] by an issuer of a health benefit plan, administrator, or pharmacy benefit manager that identifies and differentiates among [amongst] enrollees.

(9) **Issuer**--Those entities described [identified] in Insurance Code §1369.151, but not those excluded by Insurance Code §1369.152 [Article 21-53L, §2(a)(1) - (8)].

(10) **Pharmacy benefit manager**--As defined in Insurance Code §4151.151 [Article 21-07-6, §1(9)], but does not include a pharmacy benefit manager for a self-funded employee welfare benefit plan exempt from state regulation under [covered by] ERISA, 29 U.S.C. §1002(1)(A).

(11) **Pharmacy benefits**--Coverage in a health benefit plan for prescription drugs that are ordinarily and customarily dispensed by a pharmacy or pharmacist licensed under the Texas Pharmacy Act, Occupations Code §551.001, et seq.

(12) **Standard identification card**--A printed card containing the written information required by §21.3003(b) of this title [subchapter] (relating to Standard Identification Cards).

(13) **Subscriber**--The individual who is the contract holder and who is responsible for payment of premiums to the issuer of an individual health benefit plan; or the individual who is the certificate holder and whose employment or membership status, except for family dependency, is the basis for eligibility for enrollment in a [group] health benefit plan.

§21.3003. *Standard Identification Cards.*

(a) The issuer of a health benefit plan that provides pharmacy benefits, or a pharmacy benefit manager or administrator issuing standard identification cards to enrollees must [shall] issue standard identification cards as follows:

(1) For a subscriber who is an enrollee, and who has no enrolled dependents, a single card must [shall] be issued to the subscriber, with additional cards available on [upon] request.

(2) For a subscriber who is an enrollee, and who has enrolled dependents, either:

(A) a card must [shall] be issued to the subscriber and to each of the enrolled dependents, with additional cards available on [upon] request; or

(B) two cards must [shall] be issued to the subscriber for use by the subscriber and all enrolled dependents, with additional cards available on [upon] request.

(3) For coverage under an individual health benefit plan in which the subscriber is not an enrollee, or for coverage under a [group] health benefit plan that [which] is continued by an enrollee under [pursuant to] Insurance Code Chapter 1251, Subchapter E [Article 3.51-6, §3B], either:

(A) a card must [shall] be issued to each enrollee, with additional cards available on [upon] request; or

(B) two cards must [shall] be issued for use by all enrollees, with additional cards available on [upon] request.

(b) Each standard identification card issued must [shall], at all times the card is in effect, include current information on the front of each identification card as follows:

(1) the enrolled subscriber's or enrolled dependents' names and identification codes, as follows:

(A) for [For] cards issued under [pursuant to] subsection (a)(1) of this section, the enrolled subscriber's name and identification code;

(B) for [For] cards issued under [pursuant to] subsection (a)(2)(A) of this section, the enrolled subscriber's name and identification code on the enrolled subscriber's card, and on each enrolled dependent's card, the name and identification code of the enrolled dependent to whom the card will be issued;

(C) for [For] cards issued under [pursuant to] subsection (a)(2)(B) of this section, the names and identification codes of the enrolled subscriber and the names and identification codes of all the enrolled dependents;

(D) for [For] cards issued under [pursuant to] subsection (a)(3)(A) of this section, on each enrolled dependent's card, the name and identification code of the enrolled dependent to whom the card will be issued;

(E) for [For] cards issued under [pursuant to] subsection (a)(3)(B) of this section, the names and identification codes of all enrolled dependents;

(2) [if applicable,] the name or logo of the issuer, or of the administrator or pharmacy benefit manager that is administering the pharmacy benefits, if different from the health benefit plan issuer;

[(3) the name or logo of the administrator or pharmacy benefit manager that is administering the pharmacy benefits, if different from the health benefit plan;]

(3) [(4)] as applicable, the group number applicable to the enrollee(s) covered by a group health benefit plan or the policy number or evidence of coverage number applicable to the enrollee(s) covered by an individual health benefit plan;

(4) [(5)] the effective date of coverage;

[(6) a telephone number of an appropriate person for purposes of obtaining information relating to the pharmacy benefits provided under the health benefit plan;]

(5) [(7)] as applicable, the corresponding copayment or coinsurance for generic and brand-name drugs; provided that, if the health benefit plan uses a drug formulary with benefit levels in addition to generic and brand-name prescription drugs, the card must [shall] include the corresponding copayments or coinsurance for each tier level of the drug formulary. In addition to disclosure of each benefit

level, the card may include a term such as "variable," to reflect benefit designs not fully revealed by the drug formulary tier disclosure; ~~and]~~

(6) [(8)] as applicable, the International Identification Number, also known as the Banking Identification Number, assigned to the administrator or pharmacy benefit manager by the American National Standards Institute; ~~and[-]~~

(7) for a plan issued under Insurance Code Chapters 843 or 1301, the letters "TDI" or "DOI" prominently displayed.

(c) In addition to the information required under subsection (b) of this section, the issuer of a health benefit plan must include on the identification card of each enrollee a telephone number of an appropriate person for purposes of obtaining information relating to the pharmacy benefits provided under the health benefit plan.

(d) [(e)] Nothing in this section prohibits the issuer of a health benefit plan, or an administrator or pharmacy benefit manager, from issuing a standard identification card containing a magnetic strip or other technological component enabling the electronic transmission of information, provided that the information required by subsections [subsection] (b) and (c) of this section is printed on the card.

§21.3004. Issuance of Standard Identification Cards.

(a) An issuer of a health benefit plan, or an administrator or pharmacy benefit manager, is not required to issue a standard identification card in addition to an enrollee identification card if:

(1) the enrollee identification card contains the information required by §21.3003(b) and (c) of this title [subchapter] (relating to Standard Identification Cards); and

(2) the enrollee identification card is issued in accordance with §21.3003(a) of this title [subchapter] and subsections (c) and (d) of this section.

(b) Under [Pursuant to] subsection (a) of this section, if a standard identification card is required to be issued, and an administrator or pharmacy benefit manager administers a health benefit plan of an issuer, the administrator or pharmacy benefit manager and the issuer must [shall] enter into an agreement as to which entity will issue the standard identification card in accordance with this subchapter.

(c) If [Subject to §21.3005(a) and (b) of this subchapter (relating to Previously Issued Identification Cards); when] an administrator or pharmacy benefit manager for a health benefit plan is designated or required to issue a standard identification card, the administrator or pharmacy benefit manager must [shall] issue the standard identification card in accordance with this subchapter not later than the 30th calendar day after the date the administrator or pharmacy benefit manager receives notice from the issuer[;] or [from] the health benefit plan[;] that the enrollee is eligible for the pharmacy benefits.

(d) If [Subject to §21.3005(a) and (b); if] the issuer of a health benefit plan is required to issue a standard identification card, the issuer of the health benefit plan must [shall] issue the standard identification card in accordance with this subchapter not later than the 30th calendar day after the enrollee is eligible for pharmacy benefits.

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-201600230



DIVISION 3. OFF-LABEL DRUGS

28 TAC §21.3010, §21.3011

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§36.001, 1369.004, and 1369.005. Section 1369.004 describes the drug coverage a health benefit plan that covers drugs is required to provide for treatment of an enrollee for a chronic, disabling, or life-threatening illness; §1369.005 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter A; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §21.3010 and §21.3011 affect the following statutes: Insurance Code §§36.001, 1369.001(1) and (3), 1369.002, 1369.004, and 1369.005.

§21.3010. Definitions; Coverage of Off-Label Drugs.

The following words and terms, when used in this division [§§21.3010 - 21.3011 of this subchapter (relating to off-label drugs) shall] have the following meanings, unless the context clearly indicates otherwise:

(1) Chronic illness--A disease, syndrome, or condition of expected long duration, showing little change or slow progression.

(2) Contraindication--As defined in Insurance Code §1369.001(1) [Article 21.53M].

(3) Disabling illness--A disease, syndrome, or condition determined by an enrollee's health care practitioner to have caused or have the potential to cause:

(A) a physical or mental impairment that substantially limits, or may limit, one or more of the activities of daily living of the enrollee including, but not limited to, eating, bathing, dressing, grooming, routine hair and skin care, meal preparation, exercising, toileting, and transfer and ambulation;

(B) an impairment substantially limiting an enrollee's cognitive acuity;

(C) an impairment substantially limiting an enrollee's ability to work, home make [~~home-make~~], or engage in leisure or educational activities; or

(D) a condition regarded as an impairment by an enrollee's licensed health care practitioner.

(4) Drug--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(5) Enrollee--A person covered by a health benefit plan.

(6) Health benefit plan--As described in Insurance Code §1369.002, but not those described in §1369.003 [Article 21.53M]. This term includes health benefit plans providing coverage for pharmacy benefits only.

(7) Health care practitioner--An advanced practice nurse, doctor of medicine, doctor of dentistry, physician assistant, doctor of

osteopathy, doctor of podiatry, or other licensed person with prescriptive authority.

(8) Impairment--Any loss or abnormality of psychological, physiological, or anatomical structure or function.

(9) Indication--As defined in Insurance Code §1369.001(3) [Article 21.53M].

(10) Issuer--Those entities described [identified] in Insurance Code §1369.002, but not those excluded by Insurance Code §1369.003 [Article 21.53M, §2(a)(1)-(8)].

(11) Life-threatening illness--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(12) Off-label drug use--The use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition but is used to treat another medical condition, or at different dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling.

(13) Peer-reviewed medical literature--A published scientific study in a journal or other publication in which original manuscripts are published only after they have been critically reviewed by unbiased independent experts in the same field[.] for scientific accuracy, validity, and reliability, and have been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications [that are] sponsored to a significant extent by a pharmaceutical manufacturing company or an issuer of a health benefit plan.

(14) Standard drug reference compendia--

(A) The American Hospital Formulary Service-Drug Information; or

(B) The United States Pharmacopoeia-Drug Information.

§21.3011. Minimum Standards of Coverage for Off-Label Drug Use.

(a) An issuer of a health benefit plan that provides coverage for drugs must [~~shall~~] provide coverage for any drug prescribed to treat an enrollee for a covered chronic, disabling, or life-threatening illness if the drug:

(1) has been approved by the Food and Drug Administration for at least one indication; and

(2) is recognized for treatment of the indication for which the drug is prescribed in:

(A) a standard drug reference compendium; or

(B) substantially accepted peer-reviewed medical literature.

(b) Coverage of a drug required under subsection (a) of this section:

(1) must [~~shall~~] include services medically necessary to administer the drug, including any supply medically necessary to administer the drug, if the supply is a covered benefit under the health benefit plan;

(2) may be denied based on a finding that the use of the drug is not medically necessary to treat the enrollee's disease, syndrome, or condition, so long as the finding is not based on the fact that the drug is being prescribed for an off-label use;

(3) may not be denied solely on the basis that the drug does not appear on the formulary. If the issuer of a health benefit plan refuses to provide an off-label drug that is not included in a drug formulary, and the enrollee's physician or provider has determined is medically necessary for an off-label use, the refusal constitutes an adverse determination for purposes of Insurance Code §4201.002(1) [Article 21.58A, §2]. An enrollee may appeal the adverse determination under Insurance Code Chapter 4201, Subchapters H and I [§§6 and 6A of Article 21.58A];

(4) may be denied for a drug prescribed to treat any disease or condition that is excluded from coverage under the health benefit plan;

(5) may be denied for a drug prescribed for outpatient use if coverage of drugs under that particular health benefit plan is limited to the hospitalization of the enrollee; or

(6) may be denied for a drug that the Food and Drug Administration has determined to be a contraindication for treatment of the current disease or condition.

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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Norma Garcia

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



DIVISION 4. PRESCRIPTION DRUG FORMULARY COVERAGE AND DISCLOSURE REQUIREMENTS

28 TAC §§21.3020, 21.3022, 21.3023, 21.3030 - 21.3034

STATUTORY AUTHORITY. The amendments to §§21.3020, 21.3022, 21.3023 and new §§21.3030 - 21.3034 are proposed under Insurance Code §§1369.005, 1369.052, 1369.053, 1369.054, 1369.0541, 1369.0542; 1369.0543, 1369.0544, 1369.055, 1369.056, 1369.057, 1369.151, 1369.154, and 36.001. Section 1369.005 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter A; §1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.053 provides exceptions to the applicability of Insurance Code Subchapter B, and it exempts CHIP and Medicaid Managed Care Organizations; §1369.054 describes the notice and disclosure of certain information required if an issuer of a health benefit plan covers prescription drugs and uses one or more drug formularies to specify the prescription drugs covered under the plan; §1369.0541 specifies conditions under which modifications of drug coverage may occur and creates notice requirements; §1369.0542 requires a health benefit plan issuer to post formulary information on its website as required by the commissioner by rule; §1369.0543 describes the required formulary disclosures and requires the commissioner to adopt rule requirements to promote consistency and clarity in the

disclosure of formularies to facilitate consumers when comparison shopping among health benefit plans; §1369.0544 allows a health benefit plan issuer to make the formulary information available through a toll-free telephone number; §1369.055 describes the continuation of drug coverage requirements an issuer of a health benefit plan must offer if prescription drugs are covered; §1369.056 describes the circumstances under which a refusal of a health benefit plan issuer to provide benefits to an enrollee for a prescription drug is an adverse determination; §1369.057 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter B; §1369.151 extends the applicability of Insurance Code Chapter 1369, Subchapter D to include state employee, Medicaid, and CHIP plans; §1369.154 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §§21.3020, 21.3022, 21.3023 and new §§21.3030 - 21.3034 affect the following statutes: Insurance Code §§36.001, 1369.005, 1369.052, 1369.053, 1369.054, 1369.0541, 1369.0542; 1369.0543, 1369.0544, 1369.055, 1369.056, 1369.057, 1369.151, 1369.154, 4201.002, and 4151.001(1) and (4).

§21.3020. Definitions; Prescription Drug Formulary.

The following words and terms, when used in this division [§§21.3020-21.3023 of this subchapter (relating to prescription drug formulary benefits), shall] have the following meanings, unless the context clearly indicates otherwise:

(1) Adverse determination--As defined in Insurance Code §4201.002. [A determination upon utilization review that the health care services furnished or proposed to be furnished to an enrollee are not medically necessary or not appropriate.]

(2) Allowed amount--The amount that the applicable health benefit plan issuer allows as reimbursement for a health care service, supply, or prescription drug, including reimbursement amounts for which a patient is responsible due to deductibles, copayments, or coinsurance.

(3) Commonly prescribed drug list--A list of the 150 most frequently prescribed drugs published annually by the New York State Board of Pharmacy, available at <https://apps.health.ny.gov/pdpw/DrugInfo/DrugInfo.action>.

(4) [(2)] Contracted benefit level--The copayment amount or coinsurance percentage established at the beginning of the current plan year and described [set forth] in the coverage documentation.

(5) [(3)] Coverage documentation--A policy, certificate of coverage, evidence of coverage, enrollee handbook, or a plan document distributed by an issuer[,], or its delegated entity[,], to an enrollee or to the master contract holder, for distribution to enrollees.

(6) [(4)] Delegated entity--An entity, or an association of [which by itself or through one or more] entities, including [but not limited to] third-party administrators, as they are defined in Insurance Code §4151.001(1), and pharmacy benefit managers, as they are defined in Insurance Code §4151.151, that [as those terms are defined in Insurance Code Article 21.07-6, which] provides reimbursement for covered services or undertakes to arrange for or provide benefits or services to an enrollee under a [group] health benefit plan, and that [which] performs on behalf of the issuer of a [group] health benefit plan, any

function regulated by this division [§§21.3020 - 21.3023 of this subchapter].

(7) Direct electronic link--A hyperlink that, when clicked, delivers a user directly to the applicable website destination.

(8) Drug--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(9) [(5)] Drug formulary or formulary--A list of drugs for which a health benefit plan provides coverage, approves payment, or encourages or offers incentives for physicians or other health care providers to prescribe.

(10) [(6)] Enrollee--As defined in Insurance Code §1369.051(2) [Article 21.52J].

(11) [(7)] Health [Group health] benefit plan--An insurance policy or evidence of coverage as [As] described in Insurance Code §1369.052, but not those described in Insurance Code §1369.053, that provides coverage for a discrete package of benefits, paired with specific cost-sharing parameters [Article 21.52J]. This term includes [group] health benefit plans providing coverage for pharmacy benefits only.

(12) [(8)] Issuer--Those entities described [identified] in Insurance Code §1369.052, but not those excluded by Insurance Code §1369.053 [Article 21.52J, Sec. 2(a)(1)-(8)].

(13) [(9)] Multitier [Multi-tier] formulary--A drug formulary with benefit levels in addition to generic and brand name prescription drug benefit levels.

(14) Off-label drug use--The use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition but is used to treat another medical condition, or at different dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling.

(15) [(40)] Plain language--As prescribed in §3.602 of this title (relating to Plain Language Requirements).

(16) [(41)] Plan year--A 365-day period that begins on the date the [group] health benefit plan's coverage commences, or a period of one full calendar year as defined in the [group] health benefit plan's coverage documentation.

(17) [(42)] Prescription drug--As defined in Insurance Code §1369.051(4) [Article 21.52J].

(18) [(43)] Renewal date--For each [group] health benefit plan, the earlier of the date specified in the coverage documentation for renewal or the policy anniversary date. In determining the renewal date for association or multiple employer trust [group] health benefit plans, issuers may use the date specified for renewal or the policy anniversary date of either the master contract, plan document, or certificate of coverage of each group in the association or trust. Issuers must [shall] use the same method of determining renewal dates for all [group] health benefit plans.

(19) Summary health plan document--A document summarizing the coverage provided under a health benefit plan, including:

(A) a summary of benefits and coverage, as required under 42 U.S.C. §300gg-15 and 45 CFR §147.200; and

(B) a disclosure of terms and conditions of a policy, as required under §3.3705(b) of this title (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations), or an evidence of coverage, as required under §11.1600(b) of this title (relating to Information to Prospective and Current Contract Holders and Enrollees).

§21.3022. *Continuation of Benefits.*

(a) An issuer of a [group] health benefit plan that offers prescription drug benefits must [shall] make a prescription drug that was approved or covered for a medical condition or mental illness available to each enrollee at the contracted benefit level until the [group] health benefit plan renewal date. Modifications to drug coverage are not permitted until the plan's renewal date, [regardless of whether the prescribed drug has been removed from the group health benefit plan's drug formulary.]

(b) A health benefit plan issuer may make modifications to drug coverage provided under a health benefit plan if:

(1) the modification occurs at the time of coverage renewal;

(2) the modification is effective uniformly among all group health benefit plan sponsors covered by identical or substantially identical health benefit plans, or all individuals covered by identical or substantially identical individual health benefit plans, as applicable; and

(3) not later than the 60th day before the date the modification is effective, the issuer provides written notice of the modification to the commissioner, each affected group health benefit plan sponsor, each affected enrollee in an affected group health benefit plan, and each affected individual health benefit plan holder.

(c) For the purposes of this section, modifications to drug coverage include:

(1) removing a drug from a formulary;

(2) adding a requirement that an enrollee receive prior authorization for a drug;

(3) imposing or altering a quantity limit for a drug;

(4) imposing a step-therapy restriction for a drug; and

(5) moving a drug to a higher cost-sharing tier unless a generic drug alternative is available.

[(b) Continuation of benefits for those group health benefit plans that utilize a multi-tier formulary, regardless of whether the prescription drug has been moved to another formulary tier, shall be the same as that specified in subsection (a) of this section.]

[(c) An issuer of a group health benefit plan, or its delegated entity, that provides coverage for prescription drugs, and did not utilize a multi-tier formulary at the beginning of the plan year, but which later adopts a multi-tier formulary, shall continue to make a prescription drug that was approved or covered for a medical condition or a mental illness, available to each enrollee at the same contracted benefit level before the multi-tier formulary was adopted, until the group health benefit plan's renewal date.]

§21.3023. *Nonformulary Prescription Drugs; Adverse Determination.*

If the issuer of a [group] health benefit plan, its delegated entity, or their employees or agents refuses to provide coverage for a prescription drug that is not included in a drug formulary, and the enrollee's physician or other health care provider with prescriptive authority has determined the prescription drug is medically necessary to treat a condition covered by the enrollee's [group] health benefit plan, the refusal to provide coverage for the prescription drug constitutes an adverse determination for the purpose of Insurance Code Chapter 4201 [Article 21.58A, §2]. An enrollee may appeal the adverse determination under Insurance Code Chapter 4201, Subchapters H and I [Article 21.58A, §§6 and 6A], and the issuer of the [group] health benefit plan, and its employees or agents, must [shall] review and resolve the appeal in accordance with those sections.

§21.3030. Availability of Formulary Information.

(a) An issuer of a health benefit plan, or its delegated entity, that covers prescription drugs and uses one or more drug formularies must provide, in plain language, the disclosures required by Insurance Code §1369.054. The plain language disclosure must be in the coverage documentation provided to each enrollee and include the address and telephone number where the enrollee may contact the issuer of the health benefit plan, or its delegated entity, to determine if a specific prescription drug is on the formulary.

(b) An issuer of a health benefit plan must allow a current or prospective enrollee to obtain a paper copy of the formulary information required under §21.3032 and §21.3033 of this title (relating to Formulary Disclosure Requirements and Facilitating Comparison Shopping) by calling the toll-free number listed on the summary health plan document.

(c) An issuer may elect to exclude the plan-level cost-sharing information required under §21.3031(c) of this title (relating to Formulary Information on Issuer's Website) from the paper format if the document provides a toll-free number through which a current or prospective enrollee may obtain formulary information contained in §21.3032 and §21.3033, including the plan-specific cost-sharing information required under §21.3032(c) for any formulary drug.

(d) The paper copy of the formulary information must use at least 10-point font.

§21.3031. Formulary Information on Issuer's Website.

(a) Except as permitted under subsection (c) of this section, an issuer of a health benefit plan must display the formulary information required under §21.3032 and §21.3033 of this title (relating to Formulary Disclosure Requirements and Facilitating Comparison Shopping) on a website that is publicly accessible to enrollees, prospective enrollees, and others without requiring the use of paid software, a password, user name, or personally identifiable information. The formulary information must:

- (1) be electronically searchable by drug name; and
- (2) use at least 10-point font.

(b) Each summary health plan document must include a direct electronic link to the website that contains the formulary information. The direct electronic link must deliver the user directly to the formulary information associated with the health benefit plan described by the health plan document, without requiring additional navigation or user input.

(c) As an alternative to displaying the information required under §21.3032(c) of this title alongside the formulary information required generally under subsection (a) of this section, a health benefit plan issuer may elect to make plan-specific cost-sharing information available through a web-based tool. A direct electronic link to the web-based tool must be included on each page of the formulary disclosure that lists each drug. The purpose of this alternative method is to encourage the provision of the most timely and accurate drug price information. In order to qualify for this alternative method, a web-based tool must:

- (1) be publicly accessible to enrollees, prospective enrollees, and others without requiring the use of paid software or the necessity of a password, user name, or personally identifiable information;
- (2) allow consumers to electronically search formulary information by the name under which the health benefit plan is marketed;
- (3) include the following plan-specific cost-sharing information for each drug:

(A) whether the drug is subject to a pharmacy or medical deductible and the amount of the applicable deductible;

(B) the full price of the drug, based on the plan's median allowed amount for the drug using the most up-to-date data available;

(C) the cost-sharing amount the enrollee will owe for each drug under the pharmacy or medical benefit in a retail, mail order, or physician-administered setting, if applicable, after the enrollee has met any deductible requirement, including as applicable:

(i) the dollar amount of a copayment; and

(ii) for a drug subject to coinsurance, the dollar amount of cost-sharing the enrollee will owe, calculated based on the full price of the drug and the cost-sharing parameters under the enrollee's health benefit plan for the tier under which the drug is assigned;

(4) include, prominently displayed on the web page under the header "Formulary by Health Benefit Plan," a direct electronic link to a chart displaying each formulary that applies to each health benefit plan issued by the issuer and includes a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

§21.3032. Formulary Disclosure Requirements.

(a) The formulary information required under this section must include each prescription drug covered under the plan that is dispensed in a network pharmacy or administered by a physician or health care provider and clearly differentiate between drugs covered under the plan's pharmacy benefits and medical benefits. Information pertaining to drugs covered under the plan's medical benefits may be provided as an addendum to the formulary and must include each parameter that is applicable.

(b) The formulary information must include the following coverage information for each drug:

- (1) an explanation of coverage under the health benefit plan;
- (2) an indication of whether the drug is preferred, if applicable, under the plan;
- (3) a disclosure of any prior authorization, step therapy, or other protocol requirement that limits access to the drug; and
- (4) the specific tier the drug falls under, if the plan uses a multitier formulary.

(c) The formulary information must include the following plan-specific cost-sharing information for each drug:

(1) whether the drug is subject to a pharmacy or medical deductible and the amount of the applicable deductible;

(2) the cost-sharing amount for each drug under the pharmacy or medical benefit, in a retail, mail order, or physician-administered setting, if applicable, after the enrollee has met any deductible requirement, including, as applicable:

- (A) the dollar amount of a copayment; and
- (B) for a drug subject to coinsurance:

(i) an enrollee's cost-sharing amount stated in dollars; or

(ii) a cost-sharing range denoted as follows:

(I) under \$100 - \$;

(II) \$100 - \$250 - \$\$;

(III) \$251 - \$500 - \$\$\$;

(IV) \$501 - \$1,000 - \$\$\$\$; or

(V) over \$1,000 - \$\$\$\$\$.

(d) Cost-sharing amounts must reflect the cost to the consumer, rounded to the next highest dollar amount, for a month-long supply unless otherwise noted. Cost-sharing information reflecting the cost for a different duration supply should indicate the applicable duration. The cost-sharing amount for a given drug must be calculated based on the plan's median allowed amount for the drug using the most up-to-date data available and the cost-sharing parameters under the enrollee's health benefit plan for the tier under which the drug is assigned.

(e) Any formulary information presented using abbreviations must provide a legend on each page explaining the meaning of each abbreviation used, including the dollar amounts that correspond to the cost-sharing range.

§21.3033. Facilitating Comparison Shopping.

(a) The formulary information must include a summary titled "Summary of Formulary Benefits" that includes this statement: "The information in this document is designed to help you understand the prescription drug benefits offered under this plan and compare these benefits to those offered by other plans. Information contained in this summary is designed to help you compare both the value and scope of formulary benefits." The summary must also include, in the following order:

(1) Under the header, "How to Find Information on the Cost of Prescription Drugs," a description of how a consumer may use the plan's summary health plan document, formulary information, and web-based tool, if applicable, to determine the cost-sharing they may owe, and an explanation that cost-sharing information reflects a consumer's share of the cost after meeting any applicable deductible, calculated using an estimate of the full price of the drug, which is based on the plan's median allowed amount at a given point in time.

(2) Under the header, "Formulary by Health Benefit Plan," a chart that displays each formulary that applies to each health benefit plan issued by the issuer and includes a direct electronic link to the Summary of Benefits and Coverage for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

(3) Under the header, "Drugs by Cost-Sharing Tier," if the drug formulary is a multitier formulary, a summary that displays for all drugs in the formulary:

(A) the total number of drugs in each cost-sharing tier;
and

(B) the percent of drugs in each cost-sharing tier.

(4) Under the header, "Coverage for Commonly Prescribed Drugs":

(A) the percent of the drugs contained on the commonly prescribed drug list that are included in the formulary as covered, as of the date the information is provided, accompanied by the label, "Percent of Commonly Prescribed Drugs Included in this Plan," separately specifying:

(i) the percent of drugs contained on the commonly prescribed drug list that are covered without prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, accompanied by the label, "Percent of Commonly Prescribed

Drugs Covered NOT Subject to Medical Management Requirements," and;

(ii) the percent of drugs contained on the commonly prescribed drug list that are covered subject to prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, accompanied by the label, "Percent of Commonly Prescribed Drugs Covered Subject to Medical Management Requirements";

(B) the percent of drugs contained on the commonly prescribed drug list that are not covered in the formulary, accompanied by the label, "Percent of Commonly Prescribed Drugs NOT Included in this Plan."

(5) Under the header, "How Prescription Drugs are Covered under the Plan":

(A) under a section titled, "Formulary Composition," an explanation of the method the issuer uses to determine the prescription drugs to be included in or excluded from the formulary, an explanation of whether the formulary is open or closed, and a statement of how often the issuer reviews the contents of the formulary.

(B) Under a section titled, "Right to Appeal," an explanation that if a drug is not covered under the formulary, but the enrollee's physician has determined that the drug is medically necessary, the consumer has the right to appeal, consistent with §21.3023 of this title (relating to Nonformulary Prescription Drugs; Adverse Determination) and Insurance Code §1369.056. A statement of how cost-sharing will be determined for drugs covered as a result of a successful appeal.

(C) Under a section titled, "Continuation of Coverage," an explanation of a consumer's right to continued coverage for a prescription drug at the coverage level or tier at which the drug was covered at the beginning of the plan year, until the enrollee's plan renewal date, consistent with §21.3022 of this title (relating to Continuation of Benefits) and Insurance Code §1369.055 and §1369.0541.

(D) Under a section titled, "Off-Label Drug Use," an explanation of how formulary drugs are covered under the plan, including an explanation of coverage for off-label drug use.

(E) Under a section titled, "Cost-Sharing," an explanation of how cost-sharing is determined under the plan, including whether a deductible applies to prescription drug coverage; how cost-sharing for prescription drugs counts towards the plan's deductible; how drugs are categorized into each of the formulary tiers or cost-sharing levels, if the drug formulary is a multitier formulary; the difference between preferred and nonpreferred drugs, if applicable; the difference in coverage for drugs dispensed from in-network and out-of-network pharmacies; and the difference in coverage for drugs dispensed in a retail pharmacy and a mail-order pharmacy, if applicable.

(F) Under a section titled, "Medical Management Requirements," an explanation of each type of medical management requirement used by the health benefit plan, including prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, as applicable.

(b) Formulary information must include the summary information required under subsection (a) of this section beginning on the first page of the formulary document under the title, "Summary of Formulary Benefits."

§21.3034. Effective Date.

(a) The requirements under §§21.3030 - 21.3033 of this title (relating to Availability of Formulary Information, Formulary Disclosure Requirements, and Facilitating Comparison Shopping) are effec-

tive for plans marketed in the individual market on or after November 1, 2016, with an effective date on or after January 1, 2017.

(b) The requirements under §§21.3030 - 21.3033 of this title are effective for plans marketed in the group market on or after September 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.

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Norma Garcia

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



28 TAC §21.3005, §21.3021

STATUTORY AUTHORITY. The repeal of §21.3005 and §21.3021 is proposed under Insurance Code §§1369.052, 1369.054, 1369.057, 1369.154 and 36.001. Section 1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.054 provides the notice and disclosure of certain information required by issuers of a health benefit plan that covers prescription drugs and uses one or more drug formularies to specify the prescription drugs covered under the plan; §1369.057 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter B; §1369.154 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed repeal of §21.3005 and §21.3021 affect the following statutes: Insurance Code §§36.001, 1369.052, 1369.054, 1369.057, and 1369.154.

§21.3005. *Previously Issued Identification Cards.*

§21.3021. *Required Disclosure of Drug Formulary.*

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 January 20, 2016.

TRD-201600228

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 676-6584



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §305.132

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §305.132.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking proposes new §305.132 in order to implement the requirements of SB 912 for permitted wastewater treatment facilities.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 327, Spill Prevention and Control.

Section Discussion

§305.132, Special Conditions for Certain Wastewater Discharges

The commission proposes new §305.132(a) to define terms used in the section.

The commission proposes new §305.132(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission proposes new §305.132(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting of accidental discharges or spills of treated or untreated wastewater.

The commission proposes new §305.132(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission proposes new §305.132(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area. This definition is consistent with the definition in Chapter 217.

The commission proposes new §305.132(b) to allow for an accidental discharge or spill that occurs at wastewater treatment

facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission proposes new §305.132(b)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission proposes new §305.132(b)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission proposes new §305.132(b)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission proposes new §305.132(b)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission proposes new §305.132(c) which specifies that the summary must be reported to the executive director by the 20th day of the month for accidental discharges or spills of treated or untreated wastewater that occurred during the previous month. This date is consistent with other reporting requirements in the permit. This subsection also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including exact dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

The commission proposes new §305.132(d) to provide three standard methods for determining spill volumes.

The commission proposes new §305.132(d)(1) to describe visual estimates as the first of three standard methods. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 50 to obtain the number of gallons discharged or spilled.

The commission proposes new §305.132(d)(2) to describe measured volume as the second of three standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission proposes new §305.132(d)(3) to describe duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission proposes new §305.132(e) which specifies that the owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §305.132. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period for recordkeeping is consistent

with other records required to be maintained onsite by the permit.

The commission proposes new §305.132(f) which specifies that the executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule implements SB 912, which amended the TWC to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government.

Currently, all accidental discharges or spills of treated or untreated wastewater are required to be reported to TCEQ within 24 hours verbally and by written report within five days. SB 912 language allows for owners or operators of a wastewater treatment facility or collection system owned or operated by a local government to report accidental discharges or spills of treated or untreated wastewater on a monthly basis in the form of a summary if certain conditions are met. The conditions are: 1) the spill volume is 1,000 gallons or less; 2) it is not associated with another accidental discharge or spill; 3) it is controlled or removed before entering water in the state; 4) it does not adversely affect a public or private source of drinking water; 5) it will not endanger human health or safety or the environment; and 6) it is not otherwise subject to local regulatory control and reporting requirements.

There are an estimated 1,223 wastewater treatment facilities owned or operated by local governments that may be affected by the proposed rule. A noncompliance form is used to notify the agency of a discharge or spill. The noncompliance form is submitted to the agency by hard copy and by email. The proposed language will allow owners or operators to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. If a local government has numerous accidental discharges or spills of treated or untreated wastewater to report, there may be minor cost savings from the consolidation of notifications. Otherwise, no significant fiscal implications are anticipated for local governments that own or operate wastewater treatment facilities or collection systems as a result of the administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed new rule is in effect, the only public benefit anticipated from the changes seen in the proposed rule will be consistency with state law.

The proposed rule is not anticipated to result in fiscal implications for businesses or individuals. The exception to 24-hour verbal and five-day written reporting of accidental discharges or spills of treated or untreated wastewater only applies to wastewater treatment facilities or collection systems owned or operated by a local government.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect for small or micro-businesses. The proposed rule will only apply to a wastewater treatment facility or collection system owned or operated by a local government.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect and is necessary to comply with state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated wastewater are to be reported. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912.

The proposed rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed rule revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency,

but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Plan (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Therefore, the proposed rule is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 1, 2016 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-024-305-CE. The comment period closes on March 7, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For

further information, please contact Macy Beauchamp, Program Support, (512) 239-0437.

Statutory Authority

The new section is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibits unauthorized discharges into or adjacent to water in the state.

The proposed new section implements TWC, §26.039 and Senate Bill 912 (84th Texas Legislature, 2015).

§305.132. Special Conditions for Certain Wastewater Discharges.

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

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area.

(b) The owner or operator of a wastewater treatment facility or collection system that is owned or operated by a local government, may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

(1) has a volume of 1,000 gallons or less;

(2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;

(3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and

(4) is not otherwise subject to local regulatory control and reporting requirements.

(c) The owner or operator shall submit a monthly summary to the executive director by the 20th day of the month for each accidental discharge or spill of treated or untreated wastewater that occurred during the previous month. The summary must include, at a minimum, the:

(1) location, volume and content of the accidental discharge or spill;

(2) description of the accidental discharge or spill;

(3) cause of the accidental discharge or spill;

(4) exact dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(d) The owner or operator must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 50 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(e) The owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(f) The executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

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 January 22, 2016.

TRD-201600278

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-2613



CHAPTER 327. SPILL PREVENTION AND CONTROL

30 TAC §327.1, §327.32

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §327.1 and proposes new §327.32.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated

or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking proposes to amend §327.1 and proposes new §327.32 in order to implement the requirements of SB 912 for unpermitted wastewater treatment facilities and collection systems.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 305, Consolidated Permits. Section by Section Discussion

§327.1, *Applicability*

The commission proposes to amend §327.1(b)(7) to replace the phrase, "discharges not so authorized" with "unauthorized discharges" in order to improve readability and clarity.

The commission proposes §327.1(a)(10), which states that Chapter 327 is not applicable to accidental discharges or spills of treated or untreated wastewater that are reported in accordance with 30 TAC §305.132.

§327.32, *Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems*

The commission proposes new §327.32(a) to define terms used in the section.

The commission proposes new §327.32(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission proposes new §327.32(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting of accidental discharges or spills of treated or untreated wastewater.

The commission proposes new §327.32(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission proposes new §327.32(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area. This definition is consistent with the definition in Chapter 217.

The commission proposes new §327.32(b) that states that unless the conditions in §327.32(c) exists, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours from the time of occurrence. A written submission shall be provided to the executive director within five days of occurrence. The written submission shall contain a description

of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; the length of time that the accidental discharge or spill is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the accidental discharge or spill, as well as efforts made to mitigate its adverse effects.

The commission proposes new §327.32(c) to allow an accidental discharge or spill of treated or untreated wastewater that occurs at wastewater treatment facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission proposes new §327.32(c)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission proposes new §327.32(c)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission proposes new §327.32(c)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission proposes new §327.32(c)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission proposes new §327.32(d) which specifies that the summary must be reported to the executive director by the 20th day of the month for spills of treated or untreated wastewater that have occurred during the previous month. This date is consistent with the reporting requirements for permitted facilities. This clause also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including exact dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

The commission proposes new §327.32(e) to provide three standard methods for determining spill volumes.

The commission proposes new §327.32(e)(1). This paragraph describes visual estimates as the first of three standard methods. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 50 to obtain the number of gallons discharged or spilled.

The commission proposes new §327.32(e)(2). This paragraph describes volume as the second of three standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission proposes new §327.32(e)(3). This paragraph describes duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of

the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission proposes new §327.32(f) which specifies that the responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §327.32. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period is consistent with recordkeeping requirements for permitted facilities.

The commission proposes new §327.32(g) which specifies that the executive director may require more frequent reporting based on the responsible person's history of noncompliance.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement SB 912, which amended the TWC to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government.

Currently, all accidental discharges or spills of treated or untreated wastewater are required to be reported to the TCEQ within 24 hours verbally and by written report within five days. SB 912 language allows for the responsible person of a wastewater treatment facility or collection system owned or operated by a local government to report accidental discharges or spills of treated or untreated wastewater on a monthly basis in the form of a summary if certain conditions are met. The conditions are: 1) the spill volume is 1,000 gallons or less; 2) it is not associated with another accidental discharge or spill; 3) it is controlled or removed before entering water in the state; 4) it does not adversely affect a public or private source of drinking water; 5) it will not endanger human health or safety or the environment; and 6) it is not otherwise subject to local regulatory control and reporting requirements.

There are an estimated 5,147 local governments that may be affected by the proposed rules. A noncompliance form is used to notify the agency of a discharge or spill. The noncompliance form is submitted to the agency by hard copy and by email. The proposed language will allow a responsible person to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. If a local government has numerous spills of treated or untreated wastewater to report, there may be minor cost savings from the consolidation of notifications. Otherwise, no significant fiscal implications are anticipated for local governments that own or operate wastewater treatment facilities or collection systems as a result of the administration or enforcement of the proposed rules.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the only public benefit anticipated from the changes seen in the proposed rules will be consistency with state law.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. The exception to 24-hour verbal and five-day written reporting of accidental discharges or spills of treated or untreated wastewater only applies to wastewater treatment facilities or collection systems owned or operated by a local government.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The proposed rules will only apply to a wastewater treatment facility or collection system owned or operated by a local government.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and are necessary to comply with state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated wastewater are to be reported. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912.

The proposed rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these

four applicability requirements of a "major environmental rule." Specifically, the proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated and untreated wastewater. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Therefore, the proposed rules are not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 1, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-024-305-CE. The comment period closes on March 7, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Macy Beauchamp, Program Support Section, (512) 239-0437.

Statutory Authority

The amendment and new section are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibits unauthorized discharges into or adjacent to water in the state.

The proposed amendment and new section implement TWC, §26.039, and Senate Bill 912 (84th Texas Legislature, 2015).

§327.1. *Applicability.*

(a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state.

(b) This chapter does not apply to:

(1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the Railroad Commission of Texas is the on-scene coordinator, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C, D, E, F, and G;

(2) spills or discharges from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131;

(3) releases only to air;

(4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (Underground and Above-ground Storage Tanks);

(6) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;

(7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State of Texas; provided, however, that unauthorized discharges [~~not so authorized~~] shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement;

(8) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency [(EPA)] under 40 Code of Federal Regulations [(CFR)] §302.8; [and]

(9) discharges or spills occurring during the normal course of rail transportation; or[-]

(10) accidental discharges or spills of treated or untreated wastewater that are reported in accordance with §305.132 of this title (relating to Special Conditions for Certain Wastewater Discharges).

§327.32. Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems.

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

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area.

(b) Except as provided by subsection (c) of this section, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours of the occurrence. A written submission shall be provided to the executive director within five days of the occurrence. The written submission shall contain a description of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; if the cause of the accidental discharge or spill has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence, and to mitigate its adverse effects.

(c) The responsible person of a wastewater treatment facility or collection system that is owned or operated by a local government may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

(1) has a volume of 1,000 gallons or less;

(2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;

(3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and

(4) is not otherwise subject to local regulatory control and reporting requirements.

(d) The responsible person shall submit a monthly summary by the 20th day of the month for each accidental discharge or spill that occurred during the previous month. The summary must include, at a minimum, the:

(1) location, volume and content of the accidental discharge or spill;

(2) description of the accidental discharge or spill;

(3) cause of the accidental discharge or spill;

(4) exact dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(e) The responsible person must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 50 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(f) The responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(g) The executive director may require more frequent reporting based on the responsible person's history of noncompliance.

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 January 22, 2016.

TRD-201600279

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-2613

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) Chapter 356, relating to Groundwater Management, §356.10, relating to Definitions; §356.21, relating to Designation of Groundwater Management Areas; §356.22, relating to Request to Amend Groundwater Management Area Boundaries; §356.34, relating to District Adoption of the Desired Future Conditions; §356.35, relating to Modeled Available Groundwater; and §356.53, relating to Plan Submission. The TWDB also proposes new §356.41, relating to Petition: Required Administrative Review and Scientific Study, and new §356.42, regarding Petition: Mediation of Issues.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSAL.

The TWDB is proposing this rulemaking in order to clarify procedures related to amending the boundaries of groundwater management areas, and to conform to changes in statute due to passage of House Bill (HB) 200 by the 84th Texas Legislature in 2015.

Amending Boundaries of Groundwater Management Areas.

In accordance with 31 TAC §356.22(b)(2), authorization is required from the TWDB to proceed with rulemaking for a boundary change involving a substantive change to the physical groundwater management area boundary. Originally, TWDB maintained the groundwater management area boundary designations in certain internal data files. The titles of these data files were included in TWDB rules relating to groundwater management area designations. Because of this, the TWDB was required to authorize a rulemaking every time it amended groundwater management area boundaries. However, the titles of the data files are no longer listed in TWDB rules. Therefore, a rulemaking to reflect a substantive change to groundwater management area boundaries is no longer needed.

The proposed amendment to 31 TAC §356.22(b)(2) reflects the changes in TWDB practice for amending groundwater management area boundaries by removing the required rulemaking. Each groundwater management area requesting a change to its boundaries must continue to hold a public meeting on the issue and submit the notice and minutes of that meeting to TWDB with its request. Furthermore, 31 TAC §356.22(b)(2) would still require TWDB approval at a public board meeting for substantive changes. Therefore, a thorough notice and comment process will still be involved for amending groundwater management area boundaries even if the process no longer includes a rulemaking by TWDB.

Changes to Process to Consider Desired Future Conditions Petitions.

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a Groundwater Conservation District (District). The proposed rules reflect the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge. An affected person has to file a petition with the District within 120 days of the District's adoption of the desired future condition. Within 60 days of receiving a petition, a District is required to contract with SOAH to conduct the contested case hearing and submit any related petitions. Within 10 days of receiving the petition, the District is to submit a copy of the petition to the TWDB so it can conduct an administrative review of the desired future condition and a scien-

tific and technical analysis. TWDB has 120 days to deliver the scientific and technical analysis to SOAH. TWDB staff responsible for the scientific and technical analysis may be called to testify as expert witnesses.

A District can also seek the assistance of the TWDB to mediate the issues raised in the petition. If the issues cannot be resolved, SOAH is to proceed with the hearing.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 356.10. Definitions.

The definition of "Affected Person" is added to define the term as used in Chapter 36 of the Texas Water Code.

The definition of "Evidence" is deleted because it is unnecessary and is no longer applicable.

The definition of "Office" is added to define the term as used in Chapter 36 of the Texas Water Code.

The definition of "Person with a legally defined interest in groundwater" is deleted because it is unnecessary and is no longer applicable.

The definition of "Petition" is revised for consistency with Chapter 36 of the Texas Water Code.

The definition of "Petitioner" has been deleted because it is unnecessary and is no longer applicable.

The definition of "Relevant aquifer" has been moved within this Definitions section and renumbered.

Definitions have been renumbered accordingly.

Section 356.21. Designation of Groundwater Management Areas.

Section 356.21 is revised for consistency with current agency practice related to data and map files.

Section 356.22. Request to Amend Groundwater Management Area Boundaries.

Section 356.22 is revised for consistency with current agency practice related to amending groundwater management area boundaries.

Section 356.34. District Adoption of the Desired Future Condition.

Section 356.34 is revised for consistency with agency practice and rules related to the submission of a desired future condition package.

Section 356.35. Modeled Available Groundwater.

Section 356.35 is revised to require the TWDB to provide the modeled available groundwater value no later than 180 days after the executive administrator has provided notice that the desired future condition package submitted is administratively complete.

Section 356.41. Petition: Required Administrative Review and Scientific and Technical Study.

Existing §356.41 (relating to Petition: Required Administrative Review and Scientific and Technical Study) is being proposed for repeal elsewhere in this issue of the *Texas Register*. New proposed §356.41 details the procedures for the appeal of a desired future condition adopted by a groundwater conservation district, consistent with Chapter 36 of the Texas Water Code as amended

by HB 200, 84th Legislative Session. This proposal reflects the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a groundwater conservation district to contract with the SOAH to hear the challenge. The proposed rulemaking requires the TWDB to conduct an administrative review of the desired future condition and a scientific and technical analysis.

Section 356.42. Petition: Mediation of Issues.

Existing §356.42 (relating to Hearing) is proposed for repeal elsewhere in this issue of the *Texas Register*. New proposed §356.42 allows a groundwater conservation district to request the TWDB's assistance in mediating the issues raised in the petition, consistent with Chapter 36 of the Texas Water Code as amended by HB 200, 84th Legislative Session. If the issues cannot be resolved, SOAH is to proceed with the hearing.

Section 356.53. Plan Submission.

Section 356.53 is revised to correct a term.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendments and new rules. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments.

There is no change in costs because there are no direct costs associated with the proposed rules. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering the rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rules.

PUBLIC BENEFITS AND COSTS

Ms. Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it provides clarity regarding the TWDB's process for changing groundwater management area boundaries and it is consistent with statutory changes made to the process involving desired future conditions.

LOCAL EMPLOYMENT IMPACT STATEMENT

The TWDB has determined that a local employment impact statement is not required because the proposed amendments and new rules will not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these proposed rules. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rules as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same.

Even if the proposed rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, these proposed rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The TWDB evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendments and new rules is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The proposed rules would substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 36 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b)(4).

Nevertheless, the TWDB further evaluated these proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this proposed rulemaking provides clarity regarding the TWDB's process for changing groundwater management area boundaries and more closely aligns the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. This will not burden, restrict, or limit an owner's right to property. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.texas.gov, or by fax at (512) 475-2053.

SUBCHAPTER A. DEFINITIONS

31 TAC §356.10

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

§356.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here shall have the meanings provided in Chapter 36.

(1) Affected Person--An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person who holds or is applying for a permit from a district in the management area, a person who has groundwater rights in the management area, or any other person defined as affected with respect to a management area by Texas Commission on Environmental Quality rule.

(2) [(4)] Agency--The Texas Water Development Board.

(3) [(2)] Amount of groundwater being used on an annual basis--An estimate of the quantity of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include an estimate of exempt uses.

(4) [(3)] Board--The governing body of the Texas Water Development Board.

(5) [(4)] Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteris-

tics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(6) [(5)] Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(7) [(6)] Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(8) [(7)] District--Any district or authority subject to Chapter 36, Texas Water Code.

[(8) Evidence--Information, including but not limited to oral statements or presentations, written materials, data files, or graphic representations, which relates to the reasonableness of the desired future conditions.]

(9) - (15) (No change.)

(16) Office--State Office of Administrative Hearings.
[Relevant aquifer--An aquifer designated as a major or minor aquifer.]

[(17) Person with a legally defined interest in groundwater--A person or entity that owns or leases land or rights to groundwater in a groundwater management area; uses a well for beneficial use in a groundwater management area; or has current or pending authorization from a district to produce groundwater.]

(17) [(18)] Petition--A document submitted to the groundwater conservation district by an affected person [executive administrator] appealing the reasonableness [adoption] of a desired future condition [that complies with the requirements of §356.41(b) of this chapter (relating to Petition: Reviewability, Form, Receipt, Postponement, and Joinder)].

[(19) Petitioner--A person with a legally defined interest in groundwater, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area who appeals the adoption of a desired future condition.]

(18) [(20)] Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(19) [(21)] Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(20) Relevant aquifer--An aquifer designated as a major or minor aquifer.

(21) [(22)] State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(22) [(23)] Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

(23) [(24)] Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for re-

covery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

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 January 25, 2016.

TRD-201600296

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §356.21, §356.22

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

§356.21. *Designation of Groundwater Management Areas.*

The boundaries of the groundwater management areas are delineated using a geographic information system maintained and updated by the executive administrator. The digital files and a graphic representation of the groundwater management area boundaries are available [~~on a CD-ROM located in agency offices and~~] on the agency's web site at <http://www.twdb.texas.gov>. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. These files are controlling in the event of a conflict with any graphic representation.

§356.22. *Request to Amend Groundwater Management Area Boundaries.*

(a) (No change.)

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization [~~to proceed with rulemaking~~].

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

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600299

Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

31 TAC §356.34, §356.35

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

§356.34. *District Adoption of the Desired Future Condition.*

Each district shall adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Submission Package) is administratively complete.

§356.35. *Modeled Available Groundwater.*

~~[(a)]~~ The executive administrator will provide the modeled available groundwater value for each aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness). ~~[The modeled available groundwater value will be provided.]~~

~~[(1)]~~ No later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.32 of this subchapter (relating to Submission Package); ~~or~~

~~[(2)]~~ No later than 180 days after the date on which the board determines that an appeal under Subchapter D of this chapter (relating to Appealing Adoption of Desired Future Conditions) is resolved.]

~~[(b)]~~ An appeal of a desired future condition will be considered resolved when:]

~~[(1)]~~ The board determines that the desired future condition is reasonable; ~~or~~

~~[(2)]~~ When districts in the groundwater management area submit a revised desired future condition(s) to 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 January 25, 2016.

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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

31 TAC §356.41, §356.42

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

§356.41. Petition: Required Administrative Review and Scientific and Technical Study.

(a) The agency will perform an administrative review of the desired future condition established by the district to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

(b) The agency will complete and deliver to the Office a scientific and technical analysis of the desired future condition considering the criteria listed in Texas Water Code §36.1083(e)(2) within 120 days after receiving a copy of the petition from the district. The scientific and technical analysis of the desired future condition will be conducted according to the guidance published on the agency website.

§356.42. Petition: Mediation of Issues.

(a) In accordance with Texas Water Code §36.1083(j), a district may seek assistance of the agency in mediating the issues raised in the petition.

(b) If the agency's assistance is sought by the district, the executive administrator or his designee shall hold at least one meeting with the district and the affected person and shall establish procedures to mediate the issues raised in the petition.

(c) Depending on the details of the petition, the executive administrator may contract with an independent mediator to be paid for by the district.

(d) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation.

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 January 25, 2016.

TRD-201600302

Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §356.53

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

§356.53. Plan Submission.

(a) A district requesting approval of its management plan, or of an update of its management plan to incorporate adopted desired future conditions that apply to the district, shall submit to the executive administrator the following:

- (1) one hard copy of the adopted management plan;
 - (2) one electronic copy of the adopted management plan;
- and

(3) documentation [evidence] that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice printed in the newspaper or publisher's affidavit.

(b) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600303

Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

31 TAC §§356.41 - 356.46

The Texas Water Development Board (TWDB) proposes the repeal of 31 Texas Administrative Code (TAC) Chapter 356, §§356.41 - 356.46.

BACKGROUND AND BASIS FOR THE PROPOSED REPEALS.

The TWDB is proposing these repeals in order to clarify procedures related to amending the boundaries of groundwater management areas, and to conform to changes in statute due to passage of House Bill (HB) 200 by the 84th Texas Legislature in 2015. Changes to existing rules and proposed new rules to conform to the HB 200 amendments are being proposed simultaneously elsewhere in this issue of the *Texas Register*.

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a Groundwater Conservation District (District). The rules proposed for repeal reflect the change in statute that removes the TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeals. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their repeal.

The repeal of these sections is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed repeals. These repeals are not expected to have any impact on state or local revenues nor do they require any increase in expenditures for state or local governments as a result of administering the repeals. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the repeals.

PUBLIC BENEFITS AND COSTS.

Ms. Demers also has determined that for each year of the first five years the proposed repeals are in effect, the public will benefit as it is consistent with statutory changes which remove the TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the SOAH to hear the challenge.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed repeals will not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed repeals. The TWDB also has determined that there is no anticipated economic cost to persons because there are no requirements imposed by the repeal. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject

to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed repeals is to conform the TWDB's rules related to desired future conditions to the Texas Water Code related to the same.

Even if the proposed rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, the proposed repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT.

The TWDB evaluated the proposed rules and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed repeals are to conform the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The proposed repeals substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 36 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b)(4).

Nevertheless, the TWDB further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of the proposed repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed repeals do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would other-

wise exist in the absence of the regulation. In other words, the proposed repeals align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. This will not burden, restrict, or limit an owner's right to property. Therefore, the proposed repeals do not constitute a taking under Texas Government Code, Chapter 2007.

SUBMISSION OF COMMENTS.

Comments on the proposed repeals will be accepted for 30 days following publication in the *Texas Register* and may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053.

STATUTORY AUTHORITY.

The repeals are proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to propose rules necessary to carry out the powers and duties of the TWDB. The repeals are also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed repeals affect Chapter 36 of the Texas Water Code.

§356.41. *Petition: Reviewability, Form, Receipt, Postponement, and Joinder.*

§356.42. *Hearing.*

§356.43. *Board Evaluation, Consideration, and Deliberation.*

§356.44. *Board Findings and Public Hearing on Recommended Revisions.*

§356.45. *Waiver.*

§356.46. *Administrative Record of the Proceedings.*

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 January 25, 2016.

TRD-201600295

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB) proposes amendments to Chapter 358, State Water Planning Guidelines, §358.6, relating to Water Loss Audits.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2013, the 83rd Texas Legislature passed House Bill (HB) 3605 amending Texas Water Code §16.0121 regarding the water loss

audit that is required of all retail public utilities providing potable water. HB 3605 required a retail public utility providing potable water that receives financial assistance from the TWDB to use a portion of that, or any additional, financial assistance to mitigate the utility's system water loss if the utility's system water loss met or exceeded a threshold established by agency rule.

In late 2014, the TWDB adopted 31 TAC §358.6 (relating to Water Loss Audits), which establishes water loss thresholds for retail public utilities providing potable water that apply for financial assistance from the TWDB. The thresholds were developed based on industry performance indicators for both apparent loss (including meter inaccuracies, billing adjustments, and theft) and for real loss (actual loss of water from leaks and breaks and also loss from unknown and unreported sources).

In 2015, the 84th Texas Legislature passed HB 949, amending §16.0121(g) of the Water Code allowing the TWDB, on the request of a retail public utility, to waive the requirement that the utility use the financial assistance to mitigate water loss if the TWDB finds that the utility is satisfactorily addressing its water loss.

The proposed amendment to be applied to 31 TAC §358.6(f) would require a utility that is identified as meeting or exceeding the thresholds, and which requests a waiver, to provide the Executive Administrator with information regarding that activities or programs it has, or is planning to have, and current and or expected accomplishments for their water loss program. Also required will be the source of funding for their water loss program.

The proposed amendment would delete reference to 31 TAC §358.6(g) because it is no longer applicable.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 358.6(f) is revised for consistency with §16.0121(g) of the Texas Water Code, as amended.

Section 358.6(g) has been deleted because it is unnecessary and is no longer applicable.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendment. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their administration.

This rule is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed amendment. This rule is not expected to have any impact on state or local revenues. The rule does not require any increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule.

PUBLIC BENEFITS AND COSTS.

Ms. Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it allows flexibility when a utility has already taken steps or is presently taking steps to mitigate their water loss.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed amendment will not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this proposed rule. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rule as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rule-making because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather §16.0121 of the Texas Water Code. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT.

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendment is to more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same. The proposed rule would substantially advance this

stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 16 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b) (4). The TWDB is an agency that must coordinate the submission of the required water loss audit, and must compile information included in the water loss audit and determine the utility's use of financial assistance from the TWDB to mitigate system water loss in accordance with §16.0121 of the Texas Water Code.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rule-making does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with the submission of a water loss as required by state law unless a waiver is appropriately requested by a retail public utility. This will not burden, restrict, or limit an owner's right to property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

SUBMISSION OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.texas.gov or by fax at (512) 475-2053.

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Texas Water Code §16.0121, which authorizes the TWDB to waive the water loss mitigation requirements under specified conditions.

The proposed rulemaking affects §16.0121 of the Texas Water Code.

§358.6. *Water Loss Audits.*

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

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

[(g) Subsection (f) of this section shall apply to applications for financial assistance received by the board after January 1, 2015.]

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 January 25, 2016.

TRD-201600304

Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.432

The Comptroller of Public Accounts proposes amendments to §3.432, concerning refunds on gasoline, diesel fuel, compressed natural gas, and liquefied natural gas taxes. The amendments are proposed to implement the provisions of Senate Bill 254, 81st Legislature, 2009, effective July 1, 2009, House Bill 2148, 83rd Legislature, 2013, effective September 1, 2013, and House Bill 1905, 84th Legislature, 2015, effective September 1, 2015.

Subsection (h)(1)(E) is amended to add the definition of a volunteer fire department to provide clarity for refund purposes because of statutory exemptions provided in Senate Bill 254 and House Bill 2148.

Subparagraph (F) is added to include an exemption for non-profit entities providing emergency medical services as provided in House Bill 1905.

Paragraph (2) is amended to reflect the inclusion of new subparagraph (F).

Paragraph (3) is reformatted to reflect the expansion of an exemption to include a Texas municipality and a transit company, including a metropolitan rapid transit authority, as provided in House Bill 1905.

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

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

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

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§162.104 (Exemption for Gasoline), 162.125 (Gasoline Refund or Credit for Certain Taxes Paid), 162.204 (Diesel Fuel Exemptions), 162.227 (Diesel Fuel Refund for Certain Taxes Paid), 162.356 (Compressed Natural Gas and Liquefied Natural Gas Exemptions), and 162.365 (Compressed Natural Gas and Liquefied Natural Gas Exemption).

§3.432. *Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes.*

(a) Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(b) Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §§162.128, 162.230, and 162.369:

(1) one year from the first day of the calendar month that follows:

- (A) purchase;
- (B) tax exempt sale;
- (C) use, if withdrawn from one's own storage for one's own use;
- (D) export from Texas; or
- (E) loss by fire, theft, or accident; or

(2) four years from the due and payable date for a tax return on which an overpayment of state fuel tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, blender, or compressed natural gas and liquefied natural gas dealer who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The licensed supplier, permissive supplier, distributor, importer, exporter, blender, or compressed natural gas and liquefied natural gas dealer must establish the credit by filing an amended state fuel tax return for the period in which the error occurred and tax payment was made to the comptroller.

(c) Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (b) of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped

"Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the state fuel tax amount paid or a written statement that the price included state fuel tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state fuel tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used; and

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

- (A) the date the fuel was removed;
- (B) the number of gallons removed;
- (C) the type of fuel removed;
- (D) the identity of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubometer reading, or description of other off-highway use.

(d) Refund or credit for state fuel tax on gasoline used solely for off-highway purposes. A claim for refund or credit for state fuel tax on gasoline used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (c)(4) of this section.

(e) Refund or credit for state fuel tax on gasoline used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state fuel tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (c)(4) of this section of the number of gallons of gasoline used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state fuel tax.

(f) Refund or credit for state fuel tax on gasoline, compressed natural gas, or liquefied natural gas used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline, compressed natural gas, or liquefied natural gas in motor vehicles incidentally on the highway, when the incidental travel on the highway was infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair.

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(g) Refund or credit for state fuel tax on gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for state fuel tax on gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determining the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for state fuel tax on gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

- (A) the miles driven as shown by any type of odometer or hubometer;
- (B) the gallons delivered to each vehicle; and
- (C) the gallons used as recorded by the meter or other measuring device;

(2) fixed 30% method for gasoline-powered ready mix concrete trucks and solid waste refuse trucks. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubometer and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The state fuel tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not-for-highway use must be made on invoices;

(5) fixed 5.0% method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund

of the state fuel tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped; or

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval; and

(7) accurate mileage records must be kept regardless of the method used.

(h) Refund or credit for state fuel tax on gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for state fuel tax paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the following entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094;

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel fuel is used exclusively to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates; [øf]

(E) a Texas volunteer fire department when the purchase is for its exclusive use. For purposes of this section, qualifying volunteer fire departments are identified on the Texas A&M Forest Service's website as a volunteer fire department having no paid members. A directory of these fire departments is available at: <http://tfsfrp.tamu.edu/fdd/directory>; or

(F) a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services in Texas, including rescue and ambulance services, when the purchase is for its exclusive use.

(2) An exempt entity enumerated in paragraph (1)(A) - (F) [~~(E)~~] of this subsection may claim a refund of state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas purchased for its exclusive use.

(3) A [~~Texas county may claim a~~] refund may be requested for [øf] state fuels [fuel] tax [paid] on compressed natural gas or liquefied natural gas used in a motor vehicle operated exclusively by: [purchased for its exclusive use.]

(A) a Texas county or a Texas municipality; or

(B) a transit company, including a metropolitan rapid transit authority under Transportation Code, Chapter 451, or a regional transportation authority under Transportation Code, Chapter 452, that provides transportation services and who on January 1, 2015, held a prepaid liquefied gas decal as that section existed on that date.

(i) Refund or credit for state fuel tax on gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for state fuel tax paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transportation Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported.

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) A licensed supplier must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(j) Refund or credit for state fuel tax on gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on 100 or

more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (b)(1) of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) a separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory immediately preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(k) Refund or credit for state fuel tax on gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for state fuel tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered terminal.

(l) Refund or credit for state fuel tax on gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for state fuel tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(m) Refund or credit for state fuel tax on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used outside of Texas by a licensed interstate trucker. A licensed interstate trucker may take a credit on a tax return for state fuel tax paid on gasoline, diesel fuel,

compressed natural gas, or liquefied natural gas purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first;

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on a return or claimed as a refund before the prescribed deadline expires.

(n) Refund for state fuel tax on gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of state fuel tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state fuel tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state fuel tax was collected or that it was a tax-free sale.

(o) Refund of state fuel tax on compressed natural gas or liquefied natural gas sold on Indian reservations. Tribal entities and tribal members may claim a refund of state fuel tax paid on compressed natural gas or liquefied natural gas purchased from a compressed natural gas and liquefied natural gas dealer located on an Indian reservation recognized by the United States government. The refund claim must be supported with original purchase invoices that show the state fuel tax was paid and that include:

(1) the name and address of the seller;

(2) the name of the purchaser;

(3) the date of the sale;

(4) the number of diesel gallon equivalents or gasoline gallon equivalents purchased;

(5) the type of fuel purchased; and

(6) the rate and amount of tax, separately stated from the selling price.

(p) Refund or credit for state fuel tax paid on diesel fuel used in moveable specialized equipment operated exclusively in oil field well servicing.

(1) A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel consumed by moveable specialized equipment used exclusively in oil field well servicing equipment if the person or license holder has received or is eligible to receive a federal diesel fuel tax refund under Internal Revenue Code, Title 26, and the moveable specialized equipment meets the following specific design-base and use-base tests.

(A) Design-base test.

(i) The chassis has permanently mounted to it (by welding, bolting, riveting, or other means) machinery or equipment to perform oil well servicing operations if the operation of the machinery or equipment is unrelated to transportation on or off the highways;

(ii) the chassis has been specially designed to serve only as a mobile carriage and mount (and power source, if applicable) for the machinery or equipment, whether or not the machinery or equipment is in operation; and

(iii) the chassis could not, because of its special design, be used as part of a vehicle designed to carry any other load without substantial structural modification. A chassis that can be used for a variety of uses and body types (such as a dump truck, flat bed, or box truck) is a highway chassis and would not qualify as a specially designed chassis.

(B) Use-base test. The use-based test is satisfied if the vehicle travels less than 7,500 miles on highways during a calendar year.

(2) Documentation requirements. In addition to the documentation requirements in Tax Code, §162.229, the person or license holder must maintain:

(A) a mileage or trip log for each moveable specialized equipment on an individual-vehicle basis consisting of:

(i) total miles traveled, evidenced by odometer or hubometer readings;

(ii) date of each trip on the public highways of this state and out of this state (starting and ending);

(iii) beginning and ending odometer or hubometer readings of each trip on the public highway;

(iv) odometer or hubometer readings entering Texas, and odometer or hubometer readings leaving Texas;

(v) power unit number or vehicle identification number or license plate number; or

(vi) vehicles that are not licensed under the International Fuel Tax Agreement may use the Texas Department of Transportation Quarterly Hubometer Permit report in lieu of the records required in clauses (i) - (v) of this subparagraph to document incidental highway travel.

(B) Internal Revenue Service form 4136, if refund of federal excise tax claimed;

(C) verification that limited sales tax was paid on the movable specialized equipment, if purchased in Texas; and

(D) verification that an oversize/overweight permit is used to travel on the highways of this state.

(3) Computation of refund. One-fourth of one gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(4) Moveable specialized equipment licensed under the International Fuel Tax Agreement (IFTA). An IFTA licensee may only request a refund for state fuel tax paid on diesel fuel used in moveable specialized equipment licensed under the IFTA directly from the comptroller and separately from the IFTA tax return. A refund claim must be supported with purchase invoice(s) and trip or mileage logs described in paragraph (2) of this subsection.

(5) Recovery of refund. If a refund has been issued for movable specialized equipment for a partial calendar year, and it is determined that the movable specialized equipment traveled 7,500 miles or more on the highways in that calendar year then the taxes previously refunded for that vehicle must be repaid to the comptroller.

(q) Refund of state fuel tax paid on diesel fuel used in a medium to remove drill cuttings from a well bore in the production of oil or gas. A refund must be supported with purchase invoice(s) and distribution log described in Tax Code, §162.229.

(r) Refund of state fuel tax paid on diesel fuel used as a feedstock in manufacturing. A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel used as a feedstock in the manufacturing of tangible personal property for resale, but not as a motor fuel. A refund claim must be supported with purchase invoice(s), records showing the amount of diesel fuel used as feedstock and a description of the tangible personal property manufactured.

(s) The right to receive a refund or take a credit under this section is not assignable.

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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



TITLE 43. TRANSPORTATION

PART 13. HIDALGO COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 401. MOTOR VEHICLE TITLE SERVICES

43 TAC §§401.1 - 401.13

The Hidalgo County Tax Assessor-Collector proposes new 43 TAC §§401.1 - 401.13, concerning the regulation of motor vehicle title services. The Hidalgo County Tax Assessor-Collector, Pablo (Paul) Villarreal, Jr., PCC, has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Mr. Villarreal has determined that for the first five-year period these sections are in effect, there will be no fiscal impact for state or local government. The amount of the fee directly relates to the amount necessary for the department to recover the cost of its operation. The county will keep all revenues from licensing fees to offset spending.

Mr. Villarreal also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcement of the rules will be to reduce vehicle theft and related document fraud.

Mr. Villarreal has received motor vehicle title services records from approximately 10-20 distinct entities per year since 2012. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with these sections will be the license fee, which is due upon application and is not refundable. Small businesses that comply with the sections may experience increased business opportunities because noncompliant competitors will be sanctioned.

In preparing the proposed sections, Mr. Villarreal has considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. Mr. Villarreal also has considered assessing lower and higher license fees but concluded that the needs of a border county like Hidalgo are different from the counties that set regulations under 43 TAC §95.1 (Harris County) and 43 TAC §301.1 (Fort Bend County).

Comments on the proposed new sections may be submitted to Mr. Santos Castilleja III, Motor Vehicle Manager, Hidalgo County Tax Office, 2804 S. US Highway 281, Edinburg, Texas 78539. The deadline for all comments is 30 days after publication in the *Texas Register*.

The Hidalgo County Tax Assessor-Collector proposes the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This proposal does not affect any other statutes, articles, or codes.

§401.1. Definitions.

(a) "Motor vehicle" has the meaning assigned by Texas Transportation Code §501.002(17).

(b) "Motor vehicle title service" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(c) "Title documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of the Texas Transportation Code or Chapter 70 of the Texas Property Code.

(d) "Title service license holder" means a person who holds a motor vehicle title service license or a title service runner's license. A title service license holder is legally responsible for each title service runner it employs or contracts.

(e) "Title service record" means the written record for each transaction in which a motor vehicle title service receives compensation.

(f) "Title service runner" means any person employed by a licensed motor vehicle title service license holder to submit or present title documents to the county tax assessor-collector.

§401.2. License Requirement.

(a) A person may not act as a motor vehicle title service or act as an agent for such a business (which includes a title service runner) in Hidalgo County unless that person holds a license issued by the Hidalgo County Tax Assessor-Collector to conduct such transactions.

(b) A person commits an offense if the person violates a provision of Title 7, Subtitle A, Chapter 520, Subchapter C of the Texas Transportation Code or a rule adopted by the Hidalgo County Tax Assessor-Collector under Subchapter E, §§520.051 - 520.063 of the Texas Transportation Code. Such an offense is a Class A misdemeanor.

(c) Any unlicensed individual observed conducting motor vehicle transactions on behalf of others in Hidalgo County and who claims to be doing so without compensation shall complete an affidavit stating that the individual is not receiving compensation for the transaction. This affidavit shall be notarized and will be forwarded to the Fraud Investigations Department of the Hidalgo County Tax Assessor-Collector.

§401.3. License Fees.

(a) License fees must be remitted at the time a license application is submitted and are non-refundable. License fees are payable only by certified bank check or money order unless the Hidalgo County Tax Assessor-Collector agrees, in writing, to accept cash.

(b) The fee for a motor vehicle title service license shall be \$500 for the initial application and \$200 for each annual renewal.

(c) The fee for a title service runner license shall be \$100 for the initial application and \$100 for each annual renewal.

(d) The fee for replacement of a lost title service license or title runner license shall be \$20 for the first occurrence; \$20 for the second occurrence; and \$20 for each occurrence thereafter.

§401.4. General License Application Requirements.

(a) Applications for a title service license may be submitted Monday through Friday, from 9:00 a.m. to 4:00 p.m., at the Hidalgo County Tax Office located at 2804 S. US HWY 281, Edinburg, Texas 78539 or online at the Hidalgo County Tax Assessor-Collector's website at: <http://www.hidalgocountytax.org>.

(b) An applicant for a motor vehicle title service license must complete all forms required by the Hidalgo County Tax Assessor-Collector. The applicant must sign the application form and pay the license fee. An application must include:

(1) the applicant's name, business address, and business telephone number;

(2) the name under which the applicant will do business;

(3) the physical address of each office from which the applicant will conduct business (a P.O. Box will not be accepted) and a corresponding photo of each building where business is being conducted;

(4) a statement indicating whether the applicant has previously applied for a license under this section, the result of the previous application, and whether the applicant has ever been the holder of a license under this section that was revoked or suspended in any Texas county;

(5) the applicant's federal tax identification number;

(6) the applicant's state sales tax number; and

(7) the name of all individuals who have an ownership interest in the applicant motor vehicle title service company;

(8) if applicable, motor vehicle license information for each individual who has an ownership interest in the applicant's motor vehicle title service company.

(c) Following the submission of an application, an applicant must submit to a criminal background check in conformance with policies adopted by the Hidalgo County Tax Assessor-Collector.

(d) An applicant must present a valid, government-issued picture identification at the time of application. Lack of identification shall prevent the Hidalgo County Tax Assessor-Collector from granting a person's application for a title service license.

(e) An applicant must be at least 18 years of age on the date the application is submitted to apply for a title service license.

(f) Applicants will be notified of the outcome of an application within 30 days of the application being submitted to the Hidalgo County Tax Assessor-Collector. This notification will be mailed to the business address listed on the application.

(g) All licenses are issued for a period of one year and must be renewed each year thereafter. A renewal application has the same requirements as a new application.

(h) A license may not be issued under a name that is fictitious; a name that is similar to or may be confused with the name of a governmental entity; or a name that is deceptive or misleading to the public.

§401.5. Additional Application Requirements for Certain Businesses.

(a) Corporation. In addition to the information required above concerning General License Application Requirements, an applicant for a motor vehicle title service license that intends to engage in business as a corporation shall submit the following information:

(1) the state of incorporation (if any);

(2) a "doing business as" (DBA) certificate or articles of incorporation;

(3) the name, address, date of birth, and social security number of each of the principal owners and directors of the corporation;

(4) information about each officer and director as requested by the Hidalgo County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(5) a statement indicating whether an employee, officer, or director has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

(b) Partnership. In addition to the information required above concerning General License Application Requirements, a motor vehicle title service license applicant that intends to engage in business as a partnership shall submit an application that includes the following information:

(1) the names, address, date of birth, and social security number of each partner;

(2) information about each partner as requested by the Hidalgo County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(3) a statement indicating whether a partner or employee has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

§401.6. Tax Assessor-Collector Transactions.

(a) All vehicle transactions for Hidalgo County will be processed at the Hidalgo County Tax Office, 2804 S. US HWY 281, Edinburg, Texas 78539; or any other location specified by the Tax Assessor-Collector in writing at: <http://www.hidalgocountytax.org>.

(b) Title service license holders and title service runners may conduct business at privately run, contracted offices. A list of these offices is available upon request.

(c) An Hidalgo County Tax Assessor-Collector title service transaction form must accompany all motor vehicle title service transactions. Title service providers may obtain a blank title service transaction form from the Hidalgo County Tax Assessor-Collector. The motor vehicle title service company is responsible for the accuracy and validity of the information for each vehicle listed. Only vehicles authorized and listed by the licensed motor vehicle title service will be processed.

(d) Motor vehicle title services and runners may only process the following documents: motor vehicle title applications; motor vehicle registration renewal applications; requests for replacement windshield stickers; and requests for new or replacement vehicle license plates. The Hidalgo County Tax Assessor-Collector will also accept applications for a motor vehicle mechanic's lien title, a motor vehicle storage lien title and a bond title from a motor vehicle title services or runners.

(e) After the final vehicle transaction on each transaction sheet is completed, a copy of the transaction sheet will remain on file at the office of the Hidalgo County Tax Assessor-Collector.

(f) A motor vehicle title service shall assume the responsibility for the accuracy and validity of all documents presented to the Hidalgo County Tax Assessor-Collector under its name.

(g) Title service runners must be identified and sponsored by a motor vehicle title service company in order to conduct business on the motor vehicle title service's behalf. The required documents for any runner must be on file with each service company for which the runner is an authorized agent. Individuals whose names are not on file with the Hidalgo County Tax Assessor-Collector as a title service runner acting on behalf of a motor vehicle title service will not be allowed to conduct business with the Hidalgo County Tax Assessor-Collector on behalf of that motor vehicle title service.

§401.7. Record Keeping.

(a) A holder of a motor vehicle title service license shall maintain records as required by Texas law for each transaction in which the license holder receives compensation. The records shall include:

(1) the date of the transaction;

(2) the name, age, address, sex, driver license number, and a legible photocopy of the driver's license for each customer; and

(3) the vehicle make, model, year, license plate number, vehicle identification number, and a legible photocopy of proof of financial responsibility for the motor vehicle involved.

(b) A motor vehicle title service shall keep, for at least two (2) years after the date of the transaction:

(1) two copies of all records required under this section;

(2) legible photocopies of any documents submitted by a customer; and

(3) legible photocopies of any documents submitted to the Hidalgo County Tax Assessor-Collector.

(c) A motor vehicle title service license holder or any of its employees shall allow an inspection of the required records by a peace officer on the premises of the motor vehicle title service at any reason-

able time to verify, check, or audit the records. Failure to do so, or to maintain required records, may result in discipline under these rules.

§401.8. License Renewal.

(a) A license issued pursuant to these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee as outlined above. All renewals will be subject to an additional criminal background check and confirmation of the applicant's current address and contact information.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the Hidalgo County Tax Assessor-Collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(c) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Hidalgo County Tax Assessor-Collector one and one-half times the required renewal fee.

(d) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the Hidalgo County Tax Assessor-Collector two times the required renewal fee.

(e) If a person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. Notwithstanding this, if a person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired license. The person must pay to the Hidalgo County Tax Assessor-Collector a fee that is equal to two times the required renewal fee for the license.

(f) Before the 30th day preceding the date on which a person's license expires, the Hidalgo County Tax Assessor-Collector shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the Hidalgo County Tax Assessor-Collector. Failure to send notice under this provision, however, does not provide any right or remedy to a license holder.

§401.9. Denial, Suspension, or Revocation of License.

(a) Grounds for the denial, suspension, revocation, or denial of reinstatement of a title service license or title service runner license in Hidalgo County include, but are not limited to:

(1) having been found to have submitted a vehicle packet, or other document, to the Hidalgo County Tax Assessor-Collector's office which contains false information, and the Hidalgo County Tax Assessor-Collector determines that the false information was intentionally submitted by the motor vehicle title service license holder or title service runner;

(2) having been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the completion date of the applicant's sentence is fewer than five years from the date of applying for a motor vehicle title service license;

(3) having been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) having been found in violation of the administrative procedures required by the Texas Department of Transportation;

(5) in the event the Tax Assessor-Collector determines a title service license holder has delinquent Class C misdemeanor fines, the licensee shall have thirty calendar (30) days from the date of deposit of written notice into the U.S. Postal Service to pay or otherwise resolve the fines. If the fines remain unresolved after thirty calendar (30) days, the Tax Assessor-Collector may, in his discretion, deny, suspend, refuse to renew, or revoke, as provided in this section, the license of that title service license holder;

(6) a title service runner license may be revoked or suspended if the title service runner has presented a title packet to the Hidalgo County Tax Assessor-Collector that was not authorized by a licensed motor vehicle title service or if the title service runner altered or forged the original paperwork prepared for and signed by the motor vehicle title service;

(7) failure to maintain records required by §520.057 of the Texas Transportation Code or this section;

(8) behavior that causes disruption or creates a security concern to any tax office location or contracted office location, as determined by the Tax Assessor-Collector or designee, in his discretion; or

(9) involvement in the issuance of fraudulent liability insurance while holding an Hidalgo County title service license, as determined by the Tax Assessor-Collector or designee, in his discretion.

(b) The Hidalgo County Tax Assessor-Collector shall consider any and all substantial evidence available in making factual determinations under this section.

(c) If the Hidalgo County Tax Assessor-Collector makes a determination that a person's license hereunder should be denied, cancelled, suspended, or revoked, then the Tax Assessor-Collector shall send notice of the action to the person, by certified mail, stating the facts or conduct alleged to warrant the action.

(d) Upon a determination of violation of this section, the Hidalgo County Tax Assessor-Collector may order the violator's license suspended for up to one (1) year for the first offense. The Tax Assessor-Collector, in his discretion, may order an additional suspension for up to one year or the revocation of the holder's license for the second offense. A license may be revoked upon a third offense.

(e) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation. A person whose license has been revoked must apply for a new license under this section.

(f) A license may not be issued under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

(g) The Tax Assessor-Collector may discipline a title service license holder for acts in violation of these regulations or other law committed by a title service runner employed or contracted by the title service license holder. Such discipline may include suspension or revocation of the title service license holder's license if the Tax Assessor-Collector also suspends or revokes the license of the at-fault title service runner.

§401.10. The Review Board.

(a) A person who receives notice of adverse action taken on his license by the Hidalgo County Tax Assessor-Collector may submit a written request for appeal or protest and submit evidence, in the form of documents or testimony, to demonstrate that person's compliance with all requirements for the issuance, retention, or reinstatement of the person's license. The person must submit evidence and file a written request for the appeal of an action taken on the person's license with the

County Tax Assessor-Collector within 10 calendar days from the date of receipt of the notice of action on the person's license. Proof of receipt of a notice of action, or any other document that triggers a deadline under this section, includes, but is not limited to, a certified mail return receipt. The Tax Assessor-Collector or the Review Board may grant additional time to comply with this section upon written request.

(b) Evidence and/or a written request for an appeal must be sent to Hidalgo County Tax Office, via certified mail at 2804 S. US HWY 281, Edinburg, Texas 78539/P.O. Box 2099, Edinburg, Texas 78540 or at the address published at: <http://www.hidalgocountytax.org>.

(c) Upon timely filing of a request for an appeal, the County Tax Assessor-Collector shall request review by the Review Board. The adverse action shall be stayed until a final decision is made on the license.

(d) The above-referenced Review Board, designated by the Hidalgo County Tax Assessor-Collector, shall consist of an active member of the licensed Title Service, the Tax Assessor-Collector or his/her representative, and one law enforcement officer from the Fraud Investigations Department.

(e) Each member of the Review Board shall serve for a term lasting for one year. A member may be designated for additional terms as deemed appropriate by the Hidalgo County Tax Assessor-Collector.

(f) If a member is absent for three consecutive meetings, the Tax Assessor-Collector, may, in his discretion, remove the member and appoint a new member to serve the remainder of the term.

(g) If a review board member is removed or resigns, the Tax Assessor-Collector may appoint a new review board member to fill that member's position. The new member will serve for the remainder of the former member's term.

(h) The Review Board shall meet as needed, on a date determined by the Hidalgo County Tax Assessor-Collector. The Board will review any appeals and make a recommendation to the County Tax Assessor-Collector stating whether the Board agrees or disagrees with the action taken.

(i) The Hidalgo County Tax Assessor-Collector shall be the Chair of the Review Board.

(j) A quorum of three members of the Review Board must be present to render a decision. No proxy votes will be allowed.

(k) Review Board decisions are administrative in nature. As such courtroom rules of evidence shall not apply. However, the Review Board Chair may limit or discard evidence that he or she finds is not material and relevant.

(l) The parties to a Review Board proceeding shall file and exchange documentary evidence at least seven (7) days before a Review Board proceeding. The Chair may, at the Chair's discretion, exclude evidence that is not timely filed and served on the other party(ies).

(m) A simple majority vote of a quorum of Review Board members shall determine the recommendation on matters under consideration. The Tax Assessor-Collector's Fraud Investigations Division, or his or her designee, shall present the case to the Review Board

and carry the burden of proof. The standard of proof shall be by a preponderance of the evidence.

(n) A quorum of the Review Board may draft and approve other procedural rules that are not inconsistent with this section or other law. Any such rules must be published on the Hidalgo County website and made available to the public in print form upon request.

(o) All decisions related to license appeals or protests shall be subject to final review and determination by the Hidalgo County Tax Assessor-Collector. The Hidalgo County Tax Assessor-Collector shall send disposition of the appeal to the person by registered or certified mail. If the Tax Assessor-Collector does not reinstate the license, any adverse action stayed by the appeal will be reinstated.

§401.11. Exemptions.

The following persons and their agents are exempt from the licensing and other requirements described in this section:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Texas Transportation Code Chapter 503;

(2) a vehicle lessor holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under §2301.254(a), Texas Occupations Code; and

(3) a vehicle lease facilitator holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code.

§401.12. Training.

The Tax Assessor-Collector may require title service license holders and title service runners to attend an annual training to orient such licensees to these sections, Texas law, and the Tax Assessor-Collector's policies under these sections. Failure to attend the training may result in discipline under these sections.

§401.13. Policies and Procedures.

The Tax Assessor-Collector may authorize other policies and procedures that are not inconsistent with these sections or other law and to the extent authorized by law.

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

Filed with the Office of the Secretary of State on January 21, 2016.

TRD-201600253
Pablo (Paul) Villarreal, Jr.
Tax Assessor Collector
Hidalgo County Tax Assessor-Collector
Earliest possible date of adoption: March 6, 2016
For further information, please call: (956) 318-2157



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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.10

The Texas Department of Licensing and Regulation withdraws proposed amended §86.10 which appeared in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6279).

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600223

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: January 20, 2016

For further information, please call: (512) 463-8179



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §§65.90 - 65.93

The Texas Parks and Wildlife Department withdraws the emergency adoption of new §§65.90 - 65.93 which appeared in the

September 4, 2015, issue of the *Texas Register* (40 TexReg 5566).

Filed with the Office of the Secretary of State on January 15, 2016.

TRD-201600193

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: February 2, 2016

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.88

The Comptroller of Public Accounts withdraws proposed amended §3.88 which appeared in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5046).

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600220

Lita Gonzalez

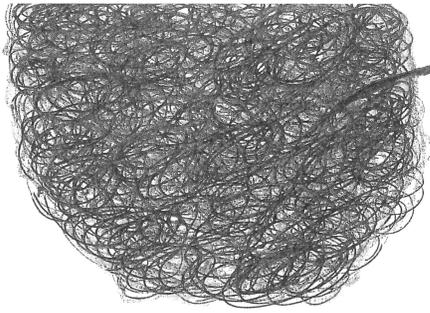
General Counsel

Comptroller of Public Accounts

Effective date: January 20, 2016

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





Sallie Parra, 10th Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

The Office of the Secretary of State (hereinafter referred to as "Office") adopts proposed revisions to Chapter 87, concerning notaries public. Specifically, the Office adopts amendments to §§87.1, 87.2, 87.10, 87.11, 87.22, 87.30, 87.42, 87.43, 87.60, and 87.61; the repeal of §§87.4 - 87.6 and 87.23 - 87.25; and new §§87.4 - 87.7 and 87.23 - 87.26 without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9023). The amendments, repeals, and new rules are adopted to conform to statutory revisions to Chapter 406 of the Government Code enacted by the 84th Legislature, Regular Session, in House Bill 1683, effective January 1, 2016 (hereinafter referred to as "HB 1683"). The adopted revisions also generally include some reorganization of the chapter and clarifications of certain procedures.

Specifically, the following changes are adopted:

1. Section 87.1 is amended to provide specific information regarding what information is required to be included in the application to be commissioned as a notary public.
2. Section 87.2 is amended to clarify that the definition of moral turpitude is not exclusive and includes moral depravity, in accordance with state case law, and moves the definition of moral turpitude from amended §87.11, in accordance with the fact that the reference to "moral turpitude" is only contained in §87.2, and not in amended §87.11.
3. Section 87.4 is repealed, and new §87.4 of the adopted rules clarifies that the name on the notary seal must match the name under which the notary is commissioned. Additionally, the new section clarifies the applicability of HB 1683 to notaries commissioned or recommissioned before, on or after the effective date of the bill.
4. Section 87.5 is repealed, and new §87.5 of the adopted rules contains information previously contained in repealed §87.4, relating to the qualification by an officer or employee of a state agency who does not furnish a bond. No substantive change to this rule is made.
5. Section 87.6 is repealed, and new §87.6 of the adopted rules is added to provide information relating to a change in employment status of an employee of a state agency who has qualified without a surety bond (previously located at §87.5), and to clarify the wording in the language previously located at §87.5 relating to the option of a notary public terminating state employment to voluntarily surrender a commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.
6. Section 87.7 is added to provide information relating to renewal of a commission (previously located at §87.6), and to clarify the wording in the language previously located at §87.6 to make it clear that an application shall be filed if a notary wishes to renew a commission.
7. Section 87.10 of the adopted rules is amended to specify the disciplinary actions which are subject to notice of hearing.
8. Section 87.11 is amended to clarify that requests for public information must be responded to promptly, and adds failure to properly identify an individual and failure to keep proper notary records as good cause.
9. Section 87.22 is amended to specify that upon qualifying under a new name, a notary is required to obtain a new seal.
10. Section 87.23 is repealed, and new §87.23 includes information on the procedures for submitting a complaint.
11. Section 87.24 is repealed, and new §87.24 provides information relating to complaint procedures (previously located at §87.23), and specifically refers to new §87.23 and §87.25.
12. Section 87.25 is repealed, and new §87.25 contains information previously contained in repealed §87.24, relating to disciplinary action taken by the secretary of state. No substantive change to this rule is made.
13. Section 87.26 is added to provide information relating to when the secretary of state can take disciplinary action against a notary (previously located at §87.25). Additionally, the rule is amended to clarify that any unresolved complaints may be required to be resolved prior to accepting a new or renewed commission.
14. Section 87.30 is amended to clarify that a private employer may restrict the notarial acts of its employees during work hours, and to clarify that a notary must have reasonable grounds to believe that a signing party does not have the capacity to understand the contents of the document.
15. Section 87.42 is amended to clarify that promptly, with respect to responding to requests for public information, means within 10 business days of receipt of payment of fees, unless the notary certifies in writing on or before the 10th business day of receipt of payment of fees, that the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees, and sets a date and hour within a reasonable time when the information will be provided, and provides the information by that date and hour.
16. Section 87.43 is amended to clarify that failure to promptly respond to a request for public information may be good cause for disciplinary action.

17. Section 87.60 is amended to modernize the procedures relating to electronic submission of notary applications.

18. Section 87.61 is amended to modernize the procedures relating to retention of records following electronic submission of a notary application.

One comment was received regarding the adoption of revisions to Chapter 87. The comment was received by Christopher L. Williston, CAE, on behalf of the Independent Bankers Association of Texas, requesting an amendment to proposed rule §87.4, stating that a notary public's failure to include the identification number prior to January 1, 2016 does not invalidate any activity by a notary public. After careful review, the Office has determined that its rulemaking authority does not extend to making determinations as to the validity of a document on which a notary stamp appears (as opposed to what is required or not required on the notary stamp itself, which it understands is within its rulemaking authority, as the contents of the stamp is covered in §406.013 of the Texas Government Code). The validity of a particular document or activity by a notary public is a fact-based inquiry which calls for a judicial determination. As a result, the Office adopts §87.4 without any additional amendments.

SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

1 TAC §§87.1, 87.2, 87.4 - 87.7

STATUTORY AUTHORITY

The amendments and new rules are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 21, 2016.

TRD-201600260

Lindsey Wolf

General Counsel

Office of the Secretary of State

Effective date: February 10, 2016

Proposal publication date: December 18, 2015

For further information, please call: (512) 463-5586



1 TAC §§87.4 - 87.6

STATUTORY AUTHORITY

The repeals are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



SUBCHAPTER B. REJECTION AND REVOCATION

1 TAC §§87.10, §87.11

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



SUBCHAPTER C. ADMINISTRATIVE ACTION

1 TAC §§87.22 - 87.26

STATUTORY AUTHORITY

The amendments and new rules are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



1 TAC §§87.23 - 87.25

STATUTORY AUTHORITY

The repeals are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



SUBCHAPTER D. REFUSAL TO PERFORM NOTARIAL SERVICES

1 TAC §87.30

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



SUBCHAPTER E. NOTARY RECORDS

1 TAC §87.42, §87.43

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5586



SUBCHAPTER G. ELECTRONIC SUBMISSIONS OF NOTARY APPLICATIONS AND BONDS

1 TAC §87.60, §87.61

STATUTORY AUTHORITY

The amendments are adopted under the authority of §406.023, Texas Government Code, which requires the secretary of state to establish rules for the enforcement and administration of Chapter 406.

Chapter 406 of the Texas Government Code is affected by the adoption.

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

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Lindsey Wolf
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5586



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

1 TAC §353.903, §353.907

The Texas Health and Human Services Commission (HHSC) adopts amendments to §353.903, concerning Definitions, and §353.907, concerning Prior Authorization Requirements. The amendments are adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7749). The text of the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The 84th Texas Legislature, Regular Session, 2015, enacted Senate Bill 200 (Section 3.08), which amends the Texas Government Code by eliminating the Pharmaceutical and Therapeutics Committee (P&T Committee) and transferring its functions to the existing Drug Utilization Review Board (DUR Board). Both of the proposed amended rules made references to the P&T Committee.

Also, the Centers for Medicare & Medicaid Services requires HHSC to have a drug utilization review program, which conducts prospective and retrospective utilization review of prescriptions. Currently, HHSC's definitions of prospective and retrospective utilization review processes are not aligned with similar definitions used by other payers, which is confusing to providers and HHSC's contracted managed care organizations. Both of the proposed amended rules referenced "clinical edits" or "clinical edit prior authorizations."

The amendments replace all references to the P&T Committee with references to the DUR Board. The amendments also clarify HHSC's drug utilization review definitions so that the definitions are more closely aligned with other payers' definitions. The amendments replace the terms "clinical edit" and "clinical edit prior authorization" with "clinical prior authorization."

Concurrently, HHSC is adopting amended §354.1832 and §354.1924, repealing §354.1928 and §354.1941, and adopting new §354.1941 and §354.1942 to remove all references to the P&T Committee and add information regarding the DUR Board.

COMMENTS

The 30-day comment period ended December 7, 2015. During this period, HHSC did not receive any comments regarding the proposed amended rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with

broad rulemaking authority), and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600243
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 9, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 424-6900



CHAPTER 354. MEDICAID HEALTH SERVICES SUBCHAPTER F. PHARMACY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1832, concerning Prior Authorization Procedures, and §354.1924, concerning Preferred Drug List; the repeal of §354.1928, concerning Pharmaceutical and Therapeutics Committee, and §354.1941, concerning Conflict of Interest Policy; and adopts new §354.1941, concerning Drug Utilization Review Board, and new §354.1942, concerning Conflict of Interest Policy. The amendments, new rules, and repeals are adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7750). The text of the rules will not be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 200 (Section 3.08), 84th Legislature, Regular Session, 2015, amends the Texas Government Code by eliminating the Pharmaceutical and Therapeutics Committee (P&T Committee) and transferring its functions to the existing Drug Utilization Review Board (DUR Board). The duties of the restructured DUR Board include: (1) develop and submit recommendations to HHSC for the preferred drug list; (2) suggest to HHSC restrictions or clinical prior authorizations on prescription drugs; (3) recommend to HHSC educational interventions for Medicaid providers; (4) review drug utilization across Medicaid; and (5) perform other duties that may be specified by law and otherwise make recommendations to HHSC.

The HHSC Executive Commissioner will appoint the new members of the DUR Board, which must include at least 17 physicians and pharmacists who provide services across the entire population of Medicaid recipients, represent different specialties, and have experience in either developing or practicing under a preferred drug list. The board must also include a consumer advocate who represents Medicaid recipients and two non-voting representatives from managed care organizations. The HHSC Executive Commissioner will appoint the initial members to the new DUR Board by March 1, 2016, for terms beginning on that date.

Concurrently, HHSC is adopting amended 1 TAC §353.903 and §353.907. These adopted amendments appear elsewhere in this issue of the *Texas Register*.

COMMENTS

The 30-day comment period ended December 7, 2015. During this period, HHSC did not receive any comments regarding the proposed amended, new, or repealed rules.

DIVISION 2. ADMINISTRATION

1 TAC §354.1832

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600244

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 424-6900



DIVISION 7. TEXAS DRUG CODE INDEX--ADDITIONS, RETENTIONS, AND DELETIONS

1 TAC §354.1924

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600245

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 424-6900



1 TAC §354.1928

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600246

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 424-6900



DIVISION 8. DRUG UTILIZATION REVIEW BOARD

1 TAC §354.1941

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600247

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 9, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 424-6900



1 TAC §354.1941, §354.1942

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033 (providing the Executive Commissioner of HHSC with broad rulemaking authority) and §531.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas and to propose and adopt rules governing the determination of Medicaid reimbursements); and Texas Human Resources Code §32.021 (providing HHSC with the authority to administer the federal medical assistance program in Texas).

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600248

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 9, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 424-6900



CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM SUBCHAPTER F. PERSONAL CARE SERVICES

1 TAC §363.603

The Texas Health and Human Services Commission (HHSC) adopts amendments to §363.603, concerning Provider Participation Requirements, without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7756) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment implements Rider 47 of the 2016-2017 General Appropriations Act (Article II, Special Provisions, House Bill 1, 84th Legislature, Regular Session, 2015), which appropriated funds for an increase in the minimum base wage for personal attendants to \$8.00 per hour. This rule change establishes a standard base wage for personal care services (PCS) that was not previously defined in rule.

COMMENTS

During the public comment period, HHSC received comments from two representatives of the Texas Association for Home Care

and Hospice (TAHCH) who support the rule change and provided an additional recommendation for future consideration.

Comment: The commenters both requested that HHSC seek additional legislative appropriations for funding of the Attendant Compensation Rate Enhancement (ACRE) program to expand the program to include PCS attendants. TAHCH stated that due to the unavailability of ACRE funding for PCS attendant wages, increases in the wage floor compress the difference in wages between new and experienced PCS staff. They believe that this wage compression increases the likelihood of attrition for experienced and specially trained attendants.

Response: The commenters' request has been shared with HHSC leadership for future consideration. The ACRE program requires providers to submit annual cost reports which are used to determine if staff compensation requirements have been met. Currently, PCS providers are not required to submit cost reports. If legislative appropriations are made available to expand the ACRE program to include PCS, PCS providers will be required to complete annual cost reports.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The 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 January 25, 2016.

TRD-201600283

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 14, 2016
Proposal publication date: November 6, 2015
For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.50, 74.55, 74.69, 74.74, 74.80, 74.105

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 74, §74.69; and new rule §74.105 without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7955). The rules will not be republished.

The amendments to §§74.10, 74.50, 74.55, 74.74 and 74.80 are adopted with changes to the proposed text as published in the

November 13, 2015, issue of the *Texas Register* (40 TexReg 7955). The rules will be republished.

The adopted amendments and new rule are necessary to implement the changes made by House Bill 3741, which authorized the Commission to adopt rules and standards for removing equipment from service and set fees for applying to remove equipment from service.

The adopted amendments to §74.10 add the definitions "Installation Placed Out of Service" and "Installation Removed from Service". Editorial changes are also made to renumber the section.

The adopted amendments to §74.50 create the department's reporting requirements for equipment that has been removed from service.

The adopted amendments to §74.55 add removal from service to the reporting requirements for inspectors and make an editorial change.

The adopted amendment to §74.69 makes an editorial change.

The adopted amendment to §74.74 adds the section reference for inspectors to comply with when removing a piece of equipment from service.

The adopted amendment to §74.80 adds the fee for each piece of equipment removed from service.

Adopted new §74.105 sets the standards for equipment being removed from service.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7955). The deadline for public comments was December 14, 2015. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period.

Comment--One commenter requested clarification on discharging miscellaneous fluids via the sump pump.

Department Response--This comment was sent to our Compliance division for response. The Department did not make any changes to the proposed rule based on this comment since it is outside the scope of this rulemaking.

Comment--One commenter made comments to several rule sections recommending that the same terminology used in ASME Code A17.1 be used in the Department's rules. In particular the commenter requested the language, "Installation Placed Out of Service" and "Installation removed from Service."

Department Response--The Department appreciates the comments and has made the requested change to align rule language with the ASME Code A17.1.

The Elevator Advisory Board (Board) met on December 15, 2015, to discuss the proposed rules and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §§74.10, 74.50, 74.55, 74.74 and 74.80. At its meeting on January 6, 2016, the Commission adopted the proposed rules with the changes recommended by the Board.

The amendments and new rule are adopted under Texas Occupations Code, Chapter 51 and Health and Safety Code, Chapter 754, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chap-

ters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Health and Safety Code, Chapter 754. No other statutes, articles, or codes are affected by the adoption.

§74.10. Definitions.

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

(1) The Act--Texas Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Acceptance Inspection--An inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(3) Accident--An event involving equipment that results in death or serious bodily injury to a person.

(4) Alteration--A change in existing equipment. The term does not include testing, maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(5) Annual Inspection--An inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(6) ASCE--American Society of Civil Engineers.

(7) ASCE Code 21--The ASCE Code 21, "Automated People Mover Standards" as adopted in §74.100.

(8) ASME--American Society of Mechanical Engineers.

(9) ASME Code A17.1--The ASME Code A17.1/CSA B 44-07 - "Safety Code for Elevators and Escalators" as adopted in §74.100.

(10) ASME A17.2--The latest published edition of ASME A17.2, "The Guide for Inspection of Elevators, Escalators, and Moving Walks."

(11) ASME Code A17.3--The ASME Code A17.3-2002, "Safety Code for Existing Elevators and Escalators" as adopted in §74.100.

(12) ASME Code A18.1--The ASME Code 18.1, "Safety Standards for Platforms Lifts and Stairway Chairlifts" as adopted in §74.100.

(13) ASME QE1-1--The ASME QE1-1 "Standard for the Qualification of Elevator Inspectors."

(14) Automated People Mover (APM)--A guided transit mode operated by cables, with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(15) Board--The elevator advisory board.

(16) Certificate of Compliance--A certificate issued by the department indicating that the equipment has been inspected by a registered inspector and found to be in compliance with this chapter, except for any delays or waivers granted by the executive director and stated in the certificate.

(17) **Certifying Organization**--An independent organization that is competent and widely recognized to certify elevator inspectors and that has been accredited by an organization that is nationally recognized and is approved or recognized by the department as competent to certify elevator inspectors.

(18) **Commission**--The Texas Commission of Licensing and Regulation.

(19) **Contractor**--A person, partnership, company, corporation, or other entity engaging in the installation, alteration, repair, testing, or maintenance of equipment. The term does not include an employee of a contractor engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21, as applicable.

(20) **Delay**--Postponement of compliance with a requirement of the applicable ASME Safety Codes or ASCE Standard as adopted in §74.100, for a specific period of time.

(21) **Department**--The Texas Department of Licensing and Regulation.

(22) **Equipment**--An elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(23) **Executive Director**--The executive director of the department.

(24) **Existing Equipment**--Equipment installed or altered before September 1, 1993.

(25) **Industrial Facility**--A facility to which access is primarily limited to employees or contractors working in that facility.

(26) **Inspection Report**--A department-approved form used by the inspector to report the inspection results of one unit of equipment.

(27) **Inspector**--A person engaged in the inspection and witnessing of the tests specified in the adopted standards of ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, to determine compliance with those standards. The term also includes references to registered inspector and registered elevator inspector.

(28) **New Equipment**--Equipment installed or altered on or after September 1, 1993.

(29) **Installation Placed Out of Service**--Equipment rendered inoperative in accordance with ASME Code A17.1.

(30) **Owner**--A person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to a building or facility in which equipment regulated by the Act is located. For purposes under this chapter and the Act, an owner may designate an agent. The term "owner" when used in the chapter shall be construed to include the owner's agent.

(31) **Owner's Agent**--The person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that has been authorized by the owner to act on the behalf of the owner as relates to a building or facility in which equipment regulated by the Act is located.

(32) **Proof of Inspection**--A document provided to the owner by the registered inspector after the completion of an acceptance inspection of new equipment to inform the public that the equipment has been inspected.

(33) **Proof of Inspection Sticker**--An adhesive label placed by the registered inspector on the Proof of Inspection or the certificate of compliance indicating the inspection has been performed.

(34) **Publicly Visible Area of Building**--A location within the building where regulated equipment is located that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any regulated equipment is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(35) **Qualified Historic Building or Facility**--A building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(36) **Related Equipment**--The term means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(37) **Installation Removed from Service**--Equipment rendered inoperative in accordance with standards adopted in §74.105.

(38) **Reportable Condition**--A condition affecting the safety operation of the equipment and requires that the equipment be rendered inoperative to prevent injury to passengers, operators, or the general public.

(39) **Responsible Party**--The person or persons meeting the experience requirements of the Act and designated by the contractor to attend continuing education in compliance with this chapter.

(40) **Serious Bodily Injury**--A major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(41) **Unit of Equipment**--One elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(42) **Variance, New Technology ("new technology variance")**--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications.

(43) **Waiver**--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.50. *Reporting Requirements--Owner.*

(a) To obtain a certificate of compliance, the owner must submit to the department within 30 days of the equipment inspection date, the following items:

(1) the application for certificate of compliance;

(2) a copy of the inspection reports for each unit of equipment;

(3) written documentation to verify that all violations of the applicable ASME Safety Codes or ASCE Standards as adopted in §74.100, cited on the inspection report, are in compliance with §74.70(a)(3);

(4) any application(s) for delay or waiver if applicable; and

(5) all applicable fees.

(b) The owner must notify the department, in writing and within thirty (30) days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in ASME Code A17.1, "installation placed out of service".

(c) The owner must notify the department, in writing and within thirty (30) days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with the applicable sections of ASME Code A17.1.

(d) The owner must notify the department, in writing and within thirty (30) days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with ASME Code A17.1 as a new installation.

(e) When a delay has been approved, the owner must notify the department, in writing within thirty (30) days of the date of correction.

(f) Within thirty (30) days of the date the equipment has become an Installation removed from service, the owner must notify the department by submitting a completed Inspection Report, including the applicable fee required by §74.80.

§74.55. Reporting Requirements--Inspector:

(a) For new installations, the inspector must provide a copy of the inspection report to the owner not later than the 5th calendar day after completing the inspection.

(b) For alterations, the inspector must provide a copy of the inspection report to the department and the owner not later than the 5th calendar day after completing the inspection.

(c) Inspectors, by e-mail, fax, or letter, must report to the department, within 72 hours of discovery, all equipment they encounter that does not have a decal number.

(d) The inspector must clearly note on the inspection report any equipment found with a reportable condition, and shall report it immediately by submitting a copy of the report to the owner and by e-mail, fax, or letter to the department within 24 hours.

(e) Inspectors, using the Online Inspection Reporting System, for each piece of equipment inspected, must report to the department within 72 hours of completing an acceptance inspection, annual inspection or Installation removed from service.

§74.74. Responsibilities of the Inspector--Inspection Procedures.

(a) The inspector must inspect all equipment for compliance with the applicable ASME Safety Codes or ASCE Standards as adopted in §74.100.

(b) Inspectors must use the latest published edition of ASME A17.2, "Guide for Inspection of Elevators, Escalators, and Moving Walks," to conduct inspections and witness tests for compliance with the ASME Safety Codes or ASCE Standards adopted in §74.100.

(c) The inspector must report to the owner before beginning any inspections.

(d) The inspector and the owner must sign and date the inspection report or electronically acknowledge the report using any electronic method approved by the department.

(e) The inspector is prohibited from performing any of the tests.

(f) On new or altered equipment installations, the inspector may perform an inspection prior to the installation being completed. However, on these installations the department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

(g) For new installations or alterations to existing equipment, the inspector must verify that approved applications and plans are on the site as specified in §74.111(b)(3) and is prohibited from proceeding with the inspection without the approved application and plans.

(h) The inspector must verify that the installation or alterations comply with the approved application and plans.

(i) New or altered units that fail to comply with the approved application and plans are prohibited from being placed in-service without the prior written approval of the department.

(1) The inspector must compare the installation to the approved application and plans.

(2) The inspector must not allow any installation that deviates from the approved application and plans to be placed into operation without the specific written authorization of the department.

(3) The inspector must not complete the inspection of any new installation or alteration until the inspector has verified that the documents required by §74.79 are on site and stored in the equipment room, machine room, machine space, control room, or control space.

(j) For Installations removed from service, the inspector must verify compliance with §74.105.

§74.80. Fees.

(a) Inspector Registration Fees.

(1) Original application--\$50

(2) Renewal application--\$50

(3) Revised/Duplicate registration card--\$25

(b) Certificate of Compliance Filing Fees.

(1) Filing fees submitted within 30 days of the equipment inspection date: \$20 per unit of equipment, along with a copy of the inspection report.

(2) Late filing fees: \$10 per unit of equipment for 30 day period if the inspection report, filing fees, and verification about correcting deficiencies in the inspection report are filed after the 60th day from the equipment inspection date.

(3) Revised/Duplicate Certificate Fee--\$25 per certificate.

(c) Waiver or Delay Application Fees.

(1) \$50 for each violation of the ASME Safety Codes or ASCE Standards as adopted in §74.100 per unit of equipment requested to be waived or delayed.

(2) Fees shall be charged and collected by the department for a waiver or delay application for an institution of higher education.

(d) Contractor Registration Fees.

(1) Original application--\$115

(2) Renewal application--\$115

(3) Revised/Duplicate registration card--\$25

(e) Late renewal fees for Inspector and Contractor registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(f) New Technology Variance Fees.

(1) Application fee--\$2,500

(2) Fee to file an appeal of a denial of an application--\$200

(g) Fees for Plan Reviews.

(1) The plan review fee for the installation or alteration of equipment included in a contract shall be calculated as follows:

(A) \$200 for each unit of equipment for which a decal is required; and

(B) the maximum fee shall not exceed \$5,000.

(2) The fee to review plans on an expedited basis is \$1,000 per unit of equipment included in a contract for which a decal is required. There is no maximum fee or cap for expedited reviews.

(h) Fees for Amendments to Previously Approved Plan Reviews.

(1) The plan review fee for amendments to previously approved plan reviews where the installation or alteration of equipment included in a contract has not been completed shall be as follows:

(A) \$100 per unit of equipment for which a decal is required; and

(B) the maximum fee shall not exceed \$2,500.

(2) The fee to review amendments to previously approved plan reviews on an expedited basis is \$1,000 per unit of equipment included in a contract for which a decal is required. There is no maximum fee or cap for expedited reviews.

(i) The fee for "Installation Removed from Service" is \$20 per unit of equipment.

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 January 21, 2016.

TRD-201600254

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: February 15, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 463-8179



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 75. CURRICULUM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC

SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §§75.1001, 75.1004, 75.1006 - 75.1013

The Texas Education Agency (TEA) adopts the repeal of §§75.1001, 75.1004, and 75.1006-75.1013, concerning driver education. The repeal is adopted without changes to the proposed text as published in the November 27, 2015 issue of the *Texas Register* (40 TexReg 8435) and will not be republished. The sections establish provisions relating to driver education standards of operation for public schools, education service centers, and colleges or universities. The repeal is necessary because of the transfer of authority for developing a program of organized instruction in driver education and traffic safety in public schools from the TEA to the Texas Department of Licensing and Regulation (TDLR) as a result of House Bill (HB) 1786, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. The TEC, §7.021 and §29.902(a), required the TEA to develop a program of organized instruction in driver education and traffic safety for public school students. Rules in 19 TAC Chapter 75, Subchapter AA, were initially adopted effective January 1, 2000.

HB 1786, 84th Texas Legislature, Regular Session, 2015, transferred the regulatory authority for driver education programs from TEA to TDLR.

Effective September 1, 2015, TDLR administratively transferred the provisions in §75.1005, Course Requirements, and §75.1014, Procedures for Student Certification and Transfers, and codified them in 16 TAC Chapter 84. Of the remaining rules in 19 TAC Chapter 75, Subchapter AA, the TEA maintains authority for §75.1002, Driver Education Teachers, and §75.1003, Teaching Assistants, which relate to the certification of professional and paraprofessional personnel who conduct driver education programs under the TEC, §29.902(a), in public schools pursuant to the TEC, §29.902(b).

Since the statutory authority for adopting rules related to driver education and traffic safety was removed from TEA, the repeal of 19 TAC §§75.1001, Administration and Supervision; 75.1004, Classroom Instruction; 75.1006, Driver Licensing; 75.1007, Verification of School Enrollment and Attendance for Issuance of a Driver License; 75.1008, Progress; 75.1009, Attendance, Makeup, and Conduct Policy; 75.1010, Motor Vehicles; 75.1011, Driver Education Course Records; 75.1012, Fees and Tuition; and 75.1013, Control of Standards and Signatures, is necessary.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The public comment period on the proposal began November 27, 2015, and ended December 28, 2015. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §7.021, which requires the agency to develop a program of instruction in driver education and traffic safety for public school students as provided under the TEC, §29.902; the TEC, §11.158, which authorizes the board of trustees of an independent school district to require a fee for a driver training course; the TEC, §29.902, which authorized the agency to develop a program of instruction in driver education and traffic safety for public school students. House Bill (HB) 1786, 84th Texas Legislature, 2015, transferred the authority from the Texas Education Agency (TEA) to the Texas Department of Licensing and Regulation (TDLR); the

TEC, §51.308, which stated that a driver education course for the purpose of preparing students to obtain a driver's license may be offered by an institution of higher education, as defined by the TEC, §61.002, with the approval of the TEA. HB 1786, 84th Texas Legislature, 2015, transferred authority from the TEA to the TDLR; the TEC, §1001.101, which required the commissioner by rule to establish or approve the curriculum and designate the textbooks to be used in a driver education course for minors and adults, including a driver education course conducted by a school district, driver education school, or parent or other individual under the TEC, Chapter 1001. Section 1001.101 requires that the driver education course include 7 hours of behind-the-wheel instruction and 7 hours of observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent or other individual under the TEC, §1001.112, and an additional 30 hours of behind-the-wheel instruction, including at least 10 hours that takes place at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). HB 1786, 84th Texas Legislature, 2015, transferred authority from the commissioner of education to the TDLR; the TEC, §1001.1025, which required the agency by rule to require that information relating to motorcycle awareness, the dangers of failing to yield the right-of-way to a motorcyclist, and the need to share the road with motorcyclists be included in the curriculum of any driver education course or driving safety course. HB 1786, 84th Texas Legislature, 2015, transferred authority from the TEA to the TDLR; the TEC, §1001.110, which required the commissioner by rule to require that information relating to the effect of using a wireless communication device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle be included in the curriculum of each driver education course or driving safety course. HB 1786, 84th Texas Legislature, 2015, transferred authority from the commissioner of education to the TDLR; and the TEC, §1001.257, which stated that the commissioner may not issue or renew a driver education instructor license, including a temporary license, to a person who has six or more points assigned to the person's driver's license under Texas Transportation Code, Chapter 708, Subchapter B. The section was repealed by HB 1786, 84th Texas Legislature, 2015.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§7.021; 11.158; 29.902, 51.308, 1001.101, 1001.1025, and 1001.110, as amended by HB 1786, 84th Texas Legislature, Regular Session, 2015; and 1001.257, as repealed by HB 1786, 84th Texas Legislature, 2015.

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 January 20, 2016.

TRD-201600250
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: February 9, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board adopts amendments to §273.4 without changes to the proposed section as published in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6286).

The amendments set fees for new licenses and fees for license renewal of active licensees. House Bill 7, Regular Session, 84th Legislature, repealed Texas Occupations Code §351.153 that imposed a charge of \$200 for new and renewed active licensees.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.152, and House Bill 7, Regular Session, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.152 as authorizing the agency to set license initial and renewal fees, and House Bill 7, Regular Session, 84th Legislature, as repealing the \$200 additional fee for renewing or obtaining an active license.

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 January 25, 2016.

TRD-201600290
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: February 14, 2016
Proposal publication date: September 18, 2015
For further information, please call: (512) 305-8500



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.1, which sets forth the definitions of words and terms used in the Board's rules. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7784).

The amendments to §361.1 are due to statutory changes brought about by the passage of House Bill 2255, during the regular session of the 84th Texas Legislature (2015) and adopted to inform the public, especially registrants and licensees, of the meaning of specific words and terms used by the Board.

No comments were received on the proposed amendments.

Section 361.1 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

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 January 20, 2016.

TRD-201600233

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.6, which sets forth the fee schedule for examinations, licenses, endorsements, registrations and renewals. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7787).

The amendments to §361.6 are due to amendments to 22 TAC §363.1, new §365.17 and the passage of Senate Bill 807, during the regular session of the 84th Texas Legislature (2015) and are adopted to inform licensees and registrants of changes in the fee schedule.

No comments were received on the proposed amendments.

Section 361.6 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

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 January 20, 2016.

TRD-201600234

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.8

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.8, which sets forth the forms used for doing official business with the agency. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7790).

Pursuant to House Bill 2464, 84th Legislative Session (2015), this amendment to the rule is necessary to administer the new statute regarding the transfer of a plumber's license on the retirement or death of a plumber.

No comments were received on the proposed amendment.

Section 361.8 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600235

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.9

The Texas State Board of Plumbing Examiners (Board) adopts the repeal of 22 TAC §361.9, concerning charges for copies of public records. This rule is repealed in its entirety without changes to the proposal as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7790).

The repeal is adopted since the reasons for originally adopting the rule no longer exist. Charges for copies of public records by state agencies are addressed by the Office of the Attorney General's rules in Title 1, Part 3, Chapter 70 of the Texas Administrative Code. The repeal of 22 TAC §361.9 is due to statutory changes brought about by the passage of Senate Bill 452 and Senate Bill 727, 79th Legislature, 2005, which transferred the duties of the Texas Building and Procurement Commission under the public information law to the Office of the Attorney General.

No comments were received on the proposed repeal.

The repeal of §361.9 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the repeal.

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 January 20, 2016.

TRD-201600236

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



22 TAC §361.11

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.11, which sets forth the general procedures the Board must follow in assigning and using its fleet of vehicles. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7791).

The Board is required to administer policies and procedures consistent with the Office of Vehicle Fleet Management. The adopted amendments to this section are needed to update and clarify the agency responsible for vehicle fleet management.

No comments were received on the proposed amendments.

Section 361.11 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

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 January 20, 2016.

TRD-201600237

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §363.1 which sets forth the Board's requirements to qualify for a license, registration or endorsement. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7792).

The amendments to §363.1 are due to House Bill 2255, 84th Legislative Session (2015) and proposed amendments by Mr.

Russell Wyman on behalf of the Texas State Association of Plumbing Inspectors. The amendments to §363.1 are adopted to inform individuals of the requirements to qualify for a license, registration or endorsement.

No comments were received on the proposed amendments.

Section 363.1 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

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 January 20, 2016.

TRD-201600238

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 9, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 936-5200



CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.4

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.4 which pertains to the issuance of licenses, registrations, and endorsements to qualified applicants. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7794).

The amendments to §365.4 are due to House Bill 2464, 84th Legislative Session (2015) and proposed amendments by Mr. Russell Wyman on behalf of the Texas State Association of Plumbing Inspectors. The amendments to §365.4 are adopted to comply with the new statute regarding transferring a license on the retirement or death of a plumber and amendments regarding the issuance of licenses to Plumbing Inspectors.

No comments were received on the proposed amendments.

Section 365.4 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

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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Executive Director
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For further information, please call: (512) 936-5200



22 TAC §365.17

The Texas State Board of Plumbing Examiners (Board) adopts new 22 TAC §365.17, which pertains to the transfer of a plumber's license on the retirement or death of a plumber. This rule is adopted without changes to the proposed text as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7794).

Pursuant to House Bill 2464, 84th Legislative Session (2015), the Board adopts this new rule as it is necessary to administer the new statute regarding the transfer of a plumber's license on the retirement or death of a plumber.

No comments were received on the proposed new rule.

New §365.17 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted new rule.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.12 concerning parole process. The amendments to §145.12 are adopted without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7211). The text of the rule will not be republished.

The amendments to §145.12 are adopted to be in compliance with House Bill 1914.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036, 508.0441, 508.045, and 508.141. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

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 January 22, 2016.

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Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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Proposal publication date: October 16, 2015
For further information, please call: (512) 406-5388



37 TAC §145.15, §145.17

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.15 and §145.17 concerning parole process. The amendments to §145.17 are adopted without changes and amended §145.15 is adopted with changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6038). The change to §145.15 is to delete an extra word in the text and the rule will be republished. The text of the rule for §145.17 will not be republished.

The adopted amendments update the frequency in which the Board considers the eligibility of certain offenders for release on parole in §145.15, and §145.17 includes two new definitions relating to administrative file processing error and erroneous information.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036, 508.0441, 508.045, 508.141 and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

§145.15. *Action upon Review; Extraordinary Vote (SB 45).*

(a) This section applies to any offender convicted of an offense under Texas Penal Code, Sections 20A.03, 21.02, or 21.11(a)(1), or who is required under Texas Government Code, Section 508.145(c), to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) F1-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 60 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 60 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching

the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS--The board shall vote F1-1 and impose special condition "O" - "The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) 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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TRD-201600275

Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388



37 TAC §145.18

The Texas Board of Pardons and Paroles adopts new rule 37 TAC §145.18 concerning action upon review; extraordinary vote (HB 1914). The new rule is adopted without changes to the proposed text as published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6039). The text of the rule will not be republished.

New §145.18 is adopted to update the frequency in which the Board considers the eligibility of certain offenders for release on parole in §145.15.

No public comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §§508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

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 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.3 - 146.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 146, §§146.3 - 146.12, concerning revocation of parole or mandatory supervision. The rules are adopted without changes to the proposed text as published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7212). The text of the rules will not be republished.

The amendments to §146.3 add language for the Board Administrator's designee to make attorney determination decisions. Section 146.6 amendments relate to the Board Policy BPP-POL.146.252 Preliminary Hearings-Pending Criminal charges. Section 146.7 updates the language to be consistent with Board Rules §146.6(a) and §146.8(c)(1) and (2), and §146.8 updates the language to be consistent with Board Rule §146.6(a)(2).

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

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General Counsel
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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER F. SECURITY AND CONTROL

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules without changes to the proposed text as published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048): §380.9715 (Testing for Alcohol and Other Drugs) and §380.9723 (Use of Force).

TJJD also adopts the repeal of the following rules without changes to the proposed text as published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048): §380.9701 (Facility Security) and §380.9727 (Riot Control).

TJJD also adopts amendments to the following rules with changes to the proposed text as published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048): §§380.9711 (Control of Unauthorized Items Seized), 380.9713 (Use of Canine (K-9) Teams), 380.9729 (Directives to Apprehend), 380.9739 (Isolation), 380.9740 (Security Program), 380.9745 (Protective Custody for Youth at Risk of Self-Harm), and 380.9747 (Self-Referral to Security Units).

The changes to the proposed text of §380.9711 consist of correcting typographical and grammatical errors.

The changes to the proposed text of §380.9713 consist of correcting a grammatical error and making a minor wording change in a subsection heading.

The changes to the proposed text of §380.9729 consist of correcting a typographical error.

The changes to the proposed text of §380.9739 consist of correcting a grammatical error.

The changes to the proposed text of §380.9740 consist of clarifying that when the director over residential services or his/her designee approves a 72-hour extension for a youth who has been in the Security Program for five continuous days, facility staff are still required to hold a Level III hearing every 24 hours to determine if the youth continues to meet extension criteria. The changes to this rule also consist of clarifying that when a youth has been in the Security Program for five continuous days, appeals of extension decisions are decided by the executive director or designee, as is currently required by §380.9353. A grammatical error was also corrected.

The changes to the proposed text of §380.9745 consist of correcting grammatical errors.

The changes to the proposed text of §380.9747 consist of correcting a typographical error.

JUSTIFICATION FOR CHANGES

The justification for these amended and repealed rules is to provide for the safety of staff, youth, and the public through programs and practices designed to maintain a safe, orderly, and therapeutic environment in TJJD facilities and the apprehension of TJJD youth who pose a risk to others. These rule changes are also intended to clarify and update TJJD rules for ease of use.

SUMMARY OF CHANGES

Throughout this subchapter, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes made throughout the subchapter are listed in the following paragraphs.

Section 380.9701 has been repealed because much of the information in this rule is addressed in other TJJD rules and procedures.

The amendment to §380.9711: 1) clarifies that the facility's evidence custodian is responsible for maintaining seized contraband that will be used in administrative due process hearings, but not contraband that will be used in a criminal investigation; 2) adds a requirement for facility staff to submit contraband that may be used in a criminal investigation to the Office of Inspector General (OIG), at which point it will be accessible only to OIG staff; 3) clarifies that when all administrative and legal proceedings are concluded, firearms and drugs are destroyed in accordance with the Texas Code of Criminal Procedure; 4) clarifies that staff who discover a potential crime scene must immediately notify the OIG; and 5) changes the title of the rule to more accurately reflect the content of the rule.

The amendment to §380.9713: 1) clarifies that the rule applies only to facilities operated by TJJD and not to facilities that contract with TJJD to house TJJD youth; 2) specifies that K-9 teams are used for detecting and identifying drugs, currency, alcohol, tobacco products, prescription medication, and other prohibited items; 3) deletes the need for local law enforcement to be noti-

fied if a K-9 alerts during an inspection of a TJJD parking area (TJJD K-9 handlers are now licensed peace officers); 4) deletes the provision allowing K-9 teams to aid in tracking and apprehending youth who have escaped from a high-restriction facility; and 5) clarifies that parking areas that are subject to search by K-9 teams include *any area used for parking that is owned, operated, or controlled by TJJD* (rather than just parking lots within the fenced perimeter).

The amendment to §380.9715 clarifies that the rule applies only to facilities operated by TJJD and not to facilities that contract with TJJD to house TJJD youth.

The amendment to §380.9723 adds a provision stating that only the facility administrator, staff having authority to act as the facility administrator, or a higher-level authority in the facility administrator's chain of supervision may declare that a particular situation is a riot, consistent with the definition of a riot. The amended rule now contains definitions for the terms "riot" and "barricade." The amended rule also clarifies that a planned team restraint may be used when a youth is in a security vehicle (in addition to when a youth is in a locked or barricaded room).

Section 380.9727 has been repealed. Certain provisions of this rule have been consolidated into §380.9723 or moved to internal operational policies and procedures. Provisions that are redundant, no longer operationally relevant, or otherwise unneeded have been deleted.

The amendment to §380.9729 clarifies that directives to apprehend TJJD youth are entered into the Texas/National Crime Information Center by staff in the TJJD Office of Inspector General. The amended rule also adds criteria for cancelling a directive to apprehend.

The amendment to §380.9739: 1) clarifies that the type of confinement addressed by this rule is not a disciplinary consequence; 2) expands the rule to apply to all residential facilities operated by TJJD, not just secure facilities; 3) adds a prohibition on placing a youth in isolation if the youth is on suicide alert; 4) adds a provision requiring isolation to occur in individual sleeping rooms or a room specifically designed for isolation; and 5) deletes the provision addressing the type of food a youth will receive upon release from isolation.

In addition to the changes listed earlier in this notice, the amendment to §380.9740: 1) deletes the requirement to include at least four hours outside of the locked room as part of the daily schedule in the Security Program; 2) deletes the requirement for staff to enter a youth's room or remove a youth from his/her room to qualify as one of the required daily staff visits; 3) clarifies that youth in the Security Program are offered an opportunity to discuss the problematic behavior that led to placement in the program (rather than requiring an intervention plan that addresses the problematic behavior); 4) deletes the ability to earn privileges from the list of required services provided to youth in the Security Program; 5) clarifies that youth in the Security Program are offered the amount of instructional minutes required by the campus master school schedule (rather than five and one-half hours each instructional day); 6) clarifies that education services provided to youth in the Security Program must include access to limited-English-proficient services for English language learners; 7) clarifies that 15-minute checks are required *unless more frequent checks are required by the suicide alert rule*; and 8) clarifies that the Security Program may be operated in a building other than the security unit if specifically allowed by other TJJD rules.

The amendment to §380.9745 includes only minor, non-substantive wording changes.

The amendment to §380.9747: 1) adds "space limitations" as a reason self-referrals to the security unit may be temporarily disallowed by the facility administrator; 2) requires staff to develop a written supervision and reintegration plan if the youth claims a need for protection from harm, the staff suspects the youth feels a need for protection from harm, or the youth has remained confined on self-referral for over 120 hours (these three situations will replace the requirement for staff to develop a safety/reintegration plan within one workday for every youth who self-refers to the security unit); 3) requires the security dorm supervisor to speak with each youth in the security unit on self-referral once every 72 hours (rather than once each day); 4) deletes the ability to earn privileges from the list of required services provided to youth who self-refer to the security unit; 5) clarifies that the daily visits with youth who self-refer to the security unit may be completed by a case manager *or other staff member designated by the facility administrator*; 6) clarifies that youth who self-refer to the security unit are offered the amount of instructional minutes required by the campus master school schedule (rather than five and one-half hours each instructional day); 7) clarifies that the education services provided to youth who self-refer to the security unit must include access to limited-English-proficient services for English language learners; 8) clarifies that access to shower and hygiene routine is provided every 24 hours, *as the youth's behavior permits*; and 9) clarifies that one hour of large-muscle exercise is provided in an enclosed outdoor recreation area *as the youth's behavior and the weather permit*.

RULE REVIEW

In the Proposed Rules section of the August 7, 2015, issue of the *Texas Register* (40 TexReg 5048), TJJD published a notice of intent to review §§380.9701, 380.9707, 380.9711, 380.9713, 380.9715, 380.9723, 380.9727, 380.9729, 380.9739, 380.9740, 380.9745, and 380.9747 as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting §380.9701 and §380.9727 no longer exist. Accordingly, these rules are repealed as described in this notice.

TJJD has also determined that the reasons for adopting §380.9707 continue to exist. Accordingly, this rule is readopted without amendments.

TJJD has also determined that the reasons for adopting the following rules continue to exist: §§380.9711, 380.9713, 380.9715, 380.9723, 380.9729, 380.9739, 380.9740, 380.9745, and 380.9747. Accordingly, these rules are readopted with amendments as described in this notice.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed amendments or repeals.

37 TAC §380.9701, §380.9727

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

Filed with the Office of the Secretary of State on January 21, 2016.

TRD-201600259

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 §§380.9711, 380.9713, 380.9715, 380.9723, 380.9729, 380.9739, 380.9740, 380.9745, 380.9747

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

§380.9711. *Control of Seized Contraband or Potential Evidence.*

(a) Purpose. This rule establishes requirements for the preservation, control, and/or disposition of all contraband, including physical evidence obtained in connection with a violation of law and/or rule violation.

(b) Applicability. This rule applies to TJJD-operated residential facilities.

(c) Definitions. Contraband--has the meaning assigned by §380.9107 of this title.

(d) Contraband Used as Evidence.

(1) Contraband Used in a Due Process Hearing. Seized contraband that may be used as evidence in a TJJD due process hearing and not used in a criminal investigation must be properly identified, documented, and submitted to the facility's evidence custodian.

(2) Contraband Used in a Criminal Investigation. Seized contraband that may be used as evidence in a criminal investigation is properly identified, documented, and submitted to the Office of Inspector General (OIG) evidence submission box. Criminal evidence is accessible only to the OIG staff. OIG maintains the chain of custody until proper case disposition.

(3) Contraband/Evidence Disposal.

(A) After all administrative/legal proceedings have been concluded, one of the following must occur:

(i) destroy firearms and drugs in accordance with the Code of Criminal Procedure; or

(ii) send contraband item(s), other than contraband firearms and drugs, to the youth's home; or

(iii) return contraband item(s) to include contraband money (if applicable) to the owner; or

(iv) deposit contraband money possessed by a youth into the student benefit fund pursuant to §385.9971 and §380.9555 of this title.

(B) After all OIG investigations, evidence will be disposed of as per court disposition.

(e) Contraband Not Used as Evidence. Seized contraband that is not used as evidence in a TJJD due process hearing or in a criminal investigation is destroyed or sent to the youth's parent or guardian at the youth's discretion.

(f) Contraband/Evidence in a Crime Scene. Staff discovering a potential crime scene must immediately notify the facility administrator and the Incident Reporting Center. A crime scene could be a death, major injury, sexual assault, and/or major property damage. The area must be immediately secured and access prohibited into the potential crime scene or area containing potential evidence. Staff must not enter the area to clean or disturb the potential evidence, clothing, and/or body fluids. Only the OIG personnel or another investigating law enforcement agency will handle the evidence of a crime scene.

§380.9713. *Use of Canine (K-9) Teams.*

(a) Purpose. This rule provides guidelines for the management and deployment of K-9 teams at residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule applies to residential facilities operated by TJJD.

(c) Definitions.

(1) K-9 Team--a handler and canine trained to detect and identify illegal drugs, currency, alcohol, tobacco products, prescription medication, and other prohibited items.

(2) Passive Indication--the K-9 is trained to sit, stand, or lie at the point closest to the source of the odor such as, but not limited to, cocaine, heroin, alcohol, marijuana, prescription medication, methamphetamines, tobacco, and other prohibited items.

(3) TJJD Parking Area--any area used for parking that is owned, operated, or controlled by TJJD.

(d) General Provisions.

(1) All TJJD K-9 teams must be certified annually and trained in passive indication.

(2) TJJD uses K-9 teams to detect and identify illegal drugs, currency, alcohol, tobacco products, prescription medication, and other prohibited items.

(3) A K-9 team may be deployed at the discretion of the K-9 handler to conduct routine, random, or specifically requested searches or inspections of the following areas:

(A) any dorm, cell, or other area used to house youth;

(B) any school or education building on TJJD property;

(C) any cafeteria, kitchen, canteen, or other food preparation area;

(D) any administrative area, staff office, storage building, and restroom;

(E) any other building or area located on TJJD grounds;

(F) any vehicle entering a perimeter fence at a facility operated by TJJD;

(G) any state vehicles;

(H) any TJJD parking area; and

(I) any property under the care, custody, control, or ownership of TJJD.

(4) All items seized by the K-9 team must be identified, documented, and submitted to the appropriate TJJD staff member in accordance with §380.9711 of this title.

(5) At the entrance of all TJJD parking areas, signs must be posted in English and Spanish noting: "This property is subject to canine inspection and search by law enforcement."

§380.9729. *Directives to Apprehend.*

(a) Purpose. This rule acknowledges a relationship between the Texas Juvenile Justice Department (TJJD), law enforcement, and the Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TJJD jurisdiction who escape or who have broken the conditions of release under supervision. This rule also establishes criteria for the issuance of a directive to apprehend.

(b) Applicability. This rule applies to all youth under TJJD jurisdiction whether supervised by TJJD staff or contract staff.

(c) Issuance of a Directive to Apprehend.

(1) TJJD may issue a directive to apprehend pursuant to the authority granted under Texas Human Resources Code §243.051 if a youth in TJJD custody has:

(A) escaped, as defined by §380.9503 of this title; or

(B) failed to comply with the written conditions of release under supervision (i.e., conditions of parole).

(2) Directives to apprehend must be entered by the Office of Inspector General Incident Reporting Center according to TCIC/NCIC procedures and the Department of Public Safety/Federal Bureau of Investigation (DPS/FBI) guidelines.

(d) Cancellation of a Directive to Apprehend. A directive to apprehend is cancelled when:

(1) a youth is arrested or apprehended;

(2) a youth is discharged from commitment to TJJD; or

(3) TJJD staff determines the directive to apprehend is no longer needed.

§380.9739. *Isolation.*

(a) Purpose. This rule allows for short-term confinement in a locked room of a youth who meets criteria. Confinement addressed in this rule is not a disciplinary consequence.

(b) Applicability.

(1) This rule applies to residential facilities operated by the Texas Juvenile Justice Department.

(2) This rule does not apply to:

(A) a youth being admitted to the Security Program. See §380.9740 of this title; or

(B) segregation in which doors are not locked. See §380.9520 of this title.

(c) Definitions. Isolation--the condition of confinement of a youth in a locked room. If the door is not locked, the confinement is not considered to be isolation. Isolation does not include when doors are routinely locked (e.g., during sleeping hours) and isolation has not otherwise been imposed.

(d) Criteria.

(1) A youth may be confined in isolation in cases when less restrictive interventions have failed and the youth is:

- (A) out of control; and
 - (B) a serious and immediate physical danger to others;
- and
- (C) not on suicide alert.

(2) Isolation must be in individual youth sleeping quarters or a room specifically designated for isolation. If the room is not individual sleeping quarters, the room must:

- (A) be heated, cooled, and ventilated;
- (B) have a minimum ceiling height of 7.5 feet when measured from the floor to the lowest point of the ceiling; and
- (C) be equipped with a viewing window that allows staff to observe the youth.

(e) Release.

(1) A youth placed in isolation must be released within three hours or be referred to the security program.

(2) Isolation must be terminated as soon as a youth is sufficiently under control so as to no longer pose a serious and immediate danger to himself/herself or others.

(f) Isolation Requirements.

(1) Staff must visually check youth in isolation at least once every 15 minutes.

(2) Youth in isolation must receive appropriate psychological and medical services.

§380.9740. *Security Program.*

(a) Purpose. The Texas Juvenile Justice Department (TJJD) operates Security Programs at its high-restriction facilities to temporarily remove youth who engage in certain dangerous or disruptive behaviors from the general campus population. This rule establishes admission criteria, service delivery requirements, security provisions, and requirements for due process and administrative review for youth admitted to the Security Program.

(b) Applicability. This rule applies to TJJD-operated high-restriction facilities that operate security units.

(c) Definitions. Security Unit--a designated building on the campus of a high-restriction TJJD facility that contains individual rooms and a central control station. Entry to and exit from the building are controlled exclusively by staff.

(d) General Provisions.

(1) Confinement in the Security Program may not be used as punishment or as a convenience for staff.

(2) Youth are afforded all basic youth rights established in §380.9301 of this title while confined in the Security Program.

(3) Except as otherwise authorized by the division director over residential services or designee on a case-by-case basis, confinement in the Security Program may not exceed five calendar days or a maximum of 120 hours.

(4) The Security Program is operated within the security unit, except as provided or permitted by other TJJD administrative rules.

(e) Admission Criteria. A youth may be admitted to the Security Program when there is a reasonable belief the youth has committed a minor rule violation that warrants referral to the security unit or a major rule violation and:

- (1) the youth is a serious and continuing escape risk;
 - (2) the youth is a serious and immediate physical danger to others and staff cannot protect them except by admitting the youth to the Security Program;
 - (3) confinement is necessary to prevent imminent and substantial damage to property;
 - (4) confinement is necessary to control behavior that disrupts programming to the extent that the current program cannot continue except by admitting the youth to the Security Program; or
 - (5) the youth is likely to interfere with a pending or ongoing investigation or a requested or scheduled due process hearing.
- (f) Admission Process.

(1) Within one hour after a youth's arrival at the security unit (or up to two hours if an extension is approved by the facility administrator or designee), a staff member must:

- (A) return the youth to the general population; or
- (B) hold a Level III hearing in accordance with §380.9557 of this title to determine whether admission criteria have been met. The staff member who conducts the review must not have been involved in the referral to the Security Program.

(2) If admission criteria are not met, the youth must be returned to the general population immediately.

(3) If admission criteria are met, the youth may be admitted to the Security Program for up to 24 hours.

(g) Extension Process.

(1) Extension Criteria.

(A) An extension may be authorized if the following criteria are met, as established through a Level III hearing conducted in accordance with §380.9557 of this title:

(i) based on current behavior, one or more of the admission criteria listed in subsection (e)(1)-(5) of this section continue to be present; or

(ii) there is documented evidence that the youth is not complying with the Security Program rules of conduct.

(B) Each extension is valid for up to 24 hours.

(C) No more than four extensions may be authorized by facility staff without approval from the division director over residential services or his/her designee, as described in paragraph (2) of this subsection.

(2) Extensions Beyond Five Days.

(A) The division director over residential services or his/her designee may approve extensions after the fifth day of confinement only when no less-restrictive placement is suitable for managing the youth's behavior and:

(i) the youth continues to present an immediate physical danger to others; or

(ii) the youth continues to be likely to interfere with a pending or ongoing investigation or a scheduled hearing.

(B) Each extension is valid for up to 72 hours. However, facility staff must continue to hold Level III hearings every 24 hours to determine whether the extension criteria in subparagraph (A) of this paragraph continue to be met.

(h) Release to the General Population.

(1) A youth must be released to the general population upon:

(A) a determination that the youth's behavior no longer warrants confinement in the security unit;

(B) expiration of the 24th hour after the most recent Level III hearing; or

(C) a finding in a Level III hearing that extension criteria are not met.

(2) A youth may be released from the Security Program only by the security dorm supervisor or a staff member authorized to conduct an admission hearing.

(i) Administrative Reviews and Appeals.

(1) The security dorm supervisor or designee must review all admission and local extension decisions within one workday. The person reviewing the decision must not have been involved in the decision. If it is determined that admission or extension criteria were not met or appropriate due process was not provided:

(A) the youth must be returned to the general population immediately; and

(B) the youth's record must be corrected to reflect the overturned admission or extension decision.

(2) The youth must be notified in writing of his/her right to appeal a Security Program admission or extension. Appeals are decided by the facility administrator or designee, unless:

(A) the admission or extension decision was made by the facility administrator, in which case the appeal is decided by the division director over residential services or designee; or

(B) the youth's current stay in the Security Program has reached 120 continuous hours, in which case the appeal is decided by the executive director or designee.

(3) The youth must be notified in writing of the outcome of the appeal.

(j) Security Program Requirements.

(1) Staff must visually check each youth at least once every 15 minutes and document youth activity and location during the check unless more frequent checks are required under §380.9188 of this title.

(2) Individual doors must be locked.

(3) The Security Program must adhere to a standard schedule approximating that of the general population, including time out of the locked room as behavior permits.

(4) The standard schedule and Security Program rules of conduct must be posted and reviewed with youth.

(5) The following staff must visit the Security Program at least once each calendar day and speak with each youth present in the program:

(A) a nurse;

(B) a case manager; and

(C) a staff member from the administrative, psychology, and/or chaplaincy departments.

(6) Youth must be provided:

(A) appropriate psychological and medical services;

(B) an opportunity to discuss with a case manager the behavior that resulted in the admission or extension;

(C) adequate access to restroom facilities and drinking water;

(D) access to shower and hygiene routine at least once every 24 hours, as behavior permits;

(E) the same food, including snacks, prepared in the same manner as for other youth except for special diets that are prescribed on an individual basis by a physician, dentist, or mental health professional or special diets approved by a chaplain;

(F) access to education services during each scheduled instructional day for the duration of instructional minutes required by the campus master schedule;

(G) education services that will enable the youth to meet the goals of the youth's individualized education program, if the youth is currently receiving special education services;

(H) access to limited-English-proficient services for English language learners; and

(I) one hour of large-muscle exercise out of the room or in an enclosed outdoor recreation area at least once every 24 hours, as the youth's behavior and weather permit.

§380.9745. *Protective Custody for Youth at Risk of Self-Harm.*

(a) Purpose. This rule provides for a protective custody program for the temporary placement of youth who are determined to be at risk of serious harm to themselves.

(b) Applicability. This rule applies only to high-restriction facilities operated by the Texas Juvenile Justice Department.

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this title.

(d) General Provisions.

(1) The protective custody program is administered in the security unit. Unless otherwise noted in this rule, all standard service delivery and programming requirements in §380.9740 must be followed while the youth is in the security unit.

(2) Placement of youth in protective custody is used only as a last resort when a mental health professional (MHP) determines that the youth cannot be safely managed in his/her assigned living unit and no appropriate less-restrictive placements are immediately available. Protective custody is used only as a temporary placement until the youth can be safely returned to his/her assigned living unit or until another appropriate housing or facility assignment can be arranged.

(3) Unless otherwise noted in this rule, youth in protective custody are monitored, assessed, and treated in accordance with requirements in §380.9188 of this title.

(e) Referral for Placement in Protective Custody.

(1) Only an MHP may authorize the referral of a youth to the security unit for possible placement in protective custody. The referral may be made only:

(A) after a trained designated staff member completes a suicide risk screening, as described in §380.9188 of this title and the MHP has consulted with the staff member concerning the results of the screening; and

(B) if the MHP determines that the youth is in imminent risk of serious self-injury and cannot be safely managed in his/her assigned living unit.

(2) The youth may be held in the security unit on referral for up to four hours, pending the completion of a face-to-face suicide risk assessment by an MHP. The youth is placed on at least constant observation until he/she is assessed by the MHP. Doors must not be locked while the youth is awaiting the suicide risk assessment unless the youth presents an imminent danger to staff due to aggressive behavior. In such cases, doors may be locked in accordance with subsection (g)(2) of this section.

(3) When a youth is referred to a security unit, the youth's suicide observation folder is transferred to the security staff, who continues documenting the youth's status at the required interval.

(f) Admission Criteria. Only an MHP, in consultation with the facility's designated mental health professional (DMHP), may admit a youth to protective custody due to suicide risk. A youth may be placed in protective custody only if the MHP has conducted a face-to-face suicide risk assessment as described in §380.9188 of this title and the MHP has determined that:

(1) based on the youth's actions, statements, or mental status, the youth is a serious and immediate physical danger to himself/herself; and

(2) confinement in the security unit is necessary to protect the youth from self-harm, and there is no less restrictive setting that provides the necessary level of security and staff supervision.

(g) Program Requirements.

(1) Youth are placed in suicide-resistant rooms. Except for youth assigned to one-to-one observation, individual room doors remain locked.

(2) For youth assigned to one-to-one observation, individual room doors must remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. In such cases, the youth's room door may be locked provided that the MHP determines (in consultation with the DMHP) that locking the door is necessary to manage the youth's aggressive behavior and still allows adequate supervision to ensure the youth's safety.

(3) In accordance with requirements established under §380.9188 of this title, the MHP develops an individualized treatment plan that identifies crisis stabilization issues to be addressed and includes a plan of action to address the issues.

(4) The MHP conducts a face-to-face assessment of the youth at least once every 24 hours while the youth is admitted to the protective custody program. As part of the assessment, the MHP must determine if the youth continues to be a serious and immediate physical danger to himself/herself and if continued confinement is necessary to prevent self-harm.

(5) At least once every 48 hours following the youth's admission into protective custody, the DMHP reviews the documentation relating to protective custody, including the youth's treatment plan and any other documentation relating to the youth's stay in protective custody.

(6) A youth may not remain in the protective custody program for more than five calendar days without written approval from the division director over residential facilities or his/her designee. This approval must be obtained for every 24-hour period thereafter.

(h) Review of Admission and Extensions. The security dorm supervisor or his/her designee reviews each admission and 24-hour extension decision within one workday to determine if policies and procedures were followed. If it is determined that a youth is being held in violation of policy, the security dorm supervisor or designee:

(1) immediately notifies the facility administrator or duty officer;

(2) unless otherwise instructed by the facility administrator or duty officer, returns the youth to the general population; and

(3) ensures the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(i) Release Criteria. The youth must be released from protective custody when:

(1) an MHP, in consultation with the DMHP, determines the youth may return to the general population with appropriate supervision and monitoring;

(2) an MHP, in consultation with the DMHP, determines that the youth meets criteria for transfer to a facility providing specialized mental health treatment, a TJJD-operated crisis stabilization unit, or a psychiatric hospital;

(3) the division director over residential facilities or his/her designee disapproves an extension request; or

(4) a review of the admission or extension in protective custody reveals that the youth is being held in violation of policy.

(j) Appeals. The youth may appeal his/her placement in protective custody to the director of treatment or his/her designee. The director of treatment or his/her designee must consult with the DMHP when reviewing the appeal.

§380.9747. *Self-Referral to Security Unit.*

(a) Purpose. This rule provides for the temporary placement of youth who request to be placed in a security unit.

(b) Applicability. This rule applies only to high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. Security Unit--has the meaning assigned under §380.9740 of this title.

(d) General Provisions.

(1) The security unit may be used as a temporary placement for youth who self-refer until the youth can be safely returned to his/her assigned living unit or another appropriate housing or facility assignment can be arranged.

(2) While placed in the security unit on a self-referral, a youth must be provided scheduled programming in accordance with his/her individual case plan and, if applicable, his/her individualized education program.

(3) If a youth claims a need for protection from harm, staff must complete a threat assessment. Based on the results of the threat assessment, all reasonable actions must be taken to ensure the safety of the youth, which may include any or all of the following:

(A) immediate implementation of enhanced supervision strategies;

(B) immediate separation of the youth from the source of the threat;

(C) referral to the TJJD Office of Inspector General for investigation;

(D) notification of the chief local administrator; and/or

(E) dorm or facility transfer.

(e) Referral Process.

(1) Any youth may request a self-referral to the security unit. Requests may be verbal or written and may be made to any staff member.

(2) Case management and/or supervisory staff must meet with the youth to discuss the circumstances regarding the request and, if appropriate, recommend alternatives to self-referral.

(3) Staff may not deny the youth's request for a self-referral to the security unit, unless self-referrals have been temporarily disallowed by the facility administrator due to an ongoing facility disruption or space limitations in the security unit.

(f) Service Delivery and Programming Requirements.

(1) While in the security unit on self-referral, youth shall be provided:

(A) psychological and medical services as appropriate;

(B) adequate access to restroom facilities and drinking water;

(C) access to shower and hygiene routine at least once every 24 hours, as behavior permits;

(D) the same food, including snacks, prepared in the same manner as for other youth, except for special diets that are prescribed on an individual basis by a physician, dentist, or mental health professional or special diets approved by a chaplain;

(E) access to education services during each scheduled instructional day for the duration of instructional minutes required by the campus master schedule;

(F) education services that will enable the youth to meet the goals of the youth's individualized education program, if the youth is currently receiving special education services;

(G) access to limited-English-proficient services for English language learners; and

(H) one hour of large-muscle exercise out of the room or in an enclosed outdoor recreation area at least once every 24 hours, as the youth's behavior and weather permit.

(2) A case manager or staff member designated by the facility administrator must meet with the youth daily to:

(A) assess the youth's status and make referrals to a mental health professional as appropriate;

(B) discuss strategies and offer opportunities for returning to the general population; and

(C) ensure that all required services and programming are being delivered.

(3) A case manager must, in consultation with members of the youth's multi-disciplinary team and a mental health professional, develop a written supervision and reintegration plan for the youth if any of the following apply:

(A) the youth claims a need for protection from harm;

(B) the staff reasonably suspects the youth feels a need to be protected from harm; or

(C) the youth has remained in the security unit on self-referral for 120 hours.

(4) The supervision and reintegration plan must include:

(A) strategies for addressing the threat of harm or coping with the circumstances that resulted in the self-referral;

(B) requirements for enhanced supervision, if appropriate;

(C) a schedule for reintegrating with the general campus population; and

(D) a safe housing reassessment, as described in §380.8524 of this title.

(g) Release from the Security Unit.

(1) Upon a youth's request or agreement to be released from the security unit, the youth must be granted release as soon as reasonably possible.

(2) If a supervision and reintegration plan is required, the youth may not be released from the security unit before the plan is completed unless the release is approved by the facility administrator or designee. If the facility administrator or designee denies a youth's request for release from the security unit before a required supervision and reintegration plan is completed, the facility administrator or designee must ensure that the plan is completed and the youth is released within 24 hours after the youth's request.

(3) Upon a youth's release from the security unit, the youth's case manager or other designated staff member must determine which components of the youth's supervision and reintegration plan will be continued after the youth's return to the general campus population. The youth must receive follow-up psychological services if directed by a mental health professional.

(h) Review and Oversight.

(1) At least once every 72 hours, the security dorm supervisor or designee must speak with each youth admitted to the security unit on a self-referral.

(2) If a youth has not requested or agreed to a release within 72 hours after admission to the security unit on self-referral, the security dorm supervisor must consult with the facility administrator or designee to discuss reintegration strategies, service delivery and counseling activities, youth behavior, and possible dorm or facility transfer. This consultation is required every 24 hours thereafter.

(3) If a youth has not requested or agreed to a release within five calendar days after admission to the security unit on self-referral, the facility administrator must consult with the division director over residential services or designee to discuss reintegration strategies, service delivery and counseling activities, youth behavior, and possible dorm or facility transfer. This consultation is required at least once every 72 hours thereafter until the youth is released from the security unit.

(4) The youth's multi-disciplinary team must monitor each youth's pattern of self-referrals to the security unit for indications of ongoing or unresolved issues. The multi-disciplinary team must address these issues through case plan objectives, clinical referrals, reports to facility management, or other appropriate interventions.

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 January 21, 2016.

TRD-201600258

Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: February 15, 2016
Proposal publication date: August 7, 2015
For further information, please call: (512) 490-7014

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**PART 13. TEXAS COMMISSION ON
FIRE PROTECTION**

**CHAPTER 421. STANDARDS FOR
CERTIFICATION**

37 TAC §421.5, §421.17

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 421, Standards for Certification, concerning §421.5, Definitions, and §421.17, Requirement to Maintain Certification. The amendments are adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8869) and will not be republished.

The amendments are adopted to address requirements contained in Senate Bill 1307 of the 84th Legislature, requiring the waiving of certain fees for military personnel and spouses as well as extending the time in which military service members can renew certification without penalty.

The adopted amendments will provide clear and concise rules regarding who qualifies for the benefits.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees for each certification.

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 January 21, 2016.

TRD-201600255
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: February 10, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 936-3812

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CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.13

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, concerning §437.3, Certification Application Processing Fees, §437.5, Renewal

Fees, and §437.13, Processing Fees for Test Application. The amendments are adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8872) and will not be republished.

The amendments are adopted to address requirements contained in Senate Bill 807 of the 84th Legislature, requiring the waiving of certain fees for military personnel and spouses as well as extending the time in which military service members can renew certification without penalty.

The adopted amendments will provide clear and concise rules regarding who qualifies for the benefits.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees for each certification and examination given to fire protection 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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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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Proposal publication date: December 11, 2015
For further information, please call: (512) 936-3812

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection (the commission) adopts an amendment to Chapter 441, Continuing Education, concerning §441.5, Requirements. The amendments are adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8874) and will not be republished.

The amendments are adopted to address requirements contained in Senate Bill 1307 of the 84th Legislature, requiring the waiving of certain fees for military personnel and spouses as well as extending the time in which military service members can renew certification without penalty.

The adopted amendments will provide clear and concise rules regarding who qualifies for the benefits.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees for each certification.

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

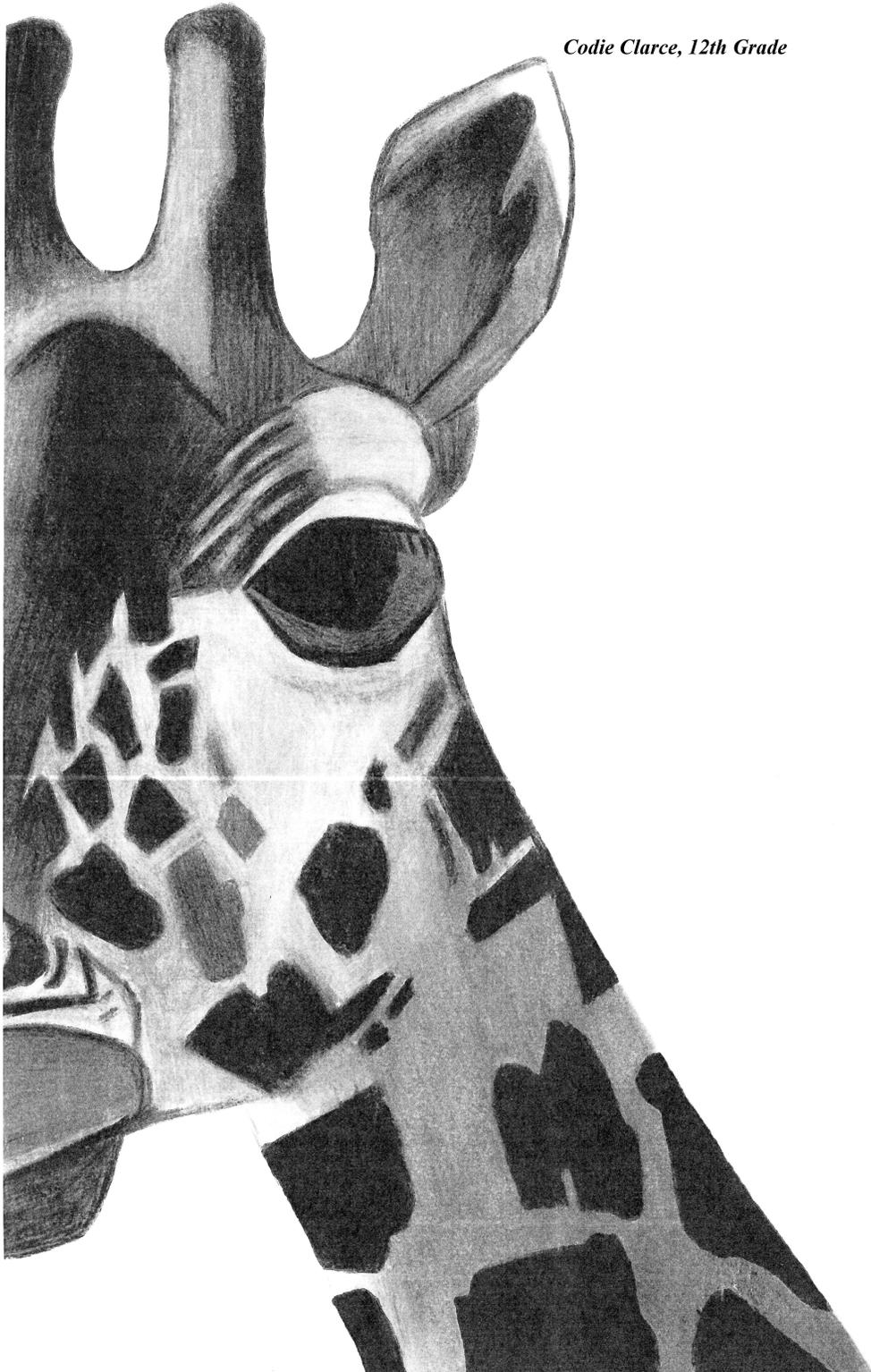
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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3812



Codie Clarce, 12th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

General Land Office

Coastal Coordination Advisory Committee

Title 31, Part 16

In accordance with §2001.039, Government Code, the Texas General Land Office (GLO) is serving notice of its intent to review rules under Title 31, Part 16 of the Texas Administrative Code. This revised rule review plan is amended to replace all previous published review plans.

The rule review will be conducted on a chapter-by-chapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register*. Review of the rules under each chapter listed in this plan will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a rule may need to be amended to further refine the directives and goals of the GLO, or that no changes to a rule as currently in effect are necessary as that rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register* Rule Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas General Land Office, 1700 North Congress, Room 910, Austin, Texas 78701-1495, (512) 475-1859, walter.talley@glo.texas.gov.

For the following chapters of Title 31, Part 16, the GLO's review will begin on February 6, 2016 and be concluded by no later than February 6, 2017.

Chapter 501. Coastal Management Program

Chapter 503. Coastal Management Program Boundary

Chapter 504. Coastal Management Program

Chapter 505. Council Procedures for State Consistency with Coastal Management Program Goals and Policies

Chapter 506. Council Procedures for Federal Consistency with Coastal Management Program Goals and Priorities

TRD-201600355

Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 27, 2016



General Land Office

Title 31, Part 1

In accordance with §2001.039, Government Code, the Texas General Land Office (GLO) is serving notice of its intent to review rules under Title 31, Part 1 of the Texas Administrative Code. This revised rule review plan is amended to replace all previous published review plans.

The rule review will be conducted on a chapter-by-chapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register*. Review of the rules under each chapter listed in this plan will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a rule may need to be amended to further refine the directives and goals of the GLO, or that no changes to a rule as currently in effect are necessary as that rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register* Rule Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas General Land Office, 1700 North Congress, Room 910, Austin, Texas 78701-1495, (512) 475-1859, walter.talley@glo.texas.gov.

The GLO will initiate the review of rules within each of the following chapters that have not already been reviewed in accordance with §2001.039, Government Code. The review will begin in February 6, 2016 and be concluded by no later than February 6, 2017.

Chapter 3. General Provision

Chapter 7. Surveying

Chapter 13. Land Resources

Chapter 15. Coastal Area Planning

Chapter 17. Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

Chapter 25. Beach Cleaning And Maintenance Assistance Program

TRD-201600354

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: January 27, 2016



Adopted Rule Reviews

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Part 5, Chapter 146, concerning Revocation of Parole or Mandatory Supervision. The adopted amendments to §§146.3 through 146.12 is to capitalize titles and update statutory references with the current format used throughout the rules. Additional amendments include adding language for the Board Administrator's designee to make

attorney determination decisions in §146.3, adding language to §146.6 as it relates to the Board Policy BPP-POL. 146.252 Preliminary Hearings-Pending Criminal charges, updating §146.7 with language to be consistent with Board Rules §146.6(a) and §146.8(c)(1) and (2) and updating language to be consistent with Board Rule §146.6(a)(2) in §146.8.

The assessment of Chapter 146 indicates that the original justifications for these rules continue to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapter 146.

TRD-201600272

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: January 22, 2016



*T*ABLES & *G*RAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §661.99(6)

Citation	Violation	Sanction on a First Offense
1071.251(b)	Engaging in the practice of professional land surveying without registration	Injunction/1500
(c)	Offering to practice professional land surveying without registration	Injunction/1500
(d)	Using a title or advertising a title or description that tends to convey the impression that a non registered/licensed person is a professional land surveyor	Injunction/1500
1071.261(b)	Failure to display the certificate or license at a person's place of business or practice	Reprimand/100
1071.263(a)	The practice of professional surveying while license has been placed on Inactive Status.	Revocation/1500
1071.351(c)	Failure to secure an authorized seal (661.46)	Reprimand/100
(d)	Application of name, seal or certification to surveying work that is not prepared by registrant/licensee or full time employee supervised by registrant/licensee	Revocation/1500
(e)	Allowing a non registrant/licensee to exert control over surveying work	Revocation/1500
1071.352(a)	Offering surveying services by a non-registered entity or with no RPLS employed full-time where the services are offered	Injunction/ 1500 Reprimand/1500
(b)	Failure of group practice to properly identify the registrant responsible for the practice	Injunction/ 1500 Reprimand/1500
1071.353	Failure to file notice of assumed name	Reprimand/100
1071.359(a)	Failure to sign and notate "Licensed State Land Surveyor"(LSLS) on all LSLS official field notes	Reprimand/100
1071.359(b)	Failure to conform LSLS field notes and plats to specifications contained in Section 21 of the Natural Resources Code.	Reprimand/100
1071.360 (1), (2)	Failure of the LSLS to notify person who has undisclosed public land enclosed and/or forward a report of undisclosed public land and the acreage to the commissioner.	Reprimand/100
1071.361(a)	Failure to allow LSLS access to County Surveyor's records	Reprimand/1500
(c)	Failure to comply with any regulations prescribed by the county surveyor or the commissioners court for protecting and preserving the records	Reprimand/1500
1071.401(a) (1)	Fraud or deceit in obtaining a certificate or license	Revocation/1500
(a)(2)	Gross negligence, incompetence, or misconduct in the practice of surveying	Revocation/1500
(a)(3)	Violation of the Act or Board Rule	Revocation/1500

Citation	Violation	Sanction on a First Offense
1071.401(b)	LCLS directly or indirectly interested in the purchase or acquisition of title to public land	Revocation/1500
1071.504(b)(1)	Engaging or offering land surveying services without being registered/licensed	Injunction/1500
(b)(2)	Presents or attempts to use another person's certificate, license or seal	Revocation/1500 Injunction/1500
(b)(3)	Giving false or forged evidence to obtain or assist another in obtaining a registration/license	Revocation/1500
(b)(4)	Violation of the Act or Board Rule	Reprimand/1500
661.45(f)	Actions to compromise the examination.	Disqualification/1500
661.46(a)	Failure to secure a seal of the type specified by the Board.	Reprimand/100
(b)	Failure to sign and affix their seal to the oath and submit to the Board	Reprimand/100
661.52(b)	Engaging in the practice of professional land surveying while registrant/license is in Inactive Status.	Suspension/Revocation/1500
(c)	Using seal during Inactive Status.	Suspension/Revocation/1500
661.55(a)	Failure of Firm to apply for and receive a Firm Registration Certificate with the Board.	Injunction/1500
(b)	Failure by Registrant/Licensee to ensure Firm employing them complies with filing requirements.	Reprimand/1500
(c)	Failure of Registrant/Licensee employed by a Firm to notify the Board in writing within (5) business days prior to or after leaving employment.	Reprimand/1500
(g)	Failure of registered Firm to sign oath and submit it to the Board.	Suspension/Revocation/ Reprimand/1500
661.57(1)	Failure of Firm to include Certificate of Registration firm number on offer to perform surveying services to the public.	Reprimand/1500
(2)	Failure of Firm to designate a surveyor of record for main office and for each branch office.	Reprimand/1500
(4)	Firm offering or performing surveying services without a current certificate of Firm registration.	Injunction/Reprimand/1500
(9)	Failure of Firm to cooperate in Board investigations by being unwilling to make files and pertinent records available to the registrant/licensee.	Reprimand/1500
(10)	Failure of Firm providing contract field crews to employ a full time R.P.L.S.	Reprimand/1500
661.60 (a)	Failure to respond to Board inquiries/orders	Reprimand/1500
661.62 (f) or 661.68	Failure to attend hearing if requested.	Default Judgment

Citation	Violation	Sanction on a First Offense
661.97	Failure of a registrant/licensee or Firm who receives a disciplinary action relative to the practice of land surveying in another jurisdiction to report such final disciplinary action to the Texas Board within 30 days.	Reprimand/1500
663.1	Failure of registrant/licensee to conduct practice with highest degree of moral and ethical standards.	Reprimand/1500
663.1(2)	Failure to notify the Board of any change of mailing address as it occurs	Reprimand/100
(3)	Failure to notify consumers of the name, mailing address, and phone number of the Board	Reprimand/100
663.3 (1)	Failure to accurately and truthfully represent ones capabilities and qualifications	Reprimand/100
(2)	Performing services for which he/she is not qualified	Reprimand/100
(3)	Evading statutory responsibility to client or employer	Reprimand/100
663.4 (1)	Performing surveying services if there exists any financial or other interest that may be in conflict with the obligation to render a faithful discharge of such services	Reprimand/1500
663.4 (4)	Failure to withdraw from employment at any time during such employment or engagement when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owned the client or employer	Reprimand/1500
(5)	Accepting remuneration from any party other than his/her client or employer for a particular project nor have any other direct or indirect financial interest in other services or phase of service to be provided for such project	Reprimand/1500
(6)	Failure to keep inviolate the confidences of his/her client or employer	Reprimand/1500
663.5	Failure to perform work with integrity, truthfulness and accuracy. Misleading the public.	Suspension/Revocation/ Reprimand/1500
(1)	Allowing a person who is not registered or licensed to exert control over professional work.	Reprimand/1500
(2)	Indulging in publicity that is false, misleading or deceptive.	Reprimand/100
(3)	Misrepresenting the amount or extent of prior education or experience to any employer, client, or the Board.	Reprimand/100

Citation	Violation	Sanction on a First Offense
(4)	Representing themselves as being engaged in a partnership or association when no partnership or association exists.	Suspension/Revocation/Reprimand/ 1500
(5)	Recommend to a client services of another for the purpose of collecting a fee for himself, without the knowledge and consent of client.	Reprimand/100
663.6 (1)	Failure to make known to the board any unauthorized practice of which the registrant has personal knowledge.	Reprimand/1500
(2)	Failure to divulge any information, of which the registrant has personal knowledge, related to any unauthorized practice to the Board upon request.	Reprimand/100
(3)	Delegate responsibility to, or aid or abet, an unauthorized person to practice or offer to practice.	Reprimand/1500
663.8 (1)	Failure to abide by and conform to the registration and licensing laws of the state.	Reprimand/1500
(2)	Failure to abide by and conform to the provisions of the state code and all local codes and ordinances.	Reprimand/1500
(3)	Violate, aid and abet another in violating a rule of conduct or engage in any conduct adversely affecting his/her fitness to practice.	Suspension/Revocation/ Reprimand/1500
(4)	Signing or impressing ones seal or stamp upon documents not prepared by him/her or knowingly permit ones seal or stamp to be used by any other person.	Suspension/Revocation/ Reprimand/1500
(5)	Submitting a request or a competitive bid to perform professional surveying services for a governmental entity or political subdivision of the State of Texas unless specifically authorized by state law.	Reprimand/100
663.9 (a)	Offering or promising to pay any commission, contribution, gift, favor, gratuity, or reward as an inducement to secure any specific work without full disclosure to all interested parties.	Reprimand/100
(b)	Making, publishing or cause to be made or published any representation or statement concerning ones professional qualifications or those of his/her partners or associates that is misleading.	Reprimand/100
(c)	Failure to have personal knowledge of documents, plats, maps or reports that bear the surveyor's seal or signature.	Reprimand/1500
(d)	Failure of the surveyor and/or Firm to maintain in a retrievable format all records and files pertaining to the preparation of a	Reprimand/1500

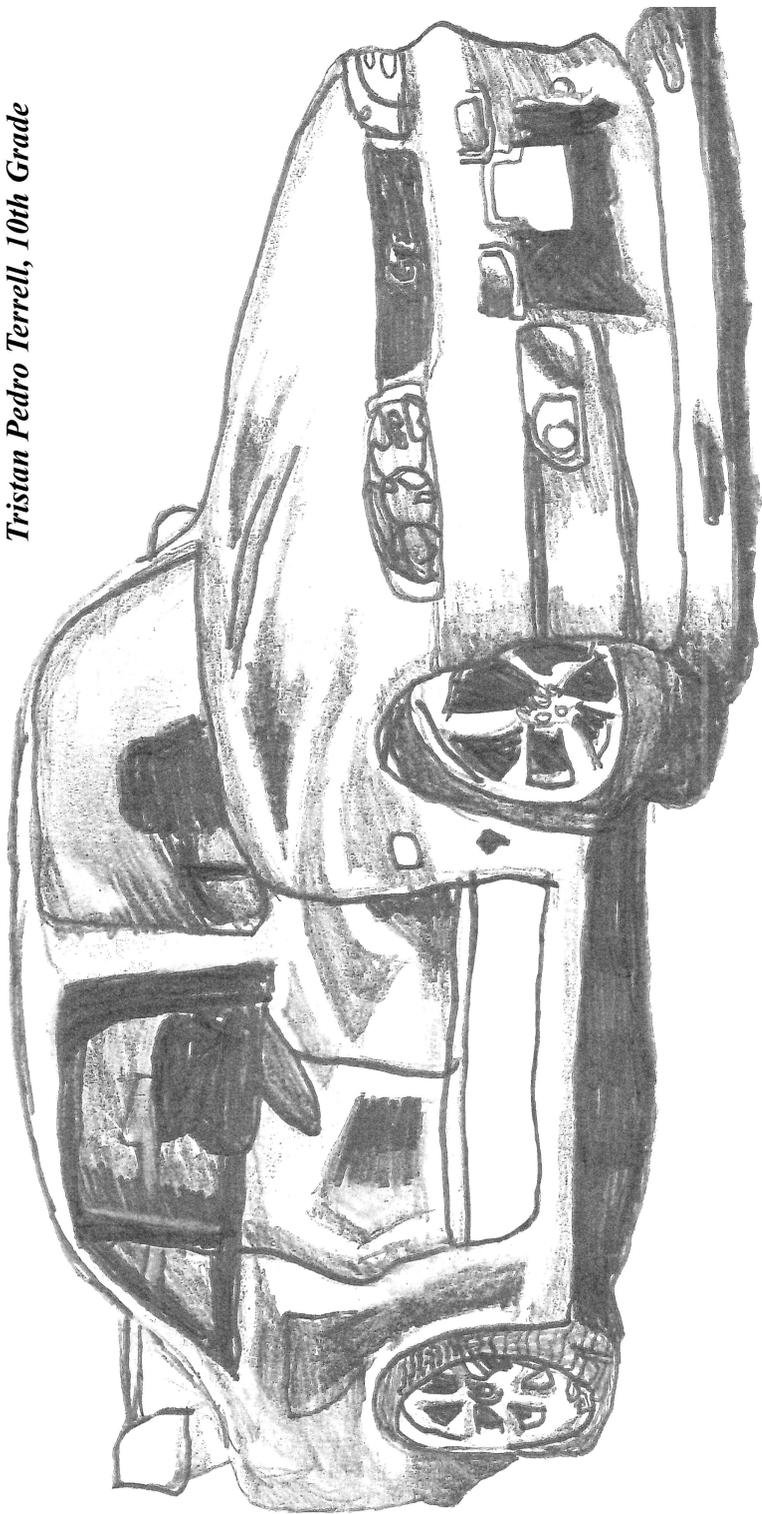
Citation	Violation	Sanction on a First Offense
	land survey document for a minimum of ten (10) years from the date of the document.	
663.10 (1)	Violating any provision of the Act or Rules.	Reprimand/1500
(2)	Circumventing or attempting to circumvent any provision of the Act or Rules.	Reprimand/1500
(3)	Participate in any plan, scheme or arrangement attempting to or having as its purpose the evasion of any provision of the Act or Rules.	Reprimand/1500
(4)	Failure to exercise reasonable care or diligence to prevent his/her partners, associates or employees from engaging in conduct which, if done by him/her, would violate any of the provisions of the Act or Rules.	Reprimand/1500
(5)	Engaging in any conduct that discredits or attempts to discredit the profession of surveying.	Reprimand/1500
(6)	Permit or allow ones professional identification, seal, form, business name or service to be used or made use of to make it possible to create the opportunity for the unauthorized practice of professional surveying by any person, or firm in this state.	Suspension/Revocation/ Reprimand/1500
(7)	Allowing an omission or making an assertion or representation that is fraudulent, deceitful or misleading or tends to create a misleading impression	Reprimand/1500
(8)	Aid or abet any unlicensed person in connection with the authorized practice of professional surveying or any firm or corporation in the practice of professional surveying unless carried on in accordance with the Act.	Suspension/Revocation/ Reprimand/1500
663.15	Failure to report areas to the least significant number compatible with the precision of closure	Reprimand/100
663.15	Failure to use equipment and methods of practice capable of attaining the tolerances specified	Reprimand/1500
663.16 (1)	Failure to respect junior and senior rights for boundary retracement.	Reprimand/1500
(2)	Failure to follow the footsteps of the original surveyor.	Reprimand/1500
(3)(A)	Failure to rely upon appropriate deeds and/or other documents including those for adjoining parcels, for the location of the boundaries of the subject parcel(s).	Reprimand/1500

Citation	Violation	Sanction on a First Offense
(3)(B)	Failure to assume the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed.	Reprimand/1500
(3)(C)	Failure to connect all boundaries to identifiable physical monuments related to corners of record dignity. In the absence of such monumentation, failure to report the surveyor's opinion of the boundary location by other appropriate physical evidence.	Reprimand/1500
(4)	Failure to follow the intent of the boundary location as evidenced by the record.	Reprimand/1500
(5)	Failure to respect the proper application of the rules of dignity (priority) of calls, and applicable statutory and case law of Texas.	Reprimand/1500
663.17 (a)	Failure to set monuments at sufficient depths to retain a stable and distinctive location or be of sufficient size to withstand the deteriorating forces of nature or be of such material that in the surveyor's judgment will best achieve this goal.	Reprimand/1500
(b)	Failure to set, or leave as found, an adequate quantity of monuments of a stable and reasonably permanent nature to represent or reference the property or boundary corners. Failure to show and describe survey markers with sufficient evidence of the location of such markers on the surveyors' drawing, written description or report.	Reprimand/1500
(c)	Failure to tie corners of record to the boundary of the affected tract in metes and bounds descriptions prepared to be used in easements.	Reprimand/1500
(d)	Failure to mark, in a way that is traceable to the responsible registrant or associated employer, all monuments set; when practical.	Reprimand/1500
663.18 (a)	Failure to personally apply surveyor's seal to all documents representing professional surveying	Reprimand/1500
(b)	Failure of registrant/licensee to ensure that document complies with all standards certified to.	Reprimand/1500
(c)	When preparing preliminary documents, failure to identify the purpose of the document, the surveyor of record and the surveyor's registration number, and the release date. Failure to note the following	Reprimand/1500

Citation	Violation	Sanction on a First Offense
	statement in the signature space: "Preliminary, this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document."	
663.19 (a)	Failure to delineate the relationship between record monuments and the location of boundaries surveyed. Failure to show such relationship on the survey plat, if a plat is prepared, and/or separate report and failure to recite such in the description with the appropriate record referenced thereon and therein.	Reprimand/1500
(b)	Failure to provide a definite and unambiguous identification of the location of boundaries and describe all monuments found or placed for descriptions prepared for defining boundaries.	Reprimand/1500
(c)	Failure to reference courses by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.	Reprimand/1500
(d)	Failure to note the firm name, Firm Registration Number, surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature and date surveyed on the plat.	Reprimand/1500
(e)	Failure to note and describe, upon the survey drawing, which boundary monuments were found or placed by the surveyor and failure to note other monuments of record dignity relied upon to establish the corners of the property surveyed.	Reprimand/1500
(f)	Failure to cite a reference on the drawing and the prepared description to the record instrument that defines the location of adjoining boundaries, if appropriate.	Reprimand/1500
(g)	If any report consists of more than one part, failure to note the existence of the other part or parts	Reprimand/1500
(h)	If a written narrative is prepared in lieu of a drawing/sketch to report the results of a survey, and there is a failure to contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.	Reprimand/1500

Citation	Violation	Sanction on a First Offense
663.11(a)(1)	Failure of the registrant to notify the Board in writing within 90 days of any felony or misdemeanor conviction	Reprimand/1500
(a) (2)	Failure of an applicant to state if he/she has ever been convicted of a felony or misdemeanor	Application Rejected Revocation
(a) (3)	Failure of the registrant/applicant to provide a summary of the conviction in sufficient detail to allow the Board to determine if it is applicable to the practice of land surveying	Application Rejected Revocation
663.20 (1)	Failure to apply and adhere to the rules of the Texas Board of Professional Land Surveying when establishing or delineating the perimeter boundary of the proposed subdivision.	Reprimand/1500
(2)	Failure to abide by, and conform to the provisions of the state code and any local codes and ordinances as to any other platting requirements.	Reprimand/1500
663.21 (1)	Falsifying the purpose of a metes and bounds description when preparing a description for a Political Subdivision	Reprimand/1500
(2)	Preparing a description for a Political Subdivision that is ambiguous and non-locatable on the ground by ordinary surveying procedures	Reprimand/1500
(3)	Failure to ensure record monuments or physical monuments called for in the description prepared for a Political Subdivision	Reprimand/1500
(4)	Failure to perform an on the ground survey for any course and distance recited in the description when such is not referenced in a recited record	Reprimand/1500
(5)	Failure to place the required notation on descriptions prepared for Political Subdivisions, “ This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.”	Reprimand/1500
664.6	Failure to maintain records to be used to support continuing education claimed in the event of an audit.	Reprimand/1500

Tristan Pedro Terrell, 10th Grade



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

2016 Specialty Crop Block Grant Program Request for Proposals

The Texas Department of Agriculture (TDA) is accepting proposals for the Specialty Crop Block Grant Program (SCBGP). The SCBGP is designed to solely enhance the competitiveness of specialty crops. Projects must demonstrate a positive measurable impact on the specialty crop industry.

Eligibility

Responses will **only** be accepted from producer, industry or community-based organizations involved with, or that promote specialty crops.

- Projects must demonstrate that they enhance the competitiveness of Texas' specialty crop industry.
- Project funds may only be used for activities benefiting specialty crops.
- Projects must benefit more than one individual, institution or organization. Grant funds will not be awarded for projects that directly benefit or provide a profit to a single organization, institution or individual.
- Applications will not be accepted where the primary applicant is an educational institution.
- Producer, industry or community-based organizations involved with specialty crops may partner with an educational institution; however, the primary applicant must be a producer, industry or community-based organizations involved with specialty crops.

Funding Parameters, Award Information and Notification

- Selected projects will receive funding on a *cost reimbursement basis*. Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.
- Projects may be funded at varying levels depending on the nature of the project.
- Projects must demonstrate strong justification for the requested budget, as well as, the potential for providing significant demonstrable benefits to Texas specialty crops.
- Where more than one (1) proposal on an eligible research topic is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.
- TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to execute a grant on the basis of a response submitted to this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP.
- The public announcements and written notifications will be made to all applicants and their affiliated agencies, organizations, or institutions. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

Submitting an Application Applications are currently being accepted, and must be submitted on the form provided by TDA by the submission deadline. Application form and guidance documents are available on TDA's website at www.TexasAgriculture.gov.

Applications must be complete and have all required documentation to be considered. Applications without required documentation will be returned. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by the applicant, and include all required supporting documentation.

Deadline for Submission of Responses

The complete application packet including the proposal with signatures must be RECEIVED by **5:00 p.m. (Central Time) on Thursday, March 10, 2015**. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. *Late or incomplete proposals will not be accepted. Applicants may not supplement or amend the application after the deadline.*

In addition, the narrative **must** be submitted via email to Grants@TexasAgriculture.gov in a format which allows the text copy function to be operational, such as Microsoft Word (.doc, .docx) or Adobe Acrobat (.pdf).

The preferred method of submission is electronic. Complete proposal narrative and application with signature must be submitted to: Grants@TexasAgriculture.gov

Contact Information

Physical Address:

Texas Department of Agriculture
Trade & Business Development - Grants Office
1700 North Congress Avenue
Austin, Texas 78701

Mailing Address:

Texas Department of Agriculture
Trade & Business Development - Grants Office
P.O. Box 12847
Austin, Texas 78711

For questions regarding submission of the proposal and TDA documentation requirements, please contact Sean Hilbe, Grant Coordinator, at (512) 463-6616 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201600327

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Filed: January 25, 2016

◆ ◆ ◆
Office of the Attorney General

Notice of Request for Proposals

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Office of the Attorney General (OAG) announces issuance of a Request for Proposal (RFP) for Zero-Based Budgeting (ZBB) Consultant services according to the specifications contained in the RFP No. 302-16-ZBB1 which has been posted on the following Electronic State Business Daily (ESBD) website as of January 22, 2016:

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122332

A pre-proposal conference will be held in the Ground Floor Conference Room, Price Daniel Sr. State Office Building, 209 W. 14th Street, Room 139, Austin, Texas 78701 at 10:00 a.m. CT on February 1, 2016.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The OAG shall make the final decision on any contract award or awards resulting from this RFP. The OAG has sole discretion and may reject any and all offers, or terminate this RFP, amend or re-issue this RFP. The OAG reserves the right to remedy technical errors in the RFP process, waive any informalities and irregularities relating to any or all offers and qualifications submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of services resulting from this RFP. The issuance of this RFP does not constitute a commitment by the OAG to award any contract.

Offers may be submitted by hand delivery, commercial delivery (e.g., FedEx, UPS, and DHL), or courier to the appropriate address listed below:

Office of the Attorney General
Procurement Division
Attn: Rick Blincoe, CTPM, CTCM
W. P. Clements Building
300 W. 15th St., 3rd Floor
Austin, Texas 78701-1649

The last day to submit proposals is February 22, 2016, (3:00 p.m.) Central Time (CT).

All dates are subject to change at OAG's discretion. Please monitor the Electronic State Business Daily (ESBD) website for updates, information and changes to the RFP.

The sole point of contact for inquiries concerning this RFP is:

Office of the Attorney General
Rick Blincoe CTPM, CTCM
W. P. Clements Building
300 W. 15th St., 3rd Floor
Austin, Texas 78701-1649
Phone: (512) 936-7928

rick.blincoe@texasattorneygeneral.gov

All communications relating to this RFP must be directed to the OAG contact person named above. All communications between respondents and other OAG staff members concerning this RFP are strictly prohibited. **Failure to comply with these requirements may result in proposal disqualification.**

TRD-201600334

Amanda Crawford
General Counsel
Office of the Attorney General
Filed: January 26, 2016

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Notice of Request for Proposals

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Office of the Attorney General (OAG) announces issuance of a Request for Proposal (RFP) for Indirect Cost Allocation Plan and Legal Billing Rates Consultant services according to the specifications contained in the RFP No. 302-16-LBC001, which has been posted on the following Electronic State Business Daily (ESBD) website as of January 22, 2016:

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122335

Pursuant to TGC 2254.029 disclosure requirement, the subject services were previously provided to the OAG by MGT of America, Inc.

A pre-proposal conference will be held in the Ground Floor Conference Room, Price Daniel Sr. State Office Building, 209 W. 14th Street, Room 139, Austin, Texas 78701 at 2:00 p.m. CT on February 1, 2016.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The OAG shall make the final decision on any contract award or awards resulting from this RFP. The OAG has sole discretion and may reject any and all offers, or terminate this RFP, amend or re-issue this RFP. The OAG reserves the right to remedy technical errors in the RFP process, waive any informalities and irregularities relating to any or all offers and qualifications submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of services resulting from this RFP. The issuance of this RFP does not constitute a commitment by the OAG to award any contract.

Offers may be submitted by hand delivery, commercial delivery (e.g., FedEx, UPS, and DHL), or courier to the appropriate address listed below:

Office of the Attorney General
Procurement Division
Attn: Rick Blincoe, CTPM, CTCM
W. P. Clements Building
300 W. 15th St., 3rd Floor
Austin, Texas 78701-1649

The last day to submit proposals is February 24, 2016, (3:00 p.m.) Central Time (CT).

All dates are subject to change at OAG's discretion. Please monitor the Electronic State Business Daily (ESBD) website for updates, information and changes to the RFP.

The sole point of contact for inquiries concerning this RFP is:

Office of the Attorney General
Rick Blincoe CTPM, CTCM
W. P. Clements Building
300 W. 15th St., 3rd Floor
Austin, Texas 78701-1649
Phone: (512) 936-7928

rick.blincoe@texasattorneygeneral.gov

All communications relating to this RFP must be directed to the OAG contact person named above. All communications between respondents and other OAG staff members concerning this RFP are strictly prohibited. **Failure to comply with these requirements may result in proposal disqualification.**

TRD-201600335
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: January 26, 2016

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Automobile Burglary and Theft Prevention Authority

Notice of Intent to Apply

The Automobile Burglary and Theft Prevention Authority (Authority or ABTPA) may consider issuance of the Fiscal Year 2017 (FY17) Request for Applications (RFA) to reduce the incidence of automobile burglary and theft in Texas at a regularly scheduled meeting held on February 24, 2016, if the Authority considers that there is sufficient interest of new applications.

To express interest, applicants that believe that they qualify may complete an Intent to Apply form located at www.txwatchyourcar.com under the tab Intent to Apply.

Only purposes provided for under *Texas Revised Civil Statutes Article 4413(37)* and consistent with the Authority may be provided in the Intent to Apply.

Intent to Apply Due Date

Eligible **new applicants** must submit a fully completed Intent to Apply form online on or before **5:00 p.m. February 23, 2016.**

Applicable Authority and Rules

All Automobile Burglary and Theft Prevention Authority grant programs are governed by one or more of the following statutes, rules, standards and guidelines.

- 1) Texas Revised Civil Statutes Article 4413(37).
- 2) Texas Administrative Code: Part 3; 43 TAC Chapter 57.
- 3) Uniform Grant Management Standards (UGMS) as promulgated by the Texas Comptroller of Public Accounts.
- 4) The current Automobile Burglary and Theft Prevention Grant Administrative Guide and subsequent adopted grantee instruction manuals.

Eligible Applicants

Law enforcement agencies, local prosecutors, judicial agencies, and neighborhood, community, business, and nonprofit organizations for programs designed to reduce the incidence of economic automobile theft are eligible to apply for grants for automobile burglary and theft prevention assistance projects. Nonprofit and for profit organizations shall be required to provide with their grant proposals sufficient documentation to evaluate the organization's credibility, the community support of the organization and the viability of the organization's existing activities in providing automobile burglary and theft prevention assistance.

Grant Type

This is a reimbursement grant.

Grant Term

The grant cycle is one (1) year, and will begin on September 1, 2016, and end August 31, 2017. No obligations or expenses may be incurred outside of the grant period.

Method of Application

If the Authority issues a request for application then the instructions will be provided.

Program Type

Only one or more of the following types of projects may be considered in the Intent to Apply:

Law Enforcement/Detection/Apprehension Projects - to establish automobile burglary and theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, or cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects - to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with automobile burglary and theft offenses.

Prevention and Anti-Theft Devices Projects - to distribute equipment or technology and/or to test experimental equipment or technology which is designed for automobile theft and burglary deterrence.

Reduction of the Sale of Stolen Vehicles or Parts Projects - to provide vehicle identification number labeling, including component part labeling, and etching methods designed to deter the sale of stolen vehicles or parts (includes inspections of facilities that operate motor vehicle part and component distribution enterprises).

Public Awareness and Crime Prevention/Education/Information Projects - to develop and provide public awareness information and education program(s) regarding automobile burglary and theft prevention; to provide education and specialized training to law enforcement officers in automobile burglary and theft prevention and interdiction procedures; and/or to provide information linkages between state law enforcement agencies on automobile burglary and theft crimes.

Supplanting Prohibited

Grant funds provided by the Authority under this RFP shall not be used to supplant federal, state or local funds that otherwise would be available for the same purposes.

Cash Match Requirement

All programs must provide at least a twenty (20%) percent cash match.

Basic Guidelines

- a) State Funds Availability - All awards by the Authority are subject to availability of state funds.
- b) Right of Refusal - The Authority reserves the right to reject any or all of the Intent to Apply forms submitted.
- c) Awards - Publishing the Intent to Apply does not obligate the Authority to fund any programs.
- d) Competitive Proposal Process - The proposal process for the Authority's Grant Program is competitive. Awards are based on a review of the grant proposal. New programs that submit an Intent to Apply and that were provided guidance on how to proceed are not guaranteed funding by the Authority nor removed from the competitive nature of the award process.

e) Final Selection - The Authority may select and award programs that best meet the statutory purposes and that reflect its current priorities. No appeal may be made from the Authority's decisions.

Contact Person

Bryan E. Wilson, ABTPA Director
Texas Automobile Burglary and Theft Prevention Authority
4000 Jackson Avenue
Austin, Texas 78731
(512) 465-1485
GrantABTPA@txdmv.gov
TRD-201600358
David Richards
General Counsel
Automobile Burglary and Theft Prevention Authority
Filed: January 27, 2016

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 215a ("RFP") from qualified, independent firms to serve as Financial Advisor to Comptroller. Comptroller desires to obtain the services of a Financial Advisor related to the document preparation, issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes ("Notes") as well as assistance in handling of disclosure issues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or after March 31, 2016.

Contact: Parties interested in submitting a proposal should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller will make the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at <http://esbd.cpa.state.tx.us> on Friday, February 5, 2016, after 10:00 a.m. Central Time ("CT").

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, February 12, 2016. Prospective respondents are encouraged to e-mail Questions to contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, February 19, 2016, Comptroller expects to post responses to questions as a revision to the *Electronic State Business Daily* notice on the issuance of the RFP. **Respondents shall be solely responsible for verifying timely receipt of Questions in the Issuing Office.**

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts, Section, no later than 2:00 p.m. CT, on **Friday, March 4, 2016. Late proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Proposals in the Issuing Office.**

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from the RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute

any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 5, 2016, 10:00 a.m. CT; Questions Due - February 12, 2016, 2:00 p.m. CT; Official Responses to Questions posted - February 19, 2016, or as soon thereafter as practical; **Proposals Due - March 4, 2016, 2:00 p.m. CT**, Contract Execution - March 31, 2016, or as soon thereafter as practical; and Commencement of Project Activities - on or after March 31, 2016.

TRD-201600351
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 27, 2016

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/01/16 - 02/07/16 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/01/16 - 02/07/16 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201600344
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 26, 2016

Texas Education Agency

Notice of Correction: Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 9, Year 1

Filing Date. January 27, 2016

Filing Authority. The availability of grant funds under Request for Applications #701-16-102 is authorized by Elementary and Secondary Education Act, Title IV, Part B, 21st Century Community Learning Centers, as amended.

The Texas Education Agency (TEA) published Request for Applications #701-16-102 concerning the Texas 21st Century Community Learning Centers Grant Program, Cycle 9, Year 1, in the January 22, 2016, issue of the *Texas Register* (41 TexReg 688).

The TEA is correcting the statutory purpose described in the notice, clarifying the funding source, and correcting the priority consideration portion of the selection criteria.

The description of the statutory purpose is corrected to read as follows: The Elementary and Secondary Education Act, Title IV, Part B, specifies that 21st Century Community Learning Centers funds are to be used to provide opportunities for communities to establish or expand

activities outside regular school hours in community learning centers that (1) provide opportunities for academic enrichment, including tutorial services to help students, particularly students who attend low-performing schools, to meet state and local student academic achievement standards in the core academic subjects of mathematics, reading, science, and social studies; (2) offer students a broad array of additional services, programs, and activities such as youth development activities; drug- and violence-prevention programs; counseling programs; art, music, and recreation programs; technology education programs; and character education programs, all designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development.

The funding source is corrected to clarify that this project is funded 100 percent from Title IV, Part B, of the Elementary and Secondary Education Act, as amended. Project amounts remain the same.

Selection Criteria. Priority consideration under this section is corrected to read as follows: Priority consideration will be given to applications that (1) are submitted jointly by eligible entities consisting of not less than one local education agency receiving funds under Part A of Title I and another eligible entity; and (2) have attached written letter(s) of support for local sustainability signed by a majority of the elected members of the local school board(s) or the governing board(s) of the charter school(s) from which students will be served. All other parts of this section remain the same.

The sections regarding eligible applicants, dates of project, applicant's conference, requesting the application, and deadline for receipt of applications remain the same.

TRD-201600349

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 27, 2016



Request for Prekindergarten Progress Monitoring Instruments Submissions

Filing Date. January 27, 2016

Filing Authority. Texas Education Code, §29.169(c)

Description. The Texas Education Agency (TEA) is notifying publishers, school districts, and charter schools that progress monitoring instruments (English and Spanish) for students in prekindergarten may be submitted for review for inclusion on the *2016-2017 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments*.

Texas Education Code (TEC), §29.169, authorizes the commissioner of education to develop recommendations for school districts to use student assessment instruments to measure and monitor students' success in prekindergarten.

In accordance with the TEC, §29.169, a school district shall select and implement appropriate methods for evaluating the district's program classes by measuring student progress and shall make data from the results of program evaluations available to parents. A school district may administer diagnostic assessments to students in a program class to evaluate student progress but may not administer a state standardized assessment instrument. An assessment instrument administered to a prekindergarten program class must be selected from a list of appropriate prekindergarten assessment instruments identified by the commissioner.

Program Requirements. To be eligible to receive grant funding under the high-quality prekindergarten grant program, a school district or charter school must measure the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines. Each district or charter school that receives grant funding must select a progress monitoring tool or a combination of tools from the *Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments* to measure one or more of the domains listed in Table 1.

Domain	Concepts to be Assessed
Social and Emotional Development	<ul style="list-style-type: none"> • Self Concept Skills • Self Regulation Skills <ul style="list-style-type: none"> ○ Behavior Control ○ Emotional Control ○ Control of Attention • Relationships with Others • Social Awareness Skills
Language and Communication	<ul style="list-style-type: none"> • Listening Comprehension Skills • Speaking (Conversation) Skills • Speech Production Skills • Vocabulary Skills • Sentences and Structure Skills
Emergent Literacy – Reading	<ul style="list-style-type: none"> • Motivation to Read Skills • Phonological Awareness Skills • Alphabet Knowledge Skills • Comprehension of Text Read Aloud Skills
Emergent Literacy – Writing	<ul style="list-style-type: none"> • Motivation to Write Skills • Conventions in Writing • Concepts about Print Skills
Mathematics	<ul style="list-style-type: none"> • Counting Skills • Adding To/Taking Away Skills • Geometry and Spatial Sense Skills • Measurement Skills • Classification and Patterns Skills

Selection Criteria Specific to Prekindergarten Progress Monitoring Instruments. Publishers, school districts, and charter schools will be responsible for submitting instruments they wish to have considered for inclusion on the *2016-2017 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments*. All instruments submitted for review must be based on scientific research and must address social and emotional development; language and communication; emergent literacy - reading; emergent literacy - writing; and/or mathematics.

Submissions must include a concise summary of the evidence base and a brief discussion of how the instrument aligns with the cited research. Evidence must demonstrate that the instrument meets reasonable standards of reliability and validity. Though no single test will identify potential risk or predisposition toward reading difficulties or dyslexia, submissions must include evidence of the instrument's reliability and validity for identifying children at risk of reading failure, including children who may have dyslexia or related disorders. At a minimum, submissions should include evidence of internal consistency reliability (e.g., alpha coefficients) and construct/criterion validity (e.g., correlations with measures of similar and/or dissimilar constructs, results of confirmatory factor analyses). Evidence of predictive validity should be submitted for measures that claim to predict future status or the likelihood of subsequent success. If alternate forms are provided, evidence of alternate-form reliability should be submitted. See the following *Guidelines for the Implementation of TEA Criteria for the Evaluation of English and Spanish Prekindergarten Progress Monitoring Instruments* for additional information. Instruments will be evaluated in terms of their validity and their reliability according to the Standard for Educational and Psychological Testing (American Educational Research Association and the American Psychological Association, 2014). Ease of administration/implementation by the classroom teacher will also be evaluated. Consideration will be given to the number of domains covered by the instrument and the number of additional instruments that would need to be purchased by schools to cover all required domains.

The *2016-2017 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments* will be available in spring 2016, so that school districts and open-enrollment charter schools may order instruments for the 2016-2017 school year. Instruments selected for the commissioner's list will remain on the list for at least one school year.

Guidelines for the Implementation of TEA Criteria for the Evaluation of English and Spanish Prekindergarten Progress Monitoring Instruments

1. The instrument must be intended for use in prekindergarten.
2. Teachers must use a standardized measure to assess student performance. This means the assessment has a common set of questions, tasks, and materials and the child's score is based on a normative sample of children. This is important because the child's performance can be related to the performance of a large number of other children of the same age.
3. Whenever possible, skill levels of children who speak a language other than English should be assessed in both their home language and English. Measurement of home language skill level is essential when children are enrolled in bilingual instructional programs.

Formal assessment approaches include:

A. Screening Measures: Brief assessment of skills that are important early indicators of later school competence. These provide information on entry-level skills at the beginning of the prekindergarten year.

B. Progress Monitoring Measures: Brief measures that are conducted on a routine basis to provide information on what children are learning and rates of improvement across the prekindergarten year. Results of progress monitoring measures should be predictive of more lengthy (e.g., comprehensive) standardized measures. As progress monitoring measures are brief, teachers can conduct them at least three times across a school year and learn who is or is not demonstrating adequate progress. With this knowledge, teachers report that they no longer have to "guesstimate" what children are learning and can adapt their curricular activities and instructional approaches to be more responsive to the children's needs.

C. Diagnostic Assessments: This approach is used to obtain a more in-depth analysis of a child's strengths and weaknesses in order to determine what learning supports are needed. Children with mental, physical, or emotional difficulties that may require special services benefit greatly from early detection and diagnosis. For such children, diagnostic assessments can be very helpful. While diagnostic assessments do not determine the underlying reasons for a child's lack of progress, they can suggest a special need. There are many reasons why a child may have difficulty with the early acquisition of academic or social skills. Any or all of the following can explain problems in learning: health, unidentified disabilities, family concerns, or social and emotional difficulties. Fortunately, specific assessments designed to identify underlying problems and disabilities exist and should be used if necessary. Once teachers discover the underlying causes for a child's difficulties in learning, they can seek appropriate assistance for the child and the child's family.

Effective preschool programs should use multiple forms of assessment, track individual children's progress in a scientifically reliable way, and use assessment to inform instruction. Assessments, when used carefully and appropriately, can resolve - rather than create - educational problems. Because young children experience incredible growth and learning at an uneven and sometimes unpredictable pace, it is imperative that teachers and caregivers have the necessary training to think about and use assessments well.

4. The length of time needed to administer each domain measurement must not exceed 20 minutes per student. The cumulative assessment time must not exceed 100 minutes per student. Some criteria may be measured through observation, informal assessments, reflection, collection of children's work in portfolios, or checklists. Informal assessments may not be the primary method for monitoring children's progress.

5. A measure must directly assess social and emotional development; language and communication; emergent literacy - reading; emergent literacy - writing; and/or mathematics, as they are specified in the Texas Prekindergarten Guidelines respectively. Instruments that only measure reading-related skills (e.g., book and print awareness) are insufficient as measures of early reading.

6. The measure should have a scoring structure that yields a separate score for each domain included for prekindergarten. For this review, an instrument is only considered to "assess" a domain if it provides a score for that domain.

7. The instrument must be individually administered.

8. Administration of the instrument by a classroom teacher must be allowable. Specifically, the qualifications for those who administer and interpret the instrument (as specified in publisher's guidelines) should be within the coursework and/or licenses typically completed by teachers certified to teach in Texas public schools. Administration procedures requiring timing, the establishment of basals and ceilings, complex judgments, and/or subjective ratings that require the special training of a diagnostician are inappropriate for teacher administration.

9. If the instrument is norm-referenced, it must have an appropriate national norming sample, in terms of the sample size and the groups represented. Norm-referenced tests must be representative of the population of students in the grade(s) for which the measure is intended. Criterion-referenced decisions about criterion mastery, non-mastery, risk, and impairment have special requirements for reliability and validity (see Guidelines 10 and 11).

10. At a minimum, a measure must possess adequate reliability as demonstrated by independent research. For tests built using classical test theory, this should include internal consistency and alternate form and/or test-retest reliability data as appropriate for the measure's purpose and intended use. For tests developed using item response models, suitable psychometric data from the test development process should be submitted, including, but not limited to, the standard error of measurement, indices of item discrimination and difficulty, and total test information. Classifications resulting from criterion-referenced tests must be shown to be reliable. Instruments that depend on examiner ratings must demonstrate appropriate forms of inter-rater reliability.

11. Decisions based on test results must be supported by validity evidence established by independent research. Evidence of construct, content, criterion validity (concurrent or predictive), and discriminant and convergent validity are appropriate, depending on the purpose and intended uses of the measure. Studies of test dimensionality (e.g., factor analysis), differential item functioning, or predictive utility involving multiple measures should be provided wherever available. Classifications resulting from criterion-referenced tests must be shown to be valid and must demonstrate both sensitivity and specificity.

12. Normative and technical data for the instrument must be no more than 15 years old (2001 or later).

13. While it is desirable to determine risk of dyslexia and other reading-related difficulties, there exists no single reliable and valid measurement method for determining such risks. According to research in measuring reading disabilities, instruments that measure phonological awareness and single-word decoding may have utility in making judgments about risk associated with dyslexia and other reading disabilities. Instruments that include reliable and valid measures of phonological awareness and single-word decoding will satisfy the commissioner's requirements related to the identification of risk for disability or dyslexia, pending further research and further communication from TEA.

Please note that all submissions will be reviewed using the *Guidelines for the Implementation of TEA Criteria for the Evaluation of English and Spanish Prekindergarten Progress Monitoring Instruments* as an outline for evaluation; thus, it is highly recommended that all submissions directly address each guideline. Further, online or electronic tests submitted for evaluation must include online access information (e.g., web address, login, password) and/or an installable copy of the software; in addition, a paper version of the submission must be received by the deadline. Submissions must include the name, direct line phone number, and email address for a primary contact person who can be contacted in the event reviewers need to ask questions or request more information pertaining to the submission. Delays in responding to reviewers' questions may result in an incomplete review; products with incomplete reviews will not be considered for inclusion on the *Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments*.

Proposals must be submitted to Janice Keizer, Texas Comprehensive Center, 4700 Mueller Boulevard, Austin, Texas 78723-3081 by 5:00 p.m. (Central Time), March 4, 2016, to be considered for inclusion on the *2016-2017 Commissioner's List of Approved Prekindergarten*

Progress Monitoring Instruments. A rolling review will be implemented and instruments will be reviewed in the order they are received.

Further Information. For clarifying information, contact the TEA Department of Standards and Programs at (512) 463-9087.

TRD-201600347

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 27, 2016

Education Service Center, Region 16

Official Notice for Election of Place 3 and 6

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center (ESC), an organization that provides educational services to 62 school districts and two charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8:00 a.m. to 5:00 p.m.) Monday through Thursday, (8:00 a.m. to 4:00 p.m.) Friday, beginning Monday, February 1, 2016. Deadline for filing is Saturday, February 20, 2016, at 4:00 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 4:00 p.m., February 20, 2016. Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, Texas 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 3: Counties of Dallam, Hartley, Moore, Oldham, Potter (except Amarillo Independent School District), and Sherman

Place 6: That part of Potter and Randall Counties included in the boundaries of the Amarillo Independent School District

To hold the office of an Education Service Center Board of Director, one must:

- Be a United States of America citizen;
- Be at least 18 years of age;
- Be a resident of the region served and of the geographic area included in the place designated outlined above;

To hold the office of Board member, one may not:

- Be engaged professionally in education;
- Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 ESC Board has determined that no election will be held.

TRD-201600317

Ray Cogburn

Executive Director

Education Service Center, Region 16

Filed: January 25, 2016

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Wa-

ter 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 March 7, 2016. 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 March 7, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Allied Waste Services of Fort Worth, LLC; DOCKET NUMBER: 2015-1334-PST-E; IDENTIFIER: RN101443307; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.48(a), by failing to ensure that the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems; PENALTY: \$40,419; Supplemental Environmental Project offset amount of \$16,168; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: American Water Operations and Maintenance, Incorporated; DOCKET NUMBER: 2015-0606-WQ-E; IDENTIFIER: RN105671531; LOCATION: Fort Hood, Bell County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of sewage into or adjacent to water in the state; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: BVE ENTERPRISES INCORPORATED dba Easy Stop; DOCKET NUMBER: 2015-1687-PST-E; IDENTIFIER: RN102353729; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tanks (USTs);

30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$6,401; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: CIRCLE K STORES INCORPORATED; DOCKET NUMBER: 2015-1407-PST-E; IDENTIFIER: RN102250271; LOCATION: Lake Dallas, Denton County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals and the amount still remaining in the tank each operating day; 30 TAC §334.42(i), by failing to remove and properly dispose of liquid or debris in the underground storage tank system's spill buckets and manways within 96 hours of discovery after an agency-authorized inspection; 30 TAC §334.603(a)(2), by failing to ensure that a Class B operator trained and certified all Class C operators; and 30 TAC §115.248(1) and Texas Health and Safety Code, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system; PENALTY: \$17,587; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Ballinger; DOCKET NUMBER: 2015-1754-PWS-E; IDENTIFIER: RN101409928; LOCATION: Ballinger, Runnels County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2011 - December 31, 2013 monitoring period; PENALTY: \$796; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Deport; DOCKET NUMBER: 2015-1674-PWS-E; IDENTIFIER: RN101390102; LOCATION: Deport, Lamar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii) and (iv), 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(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours of a low chlorine residual event using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: \$235; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Huntsville; DOCKET NUMBER: 2015-1482-MWD-E; IDENTIFIER: RN101612471; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010781003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: City of Lueders; DOCKET NUMBER: 2015-1591-PWS-E; IDENTIFIER: RN101391340; LOCATION: Lueders, Jones County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(1)(B) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level for coliform bacteria; and 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect triennial lead and copper samples at the required ten sample sites, have the samples analyzed at a TCEQ approved laboratory, and submit the results to the executive director; PENALTY: \$588; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Robinson; DOCKET NUMBER: 2015-1620-WQ-E; IDENTIFIER: RN105550974; LOCATION: Robinson, McLennan County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit for Small Municipal Separate Storm Sewer Systems; PENALTY: \$21,250; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Doughtie Construction Company, Incorporated; DOCKET NUMBER: 2015-1309-WQ-E; IDENTIFIER: RN107401127; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR150011160, Part III, Section D.2, by failing to post the Texas Commission on Environmental Quality site notice near the main entrance of the construction site; 30 TAC §305.125(1) and TPDES GP Number TXR150011160, Part III, Section C, by failing to prepare and implement a Stormwater Pollution Prevention Plan; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES GP Number TXR150011160, Part III, Section G.1, by failing to design, install, and maintain erosion and sediment controls; TWC, §26.121(a)(2), 30 TAC §305.125(1), and TPDES GP Number TXR150011160, Part V.1, by failing to prevent the unauthorized discharge of waste into or adjacent to water in the state; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES GP Number TXR150011160, Part III, Section F.6.d, by failing to remove accumulations of sediment at a frequency that minimizes offsite impacts; PENALTY: \$6,814; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713)-3500.

(11) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2015-1416-IWD-E; IDENTIFIER: RN100210665; LOCATION: La Porte, Harris County; TYPE OF FACILITY: organic chemical manufacturing facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000440000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers

002 and 003, by failing to comply with permitted effluent limitations; PENALTY: \$12,600; Supplemental Environmental Project offset amount of \$5,040; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2015-1382-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1317, Special Terms and Conditions Number 24, and Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$6,563; Supplemental Environmental Project offset amount of \$2,625; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: FORT WORTH EXCAVATING, INCORPORATED; DOCKET NUMBER: 2015-1554-WQ-E; IDENTIFIER: RN107248270; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Steven Van Lindingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: KIA ENTERPRISES, INCORPORATED dba Iffi Stop 1 Food Mart; DOCKET NUMBER: 2015-1431-PWS-E; IDENTIFIER: RN101737534; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A) and TCEQ Agreed Order Docket Number 2007-0918-PWS-E, Ordering Provision Number 2.d.i., by failing to submit well completion data before placing the well into service; and 30 TAC §290.46(n)(1) and TCEQ Agreed Order Docket Number 2007-0918-PWS-E, Ordering Provision Number 2.d.ii., by failing to provide accurate up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank to commission personnel at the time of the investigation; PENALTY: \$200; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Nerro Supply, LLC dba Bayridge Subdivision Water System; DOCKET NUMBER: 2015-1662-PWS-E; IDENTIFIER: RN101241255; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average, for the second and third quarters of 2015 and failing to timely provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for TTHM during the second quarter of 2015; PENALTY: \$175; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: PATTON VILLAGE WATER CO., INCORPORATED; DOCKET NUMBER: 2015-1473-PWS-E; IDENTIFIER: RN102678307; LOCATION: Patton Village, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having

a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the well; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$2,736; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: PLUM AGGREGATE OPERATING COMPANY, LLC.; DOCKET NUMBER: 2015-1696-WQ-E; IDENTIFIER: RN106396757; LOCATION: Plum, Fayette County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(18) COMPANY: R. J. SMELLEY COMPANY, INCORPORATED; DOCKET NUMBER: 2015-0947-WQ-E; IDENTIFIER: RN105665772; LOCATION: Cresson, Parker County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(b), by failing to register the site as an APO no later than the 10th business day before the beginning date of regulated activities; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Riviera Water System, Incorporated; DOCKET NUMBER: 2015-1644-PWS-E; IDENTIFIER: RN101251999; LOCATION: Riviera, Kleberg 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 (DLQOR) to the executive director 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 executive director regarding the failure to submit DLQORs; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the maximum contaminant level for combined uranium; 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 executive director regarding the failure to conduct radionuclide monitoring and the failure to submit DLQORs; PENALTY: \$1,222; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Smith Oil Company, Incorporated; DOCKET NUMBER: 2015-1301-PST-E; IDENTIFIER: RN101659936; LOCATIONS: Hamilton and Marshall, Hamilton County; TYPE OF

FACILITY: common carrier and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$22,720; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 236-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: SUBA BUSINESS LLC dba Speedo Gas Food Store; DOCKET NUMBER: 2015-1669-PST-E; IDENTIFIER: RN102327079; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Via Bayou Incorporated; DOCKET NUMBER: 2015-1495-MWD-E; IDENTIFIER: RN102341062; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: WE Hereford, LLC; DOCKET NUMBER: 2015-1522-AIR-E; IDENTIFIER: RN105440804; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: ethanol plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 214511 within 24 hours of discovery of the emissions event; and 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 75702, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$1,350; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: WTG FUELS, INCORPORATED; DOCKET NUMBER: 2015-1542-PWS-E; IDENTIFIER: RN102252459; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect a routine distribution water sample for coliform analysis; 30 TAC §290.109(c)(4)(C) and §290.122(c)(2)(A) and (f), by failing to collect raw groundwater source *Escherichia coli* (*E. coli*) samples from the one active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect a raw groundwater source *E. coli* sample; 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 executive director regarding exceedance of the acute maximum contaminant level for nitrate, and the failure to conduct routine coliform monitoring; PENALTY: \$1,163; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-201600333



Notice of District Petition

Notices issued January 21, 2016.

Internal Control No. D-12022015-103; Nugotex Investment Group, Ltd. (Petitioner) filed a petition for creation of Harris County Water Control and Improvement District No. 163 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 113.989 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. In compliance with Texas Local Government Code §42.042 the City of Houston consented to the creation of the proposed District. The petition further states that the proposed District will: (1) construct, acquire, improve, repair, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (2) control, abate, amend, gather, conduct, divert and control local storm waters and other harmful excesses of water; (3) acquire, finance, operate, maintain such additional facilities, systems, plants and enterprises, as shall be consistent with all the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$5,750,000 for drainage facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/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 web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested 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) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their

consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201600346
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 27, 2016



Notice of Hearing

3 B&J WASTEWATER COMPANY, INC.

SOAH Docket No. 582-16-1893

TCEQ Docket No. 2015-0565-MWD

Proposed Permit No. WQ0014911002

APPLICATION.

3 B&J Wastewater Company, Inc., c/o Austin-Ronald Reagan Boulevard LLC, 4521 Sharon Road, Suite 115, Charlotte, North Carolina 28211, a land developer, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014911002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014911001 which expired on December 1, 2013, but was not constructed.

The facility will be located approximately 0.45 mile northwest of the intersection of County Road 248 and Westridge Lane in Williamson County, Texas 78622. The treated effluent will be discharged to an unnamed tributary; thence to North Fork San Gabriel River in Segment No. 1251 of the Brazos River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 1251 are high aquatic life use, public water supply, aquifer protection, and primary contact recreation. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and 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 regu-

latory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Georgetown Public Library, 402 West 8th Street, Georgetown, Texas. This website contains an electronic map of the site or facility's general location and 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=30.751944&lng=-97.826944&zoom=13&type=r>.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - February 29, 2016

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 December 17, 2015. 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.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from 3 B&J Wastewater Company, Inc. at the address stated above or by calling Mr. Aaron Laughlin, P.E., Steger Bizzell at (512) 930-9412.

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: January 15, 2016

TRD-201600249

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 20, 2016



Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of 3DR LLC d/b/a Shell Food Mart

SOAH Docket No. 582-16-2030

TCEQ Docket No. 2015-1134-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. - February 18, 2016

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 December 7, 2015 concerning assessing administrative penalties against and requiring certain actions of 3DR LLC d/b/a Shell Food Mart, for violations in Wichita County, Texas, of: Tex. Water Code §26.3475(a) and (c)(1) and 30 Tex. Admin. Code §334.50(b)(1)(A) and (b)(2).

The hearing will allow 3DR LLC d/b/a Shell 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 3DR LLC d/b/a Shell 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 3DR LLC d/b/a Shell 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. 3DR LLC d/b/a Shell Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

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: January 25, 2016

TRD-201600330

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2016



Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Roy Station Company

SOAH Docket No. 582-16-1894

TCEQ Docket No. 2015-0359-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. - February 11, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 5, 2015 concerning assessing administrative penalties against and requiring certain actions of ROY STATION COMPANY, for violations in Williamson County, Texas, of: Tex. Water Code §26.3475(a), (c)(1), and (d) and 30 Tex. Admin. Code §§334.49(a)(1) and 334.50(b)(1)(A) and (b)(2).

The hearing will allow ROY STATION COMPANY, 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 ROY STATION COMPANY, 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 ROY STATION COMPANY 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. ROY STATION COMPANY, 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 Jake Marx, 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.

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: January 21, 2016

TRD-201600270

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 22, 2016



Notice of Public Hearing

On Assessment of Administrative Penalties and Requiring Certain Actions of Fuel Centers Environmental Management, LLC d/b/a Tetco 734

SOAH Docket No. 582-16-1892

TCEQ Docket No. 2015-0850-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. - February 11, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 23, 2015 concerning assessing administrative penalties against and requiring certain actions of Fuel Centers Environmental Management, LLC d/b/a Tetco 734, for violations in Collin County, Texas, of: Tex. Water Code §26.3475(a), (c)(1), and (d) and 30 Tex. Admin. Code §§334.49(a)(1), 334.50(b)(1)(A) and (b)(2), and 334.602(a).

The hearing will allow Fuel Centers Environmental Management, LLC d/b/a Tetco 734, 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 Fuel Centers Environmental Management, LLC d/b/a Tetco 734, 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 Fuel Centers Environmental Management, LLC d/b/a Tetco 734 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. Fuel Centers Environmental Management, LLC d/b/a Tetco 734, 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 Jake Marx, 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.

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: January 21, 2016

TRD-201600271

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 22, 2016



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 305 and 327

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new §305.132 of 30 TAC Chapter 305, Consolidated Permits; and amended §327.1 and proposed new §327.32 of 30 TAC Chapter 327, Spill Prevention and Control.

The proposed rulemaking would implement Senate Bill 912, 84th Texas Legislature, 2015, by including volume-based exemption from reporting requirements for certain accidental discharges or spills of treated or untreated wastewater from wastewater treatment facilities and collection systems in the new and amended sections.

The commission will hold a public hearing on this proposal in Austin on March 1, 2016, at 2:00 p.m. in Building E, Room 201S, at the com-

mission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2015-024-305-CE. The comment period closes March 7, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Macy Beauchamp, Compliance and Enforcement Division, (512) 239-0437.

TRD-201600280

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 22, 2016



Notice of Request for Public Comment and Notice of Public Meeting to Receive Comments on One Total Maximum Daily Load for Indicator Bacteria in Jarbo Bayou

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment one draft Total Maximum Daily Load (TMDL) for Indicator Bacteria in Jarbo Bayou in Galveston County.

The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL for indicator bacteria in one assessment unit (AU) in Segment 2425B in Galveston County, and the decision to join the implementation efforts of an approved, adjacent Implementation Plan (I-Plan).

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances.

The Coordination Committee for this project petitioned to join the implementation efforts of the Bacteria Implementation Group (BIG), which has an approved I-Plan in a large area adjacent to Jarbo Bayou. On September 9, 2015, the BIG members voted unanimously to accept the addition of the Jarbo Bayou bacteria TMDL watershed to the area covered by the BIG I-Plan. The commission also requests comments on the decision to join the efforts of this existing I-Plan.

After the public comment period, the TCEQ may revise the draft TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. The commission will also consider approving the decision to join the existing BIG I-Plan. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments received will be made available on the TCEQ's website. The TMDL will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action by the EPA. Upon approval by the EPA, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting for the draft TMDL will be held on **February 25, 2016, at 6:00 p.m. at the Clear Lake Shores Club House, 931 Cedar Street, Clear Lake Shores, Texas 77565.**

At this meeting, individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments on the draft TMDL and the decision to join the existing BIG I-Plan should be submitted to Lauren Oertel, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. Comments may be submitted electronically to www.tceq.texas.gov/rules/ecomments/ by midnight on March 7, 2016, and should reference the *One Total Maximum Daily Load for Indicator Bacteria in Jarbo Bayou*.

For further information regarding the draft TMDL and the decision to join the existing BIG I-Plan, please contact Lauren Oertel at (512) 239-3604 or lauren.oertel@tceq.texas.gov. Copies of the draft TMDL will be available and can be obtained via the commission's website at: www.tceq.texas.gov/waterquality/tmdl/tmdlnews.html or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-201600282

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 22, 2016



Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft January 2016 Update to the Water Quality Management Plan (WQMP) for the State of Texas.

Download the draft January 2016 WQMP Update at http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than 5:00 p.m. on March 7, 2016.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-201600332

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 26, 2016



Texas Facilities Commission

Request for Proposals #303-7-20535

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-7-20535. TFC seeks a five (5) or ten (10) year lease of approximately 12,704 square feet that consists of 12,509 square feet of office space and 195 square feet of outdoor employee lounge area in New Braunfels, Texas.

The deadline for questions is February 17, 2016, and the deadline for proposals is March 9, 2016, at 3:00 p.m. The award date is April 20, 2016, TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122322.

TRD-201600274

Kay Molina

General Counsel

Texas Facilities Commission

Filed: January 22, 2016



Request for Proposals #303-7-20536

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-7-20536. TFC seeks a five (5) or ten (10) year lease of approximately 2,656 square feet of space that consists of 2,461 square feet of office space and 195 square feet of outdoor employee lounge area in Burnet or Marble Falls, Texas.

The deadline for questions is February 16, 2016, and the deadline for proposals is February 23, 2016, at 3:00 p.m. The award date is March 16, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122352.

TRD-201600313
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 25, 2016



Request for Proposals #303-7-20538

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Motor Vehicles (TxDMV), announces the issuance of Request for Proposals (RFP) #303-7-20538. TFC seeks a five (5) or ten (10) year lease of approximately 3,141 square feet of office space in Corpus Christi, Texas.

The deadline for questions is February 16, 2016, and the deadline for proposals is March 3, 2016, at 3:00 p.m. The award date is April 20, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122280.

TRD-201600251
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 20, 2016



Request for Proposals #303-7-20539

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Motor Vehicles (TxDMV), announces the issuance of Request for Proposals (RFP) #303-7-20539. TFC seeks a five (5) or ten (10) year lease of approximately 3,787 square feet of office space in Pharr, Texas.

The deadline for questions is February 16, 2016, and the deadline for proposals is March 10, 2016, at 3:00 p.m. The award date is April 20, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease

on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122364.

TRD-201600316
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 25, 2016



Request for Proposals #303-7-20540

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-7-20540. TFC seeks a five (5) or ten (10) year lease of approximately 20,813 square feet of office space in S.E. Houston, Texas.

The deadline for questions is February 17, 2016, and the deadline for proposals is March 7, 2016, at 3:00 p.m. The award date is April 20, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122282.

TRD-201600252
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 20, 2016



Request for Proposals #303-7-20542

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-7-20542. TFC seeks a five (5) or ten (10) year lease of approximately 1,756 square feet of space that consists of 1,476 sq. ft. of office space and 280 sq. ft. of warehouse/workroom space in San Marcos, Hays County, Texas.

The deadline for questions is February 16, 2016, and the deadline for proposals is February 23, 2016, at 3:00 p.m. The award date is March 16, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122395.

TRD-201600337

Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 26, 2016



Request for Proposals #303-7-20543

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), the Department of Aging and Disability Services (DADS), and the Department of State Health Services (DSHS), announces the issuance of Request for Proposals (RFP) #303-7-20543. TFC seeks a five (5) or ten (10) year lease of approximately 14,093 square feet of office space in Texarkana, Texas.

The deadline for questions is February 17, 2016, and the deadline for proposals is February 29, 2016, at 3:00 p.m. The award date is March 16, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122398.

TRD-201600338
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 26, 2016



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 November 2, 2015 through January 4, 2016. 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, January 29, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, February 29, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: Valero Refining - Texas, L.P.

Location: The project site is located in the Corpus Christi Ship Channel (CCSC) along the southern shoreline near the Tule Lake Turning Basin in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 27.817826 North; Longitude: 97.475345 West

Project Description:

- The applicant proposes to:
- 1) Hydraulically and/or mechanically dredge a new 12.21-acre (492,000 cubic yards) basin to a depth of -45 feet mean low tide (MLT) in the CCSC with side slopes of the basin being constructed at 3:1;
 - 2) Place the material in the following Dredged Material Placement Areas (DMPAs) - Suntime DMPA, DMPA No. 6, South Shore DMPA Cell A and DMPA Cell B, Herbie Maurer DMPA, or DMPA 1;
 - 3) Construct a 50-foot-wide by 140-foot-long jetty platform;
 - 4) Construct a 25 by 100-foot approach trestle;
 - 5) Construct a 20 by 130-foot pipe rack;
 - 6) Construct a 3 by 260-foot catwalk with four 72-inch diameter breast-ing structures. The catwalk will extend approximately 130 feet both east and west of the proposed jetty platform; and
 - 7) Construct four 48-inch diameter fender monopoles.

CMP Project No: 16-1157-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00750. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Applicant: MDW Financial LP

Location: The project site is located on an undeveloped tract of property, approximately 29.68 acres in size, located east of the intersection of State Highway (SH) 361 and Beach Access Road 1-A, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Aransas, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 27.808354 North; Longitude: 97.079222 West

Project Description: The applicant proposes to place 21,500 cubic yards (cy) of sand to fill 4.42 acres of jurisdictional wetlands in order to construct a mix of residential housing and commercial development opportunities

CMP Project No: 16-1158-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2013-01011. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201600353

Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 27, 2016

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Supported Employment and Employment Assistance Services for the Youth Empowerment Services (YES) Waiver Program

The proposed rates will be effective March 15, 2016.

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on February 23, 2016, at 9:00 a.m. to receive public comment on proposed revised payment rates for the YES waiver program operated by the Department of State Health Services (DSHS).

This notice represents a revision of a previously published notice in the January 8, 2016, issue of the *Texas Register* (41 TexReg 530). The rate hearing has been rescheduled as indicated above with a revised proposed effective date.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 (relating to public hearing on rates) and 1 Texas Administrative Code (TAC) §355.105(g) (relating to general reporting and documentation, methods, and procedures), which require public notice of and hearings on proposed Medicaid reimbursements. The public hearing will be held in conference room #5155, fifth floor, of the Brown Heatly Building, located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through the front of the building facing Lamar Boulevard. Free parking is available in front of the building and in the adjacent parking garage. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to revise payment rates for Supported Employment and Employment Assistance services for the YES waiver program from an hourly rate to a fifteen minute rate. The proposed rates will be effective March 15, 2016.

Methodology and Justification. HHSC calculated the proposed payment rates in accordance with the rate setting methodologies codified in the 1 TAC §355.9060 (relating to reimbursement methodology for the Youth Empowerment Services waiver program).

Briefing Package. On February 5, 2016, a briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml>. Interested parties may also obtain a free copy of the briefing package by contacting the HHSC Rate Analysis department by U.S. mail addressed to Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. In addition, free copies of the briefing package will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512)730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comment may be sent by overnight mail or hand delivered to the Health and Human

Services Commission, Rate Analysis Department, H-400, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-201600357
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 27, 2016

◆ ◆ ◆
Public Notice

Dental Stakeholder Public Meeting

On February 26, 2016, from 2:00 p.m. to 4:00 p.m. at the Brown-Heatly Building Public Hearing Room, 4900 North Lamar Blvd., Austin, Texas 78751, the Texas Health and Human Services Commission will hold a public dental stakeholder meeting to discuss topics relating to the Medicaid and CHIP dental programs. This meeting will include both internal and external presenters in order to present a comprehensive update on the dental programs to stakeholders.

This meeting will be webcast. To access the webcast, go to <http://www.hhsc.state.tx.us/news/meetings.asp> the day and time of the meeting.

1. Welcome
2. Dental Director update
3. Texas Health Steps update
4. Policy update
5. Quality Assurance update
6. Office of Inspector General update
7. Dental Maintenance Organization update
8. Questions
9. Adjourn

Questions about the dental programs may be sent in advance to DentalStakeholderMeeting@hhsc.state.tx.us.

Contact: Questions regarding agenda items, content, or meeting arrangements should be directed to Aggie Hernandez, Program Specialist, Health and Human Services Commission, (512) 462-6349, agneta.hernandez@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600329
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 25, 2016

◆ ◆ ◆
Public Notice

More Liberal Methods of Treating Income Under §1902(r)(2) of the Act

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0003 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to exclude certain amounts held in school-based savings accounts and interest earned on the accounts when determining eligibility for Medicaid Eligibility for the Elderly and People with Disabilities (MEPD). The proposed amendment is effective March 1, 2016.

The proposed amendment is estimated to have no fiscal impact. The addition of excluding amounts held in school-based savings accounts and the interest earned on such accounts in determining eligibility is not expected to increase Medicaid utilization or cost because it is an optional program for school districts to implement.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin,

Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at jr.top@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201600336

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 26, 2016

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of January, 2016, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25, Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC § 289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Baytown	Jacinto Medical Center L.P. dba Jacinto MRI and Diagnostic Center	L06762	Baytown	00	01/04/16
Beaumont	Metalforms Ltd.	L06764	Beaumont	00	01/07/16
Dallas	RSR Technologies Inc.	L06766	Dallas	00	01/12/16
Round Rock	Gases 101 L.L.C.	L06767	Round Rock	00	01/13/16
Throughout TX	FMC Technologies Inc.	L06765	Houston	00	01/08/16
Throughout TX	South Environmental Services Inc.	L06763	Midland	00	01/06/16

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Abilene	ARMC L.P. dba Abilene Regional Medical Center	L02434	Abilene	83	01/14/16
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	32	01/13/16
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L00740	Austin	127	01/05/16
Austin	Bioo Scientific Corporation	L06248	Austin	03	01/15/16
Baytown	Exxon Mobil Corporation dba Exxonmobil Chemical Company	L01135	Baytown	82	01/13/16
Conroe	Arif Abdullah, M.D., P.A.	L06276	Conroe	04	01/11/16
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	203	01/08/16
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	109	01/07/16
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	110	01/15/16
Denton	Columbia Medical Ctr of Denton Subsidiary L.P. dba Denton Regional Medical Center	L02764	Denton	75	01/08/16
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	125	01/06/16

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	87	01/06/16
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence East Campus	L06152	El Paso	21	01/06/16
El Paso	Rio Grande Urology P.A. dba Rio Grande Radiation Cancer Center	L06721	El Paso	01	01/12/16
Flower Mound	Healthtexas Provider Network dba Cardiovascular Consultants – Flower Mound	L06700	Flower Mound	01	01/08/16
Fort Worth	Texas Health Physicians Group dba Consultants in Cardiology	L06468	Fort Worth	05	01/12/16
Houston	Radiographic Specialists Inc.	L02742	Houston	65	01/13/16
Houston	New Medical Horizons II Ltd.	L03424	Houston	42	01/07/16
Houston	University General Hospital L.P.	L06018	Houston	18	01/05/16
Houston	Houston Northwest Operating Company L.L.C. dba Houston Northwest Medical Center	L06190	Houston	25	01/11/16
Houston	Sightline West Houston IMRT L.L.C. dba Sightline West Houston	L06299	Houston	12	01/06/16
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06331	Houston	13	01/15/16
Houston	Woodlands Specialty Hospital P.L.L.C.	L06656	Houston	02	01/13/16
La Porte	Ineos USA L.L.C.	L00088	La Porte	63	01/11/16
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	16	01/06/16
Nacogdoches	Shared Medical Services Inc.	L06142	Nacogdoches	12	01/11/16
Pasadena	Chevron Phillips Chemical Company L.P.	L00230	Pasadena	90	01/12/16
Pasadena	PMC Hospital L.L.C. dba St. Lukes Patients Medical Center	L06384	Pasadena	04	01/07/16
Plano	Columbia Med. Center of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	106	01/13/16
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	05	01/14/16
Port Lavaca	Union Carbide Corporation A subsidiary of the Dow Chemical Company	L00051	Port Lavaca	100	01/13/16
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	345	01/13/16
Sugar Land	TMH Physician Associates P.L.L.C. dba Methodist Diagnostic Cardiology of Houston	L06527	Sugar Land	01	01/16/16
Sweetwater	Lone Star Industries dba Buzzi Unicem USA	L06720	Sweetwater	02	01/14/16
Throughout TX	ECS – Texas L.L.P.	L05384	Carrollton	12	01/07/16
Throughout TX	NQS Inspection Ltd.	L06262	Corpus Christi	10	01/05/16
Throughout TX	Fargo Consultants Inc.	L05300	Dallas	17	01/07/16
Throughout TX	D-Arrow Inspection Inc.	L03816	Houston	87	01/13/16
Throughout TX	All-Terra Engineering Inc.	L06215	Houston	04	01/08/16
Throughout TX	Furmanite America Inc.	L06554	Houston	18	01/05/16
Throughout TX	C & J Spec-Rent Services Inc.	L06712	Houston	02	01/05/16
Throughout TX	FMC Technologies Inc.	L06765	Houston	01	01/08/16
Throughout TX	Industrial Nuclear Company Inc.	L04508	La Porte	27	01/07/16
Throughout TX	Can USA Inc.	L06533	La Porte	01	01/13/16
Throughout TX	Motley Services	L06644	Odessa	01	01/08/16
Throughout TX	Calibration Solutions L.L.C.	L06447	Pflugerville	03	01/12/16
Throughout TX	ETTL Engineers & Consultants Inc.	L01423	Tyler	38	01/13/16
Valley View	Pumpco Energy Services Inc.	L06507	Valley View	10	01/13/16

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Corpus Christi	Samuel Duro Oloyo, M.D., P.A. dba South Texas Medical Associates	L05881	Corpus Christi	06	01/15/16
Point Comfort	Alcoa World Alumina L.L.C.	L05186	Point Comfort	14	01/14/16
San Antonio	Jeremy Nyle Wiersig M.D., P.A. dba Concord Imaging	L05915	San Antonio	09	01/06/16
Throughout TX	Associated Testing Laboratories Inc.	L01553	Houston	31	01/07/16
Throughout TX	Nuclear Imaging Services L.L.C.	L05791	Houston	16	01/14/16

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Abilene	Abilene Diagnostic Clinic P.L.L.C.	L05101	Abilene	22	01/14/16
Beaumont	Cray Valley USA L.L.C.	L05937	Beaumont	08	01/12/16
Houston	Cardiology Consultants of Houston	L05046	Houston	12	01/15/16
Sugar Land	Heart and Vascular Association of Houston P.A.	L05892	Sugar Land	05	01/11/16
Throughout TX	Metalforms Inc.	L02261	Beaumont	42	01/13/16
Throughout TX	J. V. Industrial Co., Ltd.	L05785	La Porte	15	01/14/16

EXEMPTIONS ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
L00051	Union Carbide Corporation A subsidiary of the Dow Chemical Company	L00051	Port Lavaca	N/A	01/13/16

TRD-201600361
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: January 27, 2016

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University of Houston System

Notice of Award

University of Houston - Victoria

In accordance with Government Code, Chapter 2254, Subchapter B, the University of Houston - Victoria (University) publishes this notice of a consultant contract award for providing Guidance and Suggestions in Marketing, Recruitment & Retention, Strategic Planning and Data Management services to the University. Notice of the request for proposals was published in the October 16, 2015, issue of the *Texas Register* (40 TexReg 7294).

The consultant will narrative, verbal and presentational guidance and recommendations to evaluate and improve the marketing techniques for our marketing area and for strategies the University can implement to improve undergraduate and graduate recruitment, both internationally and domestically, and to increase retention of current students. Also, the University is requesting guidance in strategic planning ef-

orts, including suggestions for improved organizational structure. Finally, the University is seeking help in identifying sources to assist in the creation and modification of databases to facilitate data-driven decisions related to all aspects of enrollment management.

The selected consultant for these services is The Northumberland Group, 211 N. Union St., Suite 100, Alexandria, Virginia 22314. The total value of the contract is \$42,000.00. The contract work period started on January 11, 2016, and will continue through August 31, 2016.

TRD-201600360
 Dr. Raymond Victor Morgan, Jr.
 Interim President
 University of Houston System
 Filed: January 27, 2016

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Texas Department of Insurance

Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a

health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Memorial Hermann Health Insurance Company

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Jennifer Soldano, Staff Attorney, William P. Hobby Jr. Building, 333 Guadalupe, Tower I, Room 920B, Austin, Texas.

If you wish to comment on the application from Memorial Hermann Health Insurance Company to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve Memorial Hermann Health Insurance Company's application to be a risk-assuming carrier.

TRD-201600285

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: January 25, 2016



Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Prominence HealthFirst of Texas

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Jennifer Soldano, Staff Attorney, William P. Hobby Jr. Building, 333 Guadalupe, Tower I, Room 920B, Austin, Texas.

If you wish to comment on the application from Prominence HealthFirst of Texas to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve Prominence HealthFirst of Texas's application to be a risk-assuming carrier.

TRD-201600286

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: January 25, 2016



Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Department of Licensing and Regulation (Department) provides this public notice that at their regularly scheduled meeting held October 14, 2015, the Texas Commission of Licensing and Regulation (Commission) adopted the Department's revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to update the penalty matrix for the Air Conditioning and Refrigeration program.

The revised matrix was updated to bring the violations and citations in-line with Texas Occupations Code, Chapter 1302 and 16 Texas Administrative Code Chapter 75. Specifically this includes changes implemented by Acts of the 83rd Legislature, Senate Bill 383, Regular Session (2013) which repealed the provisions in the statute relating to the sale and use of refrigerants as well as two sets of rule changes that followed in January and August of 2014. Other editorial changes include the addition of subject matter headings within each class to make it easier to find a particular violation and one violation was moved to a higher class. Additional edits were made for clarity.

The Air Conditioning and Refrigeration Contractors Advisory Board recommended approval of the matrix at their meeting held September 8, 2015. The revised matrix was presented to the Commission on October 14, 2015, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201600268

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: January 22, 2016



Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held November 18, 2015, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a pro-

posed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to update the penalty matrix for the Electricians program.

The revised matrix was updated to bring the violations and citations in-line with Texas Occupations Code, Chapter 1305 and 16 Texas Administrative Code Chapter 73. The statute has been amended several times however the most significant changes added new license types such as residential appliance installers and contractors and journeyman lineman. Specific rule changes added contractor responsibilities and obligations such as maintaining records of work performed and supervision of licensees performing work on behalf of the contractor to ensure safe and proper installation and service and to ensure electro mechanical integrity of all work performed. Other editorial changes include language changes to some violations to improve clarity and the addition of subject matter headings within each class to make it easier to find a particular violation.

The Electrical Safety and Licensing Advisory Board recommended approval of the revised matrix at their meeting held October 6, 2015. The revised matrix was presented to the Commission on November 18, 2015, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201600269

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: January 22, 2016



Texas Lottery Commission

Scratch Ticket Game Number 1719 "The Big Money Super Ticket™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1719 is "THE BIG MONEY SUPER TICKET™". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1719 shall be \$10.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1719.

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 multi-image games. The possible black Play Symbol for CASH NOW game is a MONEY BAG SYMBOL. The possible black Play Symbols for BANKROLL BONUS game are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15 and \$\$ Symbol. The possible black Play Symbols for MEGA MONEY and WIN BIG games 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, 31, 32, 33, 34 and 35. The possible green Play Symbols for MEGA MONEY game 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, 31, 32, 33, 34, and 35. The possible red Play Symbols for WIN BIG game 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, 31, 32, 33, 34 and 35. The possible black Bonus and Prize Symbols for all games are: \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$20,000 and \$250,000.

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, green and red ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1719– 1.2D

PLAY SYMBOL FOR CASH NOW GAME	CAPTION
MONEY BAG SYMBOL (BLACK)	DBL (BLACK)

PLAY SYMBOLS FOR BANKROLL BONUS GAME	CAPTIONS
01 (BLACK)	ONE (BLACK)
02 (BLACK)	TWO (BLACK)
03 (BLACK)	THR (BLACK)
04 (BLACK)	FOR (BLACK)
05 (BLACK)	FIV (BLACK)
06 (BLACK)	SIX (BLACK)
07 (BLACK)	SVN (BLACK)
08 (BLACK)	EGT (BLACK)
09 (BLACK)	NIN (BLACK)
10 (BLACK)	TEN (BLACK)
11 (BLACK)	ELV (BLACK)
12 (BLACK)	TLV(BLACK)
13 (BLACK)	TRN (BLACK)
14 (BLACK)	FTN(BLACK)
15 (BLACK)	FFN (BLACK)
\$\$ SYMBOL (BLACK)	DBL (BLACK)

PLAY SYMBOLS FOR MEGA MONEY GAME	CAPTIONS
01 (BLACK)	ONE (BLACK)
02 (BLACK)	TWO (BLACK)
03 (BLACK)	THR (BLACK)
04 (BLACK)	FOR (BLACK)
05 (BLACK)	FIV (BLACK)
06 (BLACK)	SIX (BLACK)
07 (BLACK)	SVN (BLACK)
08 (BLACK)	EGT (BLACK)
09 (BLACK)	NIN (BLACK)
10 (BLACK)	TEN (BLACK)
11 (BLACK)	ELV (BLACK)
12 (BLACK)	TLV(BLACK)
13 (BLACK)	TRN (BLACK)
14 (BLACK)	FTN(BLACK)
15 (BLACK)	FFN (BLACK)
16 (BLACK)	SXN (BLACK)

17 (BLACK)	SVT (BLACK)
18 (BLACK)	ETN (BLACK)
19 (BLACK)	NTN (BLACK)
20 (BLACK)	TWY (BLACK)
21 (BLACK)	TWON (BLACK)
22 (BLACK)	TWTO (BLACK)
23 (BLACK)	TWTH (BLACK)
24 (BLACK)	TWFR (BLACK)
25 (BLACK)	TWV (BLACK)
26 (BLACK)	TWSX (BLACK)
27 (BLACK)	TWSV (BLACK)
28 (BLACK)	TWET (BLACK)
29 (BLACK)	TWNI (BLACK)
30 (BLACK)	TRTY (BLACK)
31 (BLACK)	TRON (BLACK)
32 (BLACK)	TRTO (BLACK)
33 (BLACK)	TRTH (BLACK)
34 (BLACK)	TRFR (BLACK)
35 (BLACK)	TRFV (BLACK)
01 (GREEN)	ONE (GREEN)
02 (GREEN)	TWO (GREEN)
03 (GREEN)	THR (GREEN)
04 (GREEN)	FOR (GREEN)
05 (GREEN)	FIV (GREEN)
06 (GREEN)	SIX (GREEN)
07 (GREEN)	SVN (GREEN)
08 (GREEN)	EGT (GREEN)
09 (GREEN)	NIN (GREEN)
10 (GREEN)	TEN (GREEN)
11 (GREEN)	ELV (GREEN)
12 (GREEN)	TLV (GREEN)
13 (GREEN)	TRN (GREEN)
14 (GREEN)	FTN (GREEN)
15 (GREEN)	FFN (GREEN)
16 (GREEN)	SXN (GREEN)
17 (GREEN)	SVT (GREEN)
18 (GREEN)	ETN (GREEN)
19 (GREEN)	NTN (GREEN)
20 (GREEN)	TWY (GREEN)
21 (GREEN)	TWON (GREEN)

22 (GREEN)	TWTO (GREEN)
23 (GREEN)	TWTH (GREEN)
24 (GREEN)	TWFR (GREEN)
25 (GREEN)	TWTV (GREEN)
26 (GREEN)	TWSX (GREEN)
27 (GREEN)	TWSV (GREEN)
28 (GREEN)	TWET (GREEN)
29 (GREEN)	TWNI (GREEN)
30 (GREEN)	TRTY (GREEN)
31 (GREEN)	TRON (GREEN)
32 (GREEN)	TRTO (GREEN)
33 (GREEN)	TRTH (GREEN)
34 (GREEN)	TRFR (GREEN)
35 (GREEN)	TRFV (GREEN)

PLAY SYMBOLS FOR WIN BIG GAME	CAPTIONS
01 (BLACK)	ONE (BLACK)
02 (BLACK)	TWO (BLACK)
03 (BLACK)	THR (BLACK)
04 (BLACK)	FOR (BLACK)
05 (BLACK)	FIV (BLACK)
06 (BLACK)	SIX (BLACK)
07 (BLACK)	SVN (BLACK)
08 (BLACK)	EGT (BLACK)
09 (BLACK)	NIN (BLACK)
10 (BLACK)	TEN (BLACK)
11 (BLACK)	ELV (BLACK)
12 (BLACK)	TLV(BLACK)
13 (BLACK)	TRN (BLACK)
14 (BLACK)	FTN(BLACK)
15 (BLACK)	FFN (BLACK)
16 (BLACK)	SXN (BLACK)
17 (BLACK)	SVT (BLACK)
18 (BLACK)	ETN (BLACK)
19 (BLACK)	NTN (BLACK)
20 (BLACK)	TWY (BLACK)
21 (BLACK)	TWON (BLACK)
22 (BLACK)	TWTO (BLACK)
23 (BLACK)	TWTH (BLACK)

24 (BLACK)	TWFR (BLACK)
25 (BLACK)	TWV (BLACK)
26 (BLACK)	TWSX (BLACK)
27 (BLACK)	TWSV (BLACK)
28 (BLACK)	TWET (BLACK)
29 (BLACK)	TWNI (BLACK)
30 (BLACK)	TRTY (BLACK)
31 (BLACK)	TRON (BLACK)
32 (BLACK)	TRTO (BLACK)
33 (BLACK)	TRTH (BLACK)
34 (BLACK)	TRFR (BLACK)
35 (BLACK)	TRFV (BLACK)
01 (RED)	ONE (RED)
02 (RED)	TWO (RED)
03 (RED)	THR (RED)
04 (RED)	FOR (RED)
05 (RED)	FIV (RED)
06 (RED)	SIX (RED)
07 (RED)	SVN (RED)
08 (RED)	EGT (RED)
09 (RED)	NIN (RED)
10 (RED)	TEN (RED)
11 (RED)	ELV (RED)
12 (RED)	TLV (RED)
13 (RED)	TRN (RED)
14 (RED)	FTN (RED)
15 (RED)	FFN (RED)
16 (RED)	SXN (RED)
17 (RED)	SVT (RED)
18 (RED)	ETN (RED)
19 (RED)	NTN (RED)
20 (RED)	TWY (RED)
21 (RED)	TWON (RED)
22 (RED)	TWTO (RED)
23 (RED)	TWTH (RED)
24 (RED)	TWFR (RED)
25 (RED)	TWV (RED)
26 (RED)	TWSX (RED)
27 (RED)	TWSV (RED)
28 (RED)	TWET (RED)

29 (RED)	TWNI (RED)
30 (RED)	TRTY (RED)
31 (RED)	TRON (RED)
32 (RED)	TRTO (RED)
33 (RED)	TRTH (RED)
34 (RED)	TRFR (RED)
35 (RED)	TRFV (RED)

BONUS AND PRIZE SYMBOLS FOR ALL GAMES	CAPTIONS
\$5.00 (BLACK)	FIVE\$ (BLACK)
\$10.00 (BLACK)	TEN\$ (BLACK)
\$20.00 (BLACK)	TWENTY (BLACK)
\$30.00 (BLACK)	THIRTY (BLACK)
\$50.00 (BLACK)	FIFTY (BLACK)
\$100 (BLACK)	ONE HUN (BLACK)
\$200 (BLACK)	TWO HUN (BLACK)
\$500 (BLACK)	FIV HUN (BLACK)
\$1,000 (BLACK)	ONE THOU (BLACK)
\$20,000 (BLACK)	20 THOU (BLACK)
\$250,000 (BLACK)	250 THOU (BLACK)

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. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$20,000 or \$250,000.

I. 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.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1719), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1719-0000001-001.

K. Pack - A Pack of "THE BIG MONEY SUPER TICKET™" Scratch Ticket Game contains 050 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Scratch Ticket back 001 and 050 will both be exposed.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket or Scratch Ticket Game, or Ticket - A Texas Lottery "THE BIG MONEY SUPER TICKET™" Scratch Ticket Game No. 1719 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "THE BIG MONEY SUPER TICKET™" Scratch Ticket is determined once the latex is scratched off to expose the Play Symbols on this Scratch Ticket's 4 (four) games: CASH NOW game has 9 (nine) Play Symbols; BANKROLL BONUS game has 11 (eleven) Play Symbols; MEGA MONEY game has 48 (forty-eight) Play Symbols; and WIN BIG game has 48 (forty-eight) Play Symbols. CASH NOW game's Play Instructions: If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 2 matching prize amounts and a "MONEY BAG" Play Symbol, the player wins DOUBLE that amount. BANKROLL BONUS game's Play Instructions: If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If a player reveals a "\$\$" Play Symbol, the player wins DOUBLE the prize for that symbol. MEGA MONEY game's Play Instructions: If a player matches any of YOUR NUMBERS Play Sym-

bolos to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If any of your matching numbers are "GREEN" Play Symbols, the player wins DOUBLE the PRIZE for that number. MEGA MONEY game's BONUS 1: If a player reveals 2 matching prize amounts in BONUS 1, the player wins that amount. MEGA MONEY game's BONUS 2: If a player reveals 2 matching prize amounts in BONUS 2, the player wins that amount. WIN BIG game's Play Instructions: If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If any of your matching numbers are "RED" Play Symbols, the player wins DOUBLE the PRIZE for that number. WIN BIG game's BONUS 1: If a player reveals 2 matching prize amounts in BONUS 1, the player wins that amount. WIN BIG game's BONUS 2: If a player reveals 2 matching prize amounts in BONUS 2, the player wins that amount. 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. In CASH NOW game exactly 9 (nine) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket; in BANKROLL BONUS game exactly 11 (eleven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket; in MEGA MONEY game exactly 48 (forty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket; in WIN BIG game exactly 48 (forty-eight) 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. Each of the Scratch Ticket's Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures. The Play Symbols will appear 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 Scratch Ticket's Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the Scratch Ticket's Play Symbols 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. GENERAL: Tickets can win up to fifty (50) times in accordance with the approved prize structure.

B. GENERAL: Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. CASH NOW game: No more than three (3) matching Prize Symbols.

E. CASH NOW game: No more than one (1) set of three (3) matching Prize Symbols within the game (i.e., three (3) \$10 symbols and three (3) \$20 symbols).

F. CASH NOW game: Winning games that contain a "MONEY BAG" (DBL) Play Symbol will never contain more than one (1) pair of matching Prize Symbols.

G. CASH NOW game: Winning games with three (3) matching Prize Symbols will never contain a "MONEY BAG" (DBL) Play Symbol.

H. CASH NOW game: No CASH NOW game will contain more than one (1) "MONEY BAG" (DBL) Play Symbol.

I. BANKROLL BONUS game: Non-winning "YOUR NUMBERS" Play Symbols will all be different.

J. BANKROLL BONUS game: No "WINNING NUMBER" Play Symbol will match any "WINNING NUMBER" Play Symbol in another game on the Ticket.

K. BANKROLL BONUS game: Non-winning Prize Symbols will never appear more than two (2) times.

L. BANKROLL BONUS game: The "\$\$" (DBL) Play Symbol will never appear in the "WINNING NUMBER" Play Symbol spot.

M. BANKROLL BONUS game: The "\$\$" (DBL) Play Symbol will only appear as dictated by the prize structure.

N. BANKROLL BONUS game: Non-winning Prize Symbols will never match winning Prize Symbols.

O. BANKROLL BONUS game: No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

P. MEGA MONEY and WIN BIG games: Games will not have matching Play Symbol and Prize Symbol patterns on a ticket unless restricted by other parameters, play action or prize structure. These two (2) games have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots. In this parameter, the "RED"/"GREEN" Play Symbols shall be considered as a single colored Play Symbol.

Q. MEGA MONEY and WIN BIG games: The eight (8) "WINNING NUMBERS" Play Symbols on the MEGA MONEY and WIN BIG games, will be different on the same Ticket.

R. MEGA MONEY and WIN BIG games: The eight (8) "WINNING NUMBERS" Play Symbols on the MEGA MONEY and WIN BIG games, will always be "BLACK".

S. MEGA MONEY and WIN BIG games: The eight (8) "WINNING NUMBERS" Play Symbols on the MEGA MONEY and WIN BIG games will not match the "WINNING NUMBER" in the BANKROLL BONUS game.

T. MEGA MONEY and WIN BIG games: On each MEGA MONEY and WIN BIG game, non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

U. MEGA MONEY and WIN BIG games: Non-winning "YOUR NUMBERS" Play Symbols will all be different within each game.

V. MEGA MONEY and WIN BIG games: For each MEGA MONEY and WIN BIG game, no prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

W. MEGA MONEY and WIN BIG games: The "WINNING NUMBERS" Play Symbols from the MEGA MONEY game will never match the "YOUR NUMBERS" Play Symbols from the WIN BIG and BANKROLL BONUS games on the same Ticket and the "WINNING NUMBERS" from the WIN BIG game will never match the "YOUR NUMBERS" from the MEGA MONEY and BANK ROLL BONUS games on the same Ticket.

X. MEGA MONEY and WIN BIG games: "GREEN" Play Symbols numbers will only appear on the MEGA MONEY game and "RED" Play Symbol numbers will only appear on the WIN BIG game.

Y. MEGA MONEY and WIN BIG games: Each MEGA MONEY and WIN BIG game will contain no more than six (6) "GREEN"/"RED"

"YOUR NUMBERS" Play Symbols unless restricted by other parameters, play action or prize structure.

Z. MEGA MONEY and WIN BIG games: "GREEN"/"RED" "YOUR NUMBERS" Play Symbols will only match WINNING NUMBERS in their respective games to win double as dictated by the prize structure.

AA. BONUS games: Non-winning BONUS games will always contain different Prize Symbols on each Ticket.

BB. BONUS games: Winning BONUS game Prize Symbols will never match non-winning BONUS game Prize Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE BIG MONEY SUPER TICKET™" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE BIG MONEY SUPER TICKET™" Scratch Ticket Game prize of \$1,000, \$20,000 or \$250,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE BIG MONEY SUPER TICKET™" 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 "THE BIG MONEY SUPER TICKET™" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "THE BIG MONEY SUPER TICKET™" 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 Prizes. There will be approximately 12,000,000 Scratch Tickets in the Scratch Ticket Game No. 1719. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1719 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,560,000	7.69
\$20	1,020,000	11.76
\$30	480,000	25.00
\$50	240,000	50.00
\$100	160,000	75.00
\$200	13,700	875.91
\$500	2,400	5,000.00
\$1,000	210	57,142.86
\$20,000	10	1,200,000.00
\$250,000	5	2,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.45. 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. 1719 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1719, 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-201600345
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 27, 2016



Scratch Ticket Game Number 1746 "#LuckyTicket"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1746 is "#LuckyTicket". The play style is "key symbol match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1746 shall be \$1.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1746.

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: \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$25.00, \$40.00, \$100, \$3,000, 1, 2, 3, 4, 5, 6, 7, 8, 9 and # Symbol.

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. 1746 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$100	ONE HUN
\$3,000	THR THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
# SYMBOL	WIN

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. Low-Tier Prize - A prize of \$1.00, \$2.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$40.00 or \$100.

H. High-Tier Prize - A prize of \$3,000.

I. 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.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1746), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1746-0000001-001.

K. Pack - A Pack of the "#LuckyTicket" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front 001 and 010 will be exposed.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "#LuckyTicket" Scratch Ticket Game No. 1746.

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 "#LuckyTicket" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a Hashtag "#" Play Symbol, the player wins the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) 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 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 12 (twelve) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the

Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. A Ticket can win up to six (6) times in accordance with the approved prize structure.
- B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.
- C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.
- D. Non-winning Play Symbols will all be different.
- E. Non-winning Prize Symbols will never appear more than one (1) time.
- F. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "#LuckyTicket" Scratch Ticket Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$25.00, \$40.00 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 \$25.00, \$40.00 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 "#LuckyTicket" Scratch Ticket Game prize of \$3,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "#LuckyTicket" 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 "#LuckyTicket" 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 "#LuckyTicket" 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 Prizes. There will be approximately 11,040,000 Scratch Tickets in Scratch Ticket Game No. 1746. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1746 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,177,600	9.38
\$2	883,200	12.50
\$5	147,200	75.00
\$10	73,600	150.00
\$20	36,800	300.00
\$25	27,600	400.00
\$40	11,040	1,000.00
\$100	2,806	3,934.43
\$3,000	20	552,000.00

*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 4.68. 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. 1746 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1746, 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-201600348

Bob Biard

General Counsel

Texas Lottery Commission

Filed: January 27, 2016



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 19, 2016, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc., d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 45529.

The requested amendment is to expand the service area footprint to include the city limits of Hackberry, Texas.

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 telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45529.

TRD-201600281

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 22, 2016



Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 22, 2016, for a service provider certificate of operating authority (SPCOA), pursuant to the Public Utility Regulatory Act (PURA). Applicant intends to provide resale telecommunications services throughout the state of Texas.

Docket Title and Number: Application of Medallion Telecom for a Service Provider Certificate of Operating Authority, Docket Number 45538.

Persons who wish to comment upon 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 no later than February 12, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45538.

TRD-201600340
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2016



Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 22, 2016, for an amendment to certificated service area boundaries within Runnels County.

Docket Style and Number: Application of Concho Valley Electric Cooperative, Inc. for a Certificate of Convenience and Necessity Service Area Exception within Runnels County. Docket Number 45537.

The Application: Concho Valley Electric Cooperative, Inc. (CVEC) filed an application for a service area boundary change to allow CVEC to provide service to a specific customer located within the certificated service area of Coleman County Electric Cooperative, Inc. (CCEC). CCEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the commission no later than February 12, 2016, 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 telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45537.

TRD-201600339
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2016



Notice of Application to Amend Service Provider Certificates of Operating Authority

On January 25, 2016, Onvoy, LLC, Broadvox-CLEC, LLC and GTCR Onvoy Holdings LLC filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority (SPCOA) Numbers 60837 and 60896. Applicants request approval of a change in ownership/control.

Docket Style and Number: Application of Onvoy, LLC, Broadvox-CLEC, LLC and GTCR Onvoy Holdings LLC for amendment to Service Provider Certificates of Operating Authority, Docket Number 45544.

Application: Application of Onvoy, LLC (Onvoy), Broadvox-CLEC, LLC (Broadvox) and GTCR Onvoy Holdings LLC for approval of the proposed transfer of indirect ownership and control of Onvoy, holder of service provider certificate of operating authority (SPCOA) number 60896, and Broadvox, holder of SPCOA No. 60837, from Commu-

nications Infrastructure Investments, LLC to GTCR Onvoy Holdings LLC.

Persons wishing to 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 1-888-782-8477 no later than February 12, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45544.

TRD-201600359
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2016



Public Notice of Workshop on Establishing a Procedure Identifying Contracts that Require Enhanced Contract Monitoring Pursuant to Senate Bill 20 §2261.253

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding Establishing a Procedure Identifying Contracts that Require Enhanced Contract Monitoring Pursuant to SB 20 Government Code §2261.253, on Wednesday, February 10, 2016, at 9:00 a.m. in Commissioners Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 45273, To Establish a Procedure Identifying Contracts that Require Enhanced Contract Monitoring Pursuant to SB 20 §2261.253 has been established for this proceeding.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 45273 an agenda for the format of the workshop. AND/OR a copy of a draft rule.

Questions concerning the workshop or this notice should be referred to Jay Stone, Program Administrator, Finance and Administration, (512) 936-7425. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Project No. 45273

TRD-201600350
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2016



Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, February 22, 2016, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the February 2016 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2015-2018.

The STIP reflects the federally funded transportation projects in the FY 2015-2018 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed February 2016 Quarterly Revisions to the FY 2015-2018 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: <http://www.txdot.gov/government/programs/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033, not later than Friday, February 19, 2016, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5053. Requests should be made no later than Friday, February 19, 2016. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed February 2016 Quarterly Revisions to the FY 2015-2018 STIP to James W. Koch, P.E., Director of Transportation Planning and Programming, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, March 7, 2016.

TRD-201600314
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 25, 2016



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201600315
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 25, 2016



How to Use the Texas Register

Information Available: The 14 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.

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.

Review of Agency Rules - notices of state agency rules review.

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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