TEXAS REGISTER

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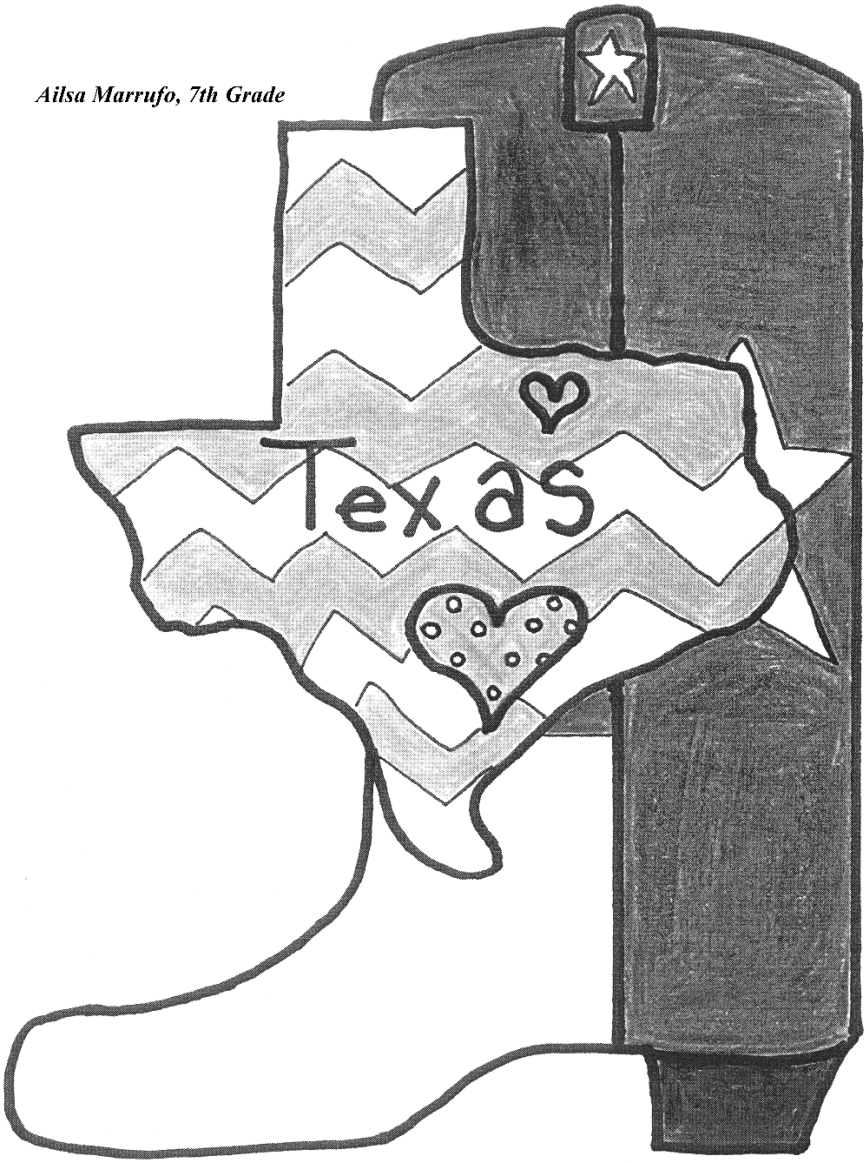
Ailsa Marrufo, 7th Grade



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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-0100-KP

Requestor:

The Honorable Wiley B. McAfee

District Attorney, 33rd & 424th Judicial Districts

Post Office Box 725

Llano, Texas 78643

Re: Whether a commissioners court may impose a vehicle policy that regulates the use, deployment, recording, and tracking of vehicles used by the sheriff (RQ-0100-KP)

Briefs requested by March 30, 2016

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

TRD-201601173
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 8, 2016

♦ ♦ ♦

Opinions

Opinion No. KP-0068

The Honorable Patrick M. Wilson

Ellis County and District Attorney

109 South Jackson

Waxahachie, Texas 75165

Re: Disposition of revenue collected pursuant to section 502.403 of the Transportation Code, authorizing an optional county fee for child safety (RQ-0052-KP)

S U M M A R Y

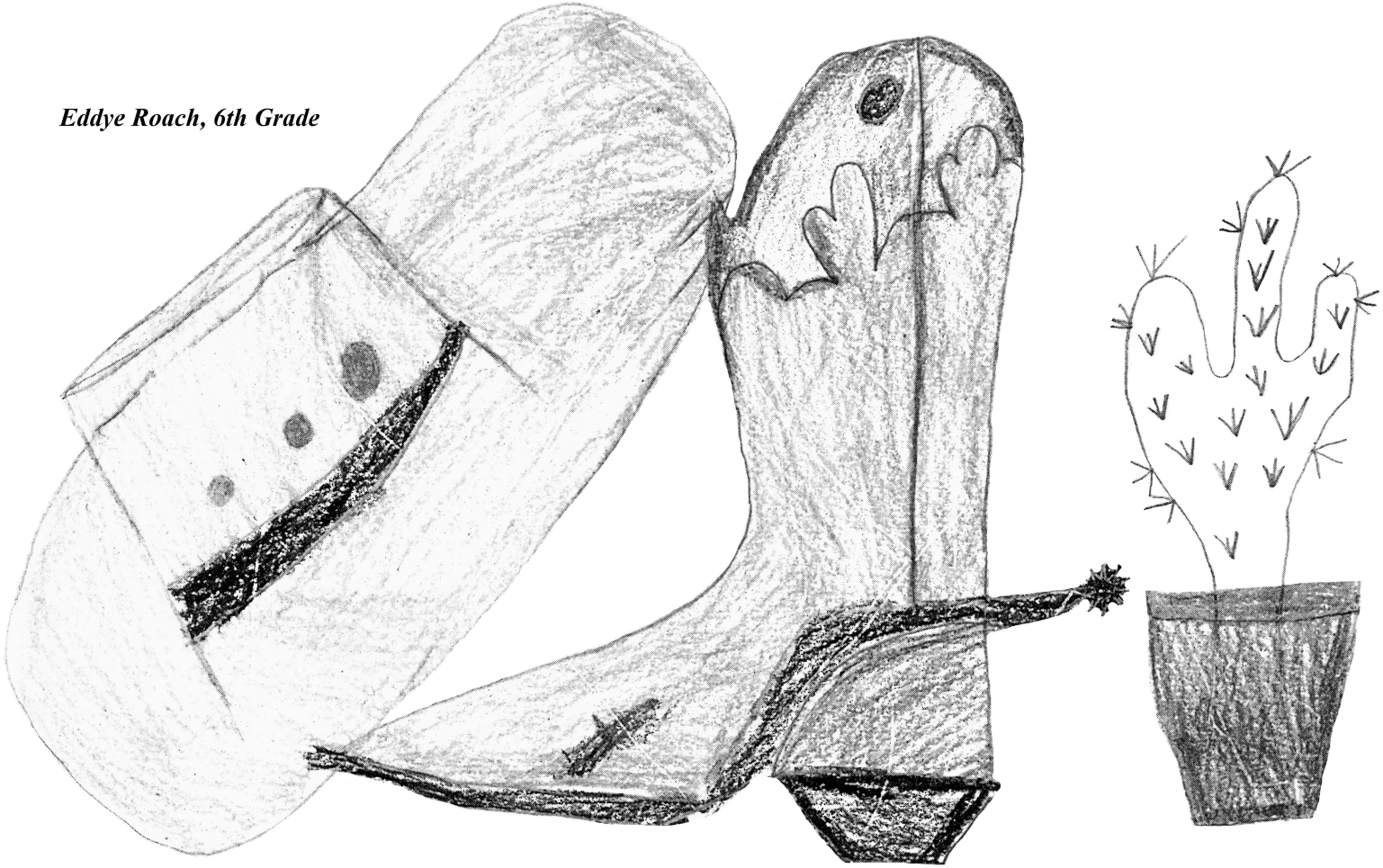
Section 502.403 of the Transportation Code allows a county that has imposed a fee under that section to retain a portion of the revenue from the fee for administrative costs as well as an amount proportional to the percentage of county residents who live in unincorporated areas of the county. Subsection (e) requires the county to send the remainder of the fee revenue to the municipalities in the county according to their population.

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

TRD-201601176
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 8, 2016

♦ ♦ ♦

Eddye Roach, 6th Grade



TEXAS ETHICS COMMISSION

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

Advisory Opinion Requests

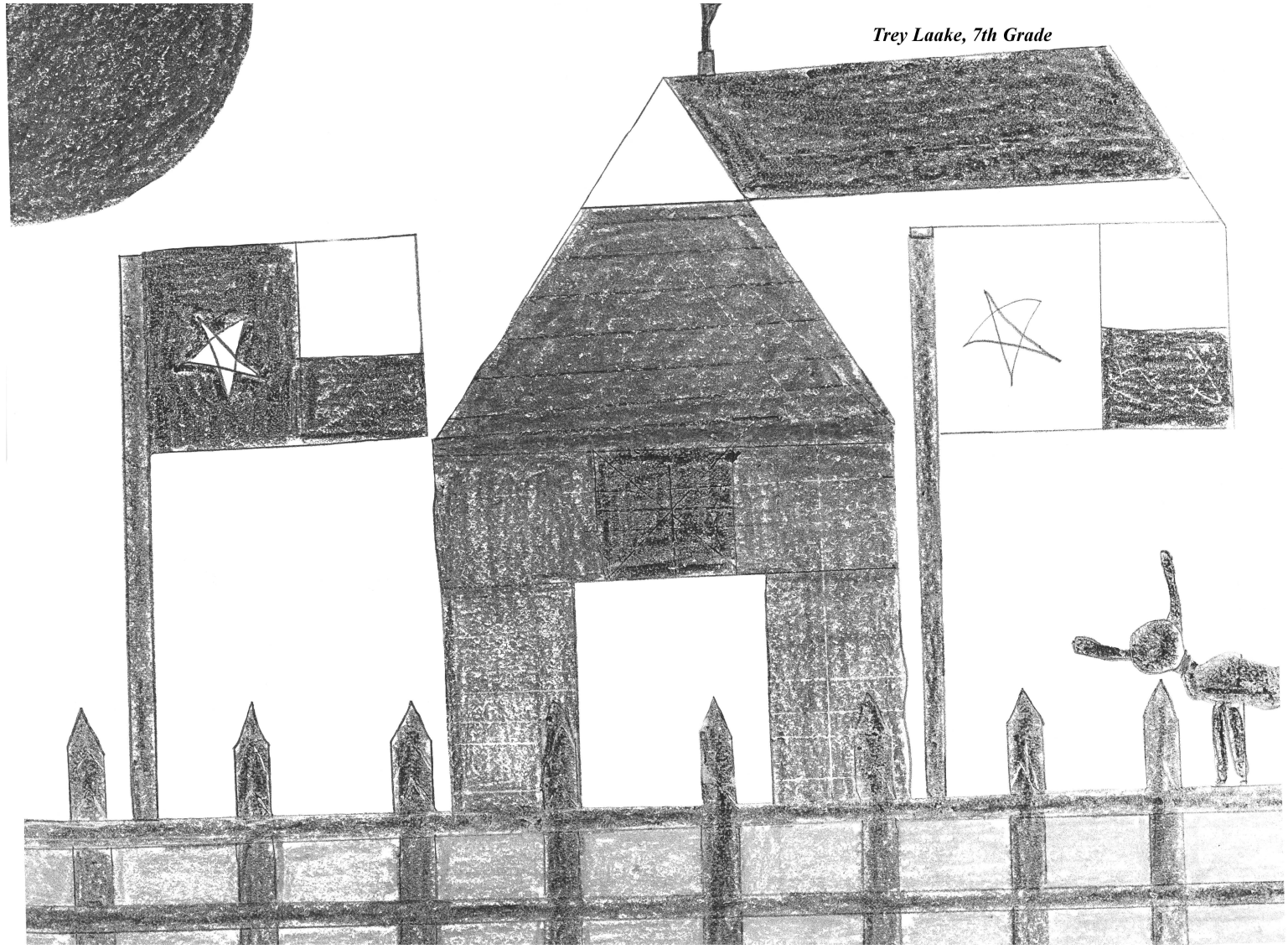
The Texas Ethics Commission has been asked to consider whether a judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at a legal conference. **(AOR-608)**

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

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

TRD-201601157
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: March 7, 2016

♦ ♦ ♦



Trey Laake, 7th 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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER C. MEMBERS

7 TAC §91.301

The Credit Union Commission (the Commission) proposes amendments to §91.301, concerning Field of Membership. The proposed amendments to §91.301 make changes to expand the definition of local service area to generally consist of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by TEX. LOCAL GOV'T CODE §172.003(3). The proposed amendments also allow all credit unions to include in their field of membership areas designated by a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts), without regard to location. Once a credit union development district has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in that district.

The amendments are proposed as a result of the Department's general rule review.

The amendments proposed will establish that political subdivisions within reasonable proximity of the location of a credit union's office as a presumptive "local service area". The convenience, certainty, and staff efficiency resulting from the use of recognized political jurisdictions will modernize the rule and reduce regulatory burdens on credit unions. The amendments will also fully implement the intent of HB 1626, 84th Session (HB 1626 added Chapter 279 to the Texas Finance Code, and assigned the Department the duty to administer and monitor a credit union development district program where there is a demonstrated need for services provided by a state or federal credit union), and encourage the establishment of branches in geographic areas where there is a demonstrated need for credit union services.

Shari Shivers, General Counsel, has determined that for the first five (5) year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Shivers has also determined that for each year of the first five (5) years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within thirty (30) days after its publication in the *Texas Register* to Shari Shivers, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.051, concerning membership.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.051.

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has its own community of interest and is within the credit union's local service area. In this section, local service area generally consists of one or more contiguous political subdivisions ~~shall mean an area~~] that are [~~is~~] within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by TEX. LOCAL GOV'T CODE §172.003(3). [~~office, and allows members to be realistically served from that office.~~] For purposes of field of membership, the Group as a whole will be considered to be within the local service area when:

(1) a [~~A~~] majority of the persons in the Group live, work, or gather regularly within the local service area;

(2) the [~~The~~] Group's headquarters is located within the local service area; or

(3) the [~~The~~] persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area. The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing to serve a larger group or there are other operational or management concerns.

(b) Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:

(1) members of the family or household of a member of the Group;

(2) volunteers performing services for or on behalf of the Group;

(3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;

(4) spouses of persons who died while in the Group;

(5) employees of the credit union;

(6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.

(c) Multiple-groups.

(1) The commissioner may approve a credit union's original articles of incorporation and bylaws or a request for approval of an amendment to a credit union's bylaws to serve one or more communities of interest or a combination of types of communities of interest.

(2) In addition to general requirements, special requirements pertaining to multiple-Group applications may be required before the commissioner will grant such a certificate or approve such an amendment.

(A) Each Group to be included in the proposed field of membership of the credit union must have its own community of interest.

(B) Each associational or occupational Group must individually request inclusion in the proposed credit union's field of membership.

(d) Overlap protection.

(1) The commissioner will only consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap for a Group of 3,000 members or more.

(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility, complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.

(3) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." Exclusionary clauses are rarely appropriate for inclusion on a geographic community of interest.

(4) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:

(A) whether the overlap is incidental in nature, i.e., the group(s) in question is so small as to have no material effect on the overlapped credit union;

(B) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;

(C) whether the overlapped credit union provides requested service;

(D) the financial effect on the overlapped credit union;

(E) the desires of the group(s); and

(F) the best interests of the affected group(s) and the credit union members involved.

(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.

(6) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.

(e) Underserved communities.

(1) All credit unions may include underserved areas or areas designated as a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts) in their fields of membership, without regard to location. More than one credit union can serve the same underserved community [~~area~~].

(2) Once an underserved community [~~area~~] has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the area under this subsection. [~~community. For the purposes of this subsection, service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loan proceeds are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, and an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or a credit union's Internet website.~~]

(3) A credit union desiring to add an underserved community [~~area~~] must document that the area [~~community~~] meets the applicable definition in §91.101 (relating to Definitions and Interpretations). In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved area.

(f) Parity with Federal Credit Unions. Credit unions will be allowed to have, at a minimum, at least as much flexibility as federal credit unions have in field of membership regulation. If a credit union proposes a type of Group that the National Credit Union Administration has previously determined meets the Federal requirements, the commissioner shall approve the application unless the commissioner finds that the credit union has not demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership.

(g) Application. In order to request the approval of the commissioner to add a Group to its bylaws, a credit union must submit a written application to the Department. The applicant credit union shall have the burden to show to the Department such facts and data that

support the requirements and considerations in this rule. In reviewing such application, the commissioner shall consider:

(1) Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;

(2) The ability of credit unions to maintain parity and to compete fairly with their counterparts;

(3) Service by the credit union that is responsive to the convenience and needs of prospective members;

(4) Protection for the interest of current and future members of the credit union; and

(5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601119
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 837-9236

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER C. DEPARTMENT OPERATIONS

7 TAC §97.200

The Credit Union Commission (the Commission) proposes amendments to §97.200, concerning the Employee Training Program. The proposed amendments to §97.200 make changes necessary to implement House Bill 3337, 84th Legislative Session. HB 3337, among other things, prohibits state agencies from reimbursing employees or administrators for tuition expenses for training or education programs offered by higher education institutions unless the programs were successfully completed at an accredited institution. HB 3337 also mandates that state agencies adopt rules requiring that before an administrator or employee of the agency may be reimbursed for such programs, the executive head of the agency must authorize the tuition reimbursement payment. The proposed amendments require the Commissioner to authorize in writing tuition reimbursement, insert the word "accredited" before the term "institution of higher education", and clarify the exact section of the rule concerning the employee repayment requirement.

The amendments are proposed to implement HB 3337, 84th Legislative Session and to clarify the exact section of the rule concerning the employee repayment requirement.

Shari Shivers, General Counsel, has determined that for the first five (5) year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Shivers has also determined that for each year of the first five (5) years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within thirty (30) days after its publication in the *Texas Register* to Shari Shivers, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

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

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402 pertaining to the general authority of the Commission.

§97.200. Employee Training Program.

(a) Components of program. The employee training program for the department consists of one or more of the following components:

(1) Agency-sponsored training to include in-house training sessions and on-the-job training;

(2) Formal training program conducted through the National Credit Union Administration as administrator of the National Credit Union Share Insurance Fund.

(3) Seminars and conferences; and

(4) Formal course of study at an accredited institution of higher education [~~or a private or independent institution of higher education~~].

(b) In order for the cost of training and the time related to that training to be reimbursed by the department, the employee must demonstrate that the course has direct applicability to the employee's job with the department. Attendance at an approved training session described in subsection (a)(1)-(3) will be considered part of the employee's normal work duties and will not require the employee to use accrued leave to attend.

(c) Requests to attend an external training program, seminar or conference pursuant to this section must be approved by the commissioner. Approval of a request is contingent upon availability of funds. If limited funds are available, and more than one employee wishes to participate, a decision regarding who will attend will be based upon the extent of their previous use of funds, the training's merit and its value to the department's operations.

(d) Continuing education courses. Continuing education courses required by licensing or certifying bodies for employees to maintain a professional license or designation will only be reimbursed if such courses relate directly to the employee's job duties with the department and there are funds available.

(e) Tuition reimbursement. The Commissioner must authorize in writing the reimbursement of tuition in accordance with this subsection.

(1) The department may reimburse full-time employees for part or all of tuition and required fees for formal courses of study described in subsection (a)(4) provided the eligibility criteria set forth below are met.

(A) An employee must have completed 24 consecutive months of full-time employment with the department prior to requesting approval to receive tuition reimbursement. However, the 24-month requirement may be waived if the commissioner finds that the employee needs a particular course to fulfill his or her work duties.

(B) An employee must be performing consistently above that normally expected or required and must have achieved an overall performance rating of at least 3.50 on the employee's most recent performance evaluation.

(C) An employee must not have been subject to formal disciplinary action for at least twelve months prior to requesting approval. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

(D) The course work must be related to a current or prospective duty assignment within the department.

(E) An employee, before the course begins, must agree in writing to the repayment requirement stated in [~~paragraph (3) of~~] this subsection.

(F) At the time of the request for approval to receive tuition reimbursement, comparable training must not be scheduled to be offered in-house or through the National Credit Union Administration during the period of time covered by the tuition reimbursement.

(G) The employee's participation must not adversely affect workload or performance.

(H) The employee must complete the course within the semester for which tuition reimbursement was requested.

(I) The employee must receive a passing grade in the course. A passing grade is a grade which will entitle the employee to receive credit for the course from the educational institution offering the course.

(2) Reimbursable costs. Criteria addressing the extent to which cost of tuition may be reimbursed are as follows:

(A) The maximum amount an employee may be reimbursed for an approved tuition reimbursement request is $250 per semester, not to exceed $500 per fiscal year. The maximum amount of reimbursement may be increased up to $400 per semester for good cause shown upon approval by the commissioner.

(B) Reimbursable costs include tuition, related fees, and required textbooks and workbooks. Employees will not be reimbursed for auditing a course.

(C) Costs described in subparagraph (B) of this paragraph will be paid to the employee at the completion of the course upon the employee submitting proof that the course was completed and a passing grade was received.

(3) Repayment. Should an employee separate from department service within 12 months of completion of the course, the employee must reimburse the department for all reimbursable costs expended by the department for that course in accordance with §656.103 of the Texas Government Code (relating to Restrictions on Certain Training Costs). The commission may adopt an order waiving this requirement upon finding that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee.

(4) Prohibition on use of state resources. Employees may not use department equipment, such as computers, calculators or typewriters to complete course work

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601121
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 837-9236

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER P. EMERGENCY ORDERS FOR WATER UTILITIES

The Public Utility Commission of Texas (commission) proposes amendments to §22.291, relating to Purpose and Applicability; §22.292, relating to Definitions; §22.293, relating to Notification of Emergency Order; §22.295, relating to Application for Emergency Order; §22.296, relating to Additional Requirements for Emergency Rate Increases; §22.297, relating to Notice and Opportunity for Hearing; §22.298, relating to Contents of Emergency Order; and §22.299, relating to Hearing Required. The commission proposes the repeal of §22.294, relating to Emergency Orders and Emergency Rates. Consistent with 1 TAC §91.35(d), the commission also proposes amendments to Chapter 24 of the commission's rules in a separate notice preamble as part of this project.

The proposed amendments and repeal will allow the commission's procedural rules relating to emergency orders to conform to §§2, 3, 5, 6, and 8 - 10 of Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). Project Number 45115 is assigned to this proceeding.

Tammy Benter, Division Director of the commission's Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with SB 1148. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on May 10, 2016. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments and repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 40 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments and repeal. The commission will consider the costs and benefits in deciding whether to amend and repeal the identified sections. All comments should refer to Project Number 45115.

16 TAC §§22.291 - 22.293, 22.295 - 22.299

The amendments are proposed under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§22.291. Purpose and Applicability.

(a) (No change.)

(b) This subchapter applies to any request [~~application~~] under the Texas Water Code for an emergency order or emergency rates.

§22.292. Definitions.

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

(1) Emergency order--An order which must be issued immediately for one of the reasons provided in §24.14(a) of this title (relating to Emergency Orders and Emergency Rates) [~~to appoint a person to temporarily manage and operate a utility under Texas Water Code §5.507 and §13.4132, to authorize an emergency rate increase as authorized by Texas Water Code §5.508 and §13.4133, or to compel a water or sewer service provider to provide service as authorized by Texas Water Code §13.041(d)~~].

(2) TCEQ--Texas Commission on Environmental Quality.

§22.293. Notification of Emergency Order.

(a) A retail public [~~water or sewer~~] utility that requests [~~applies for~~], obtains, or is subject to an emergency order issued by the TCEQ [~~Texas Commission on Environmental Quality (TCEQ)~~] shall notify the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies as soon as reasonably possible by:

(1) filing with the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies a copy of the request [~~application~~] or order; or

(2) if the request [~~application~~] or order is not available to the retail public utility, filing with the commission and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies a letter describing the facts and circumstances relating to the request [~~application~~] or order.

(b) A retail public [~~water or sewer~~] utility may comply [~~complies~~] with subsection (a) of this section by providing [~~if~~] the information required by subsection (a) of this section [~~is provided~~] as part of a request [~~an application~~] for an emergency order under §22.295 of this title (relating to Request [~~Application~~] for Emergency Order) and by providing notice, if applicable, to all other regulatory authorities having original jurisdiction over the retail public utility's rates and service policies.

(c) Upon issuance of an emergency order by the commission, the commission shall provide notice of issuance of the order to the affected retail public utility as soon as practicable. Notice of the commission's action under this subchapter is adequate if the notice or emergency order is delivered by registered or certified mail, return receipt requested, or hand-delivered, to the last known address of the retail public utility's headquarters.

(d) After a retail public utility receives notice of the issuance of an emergency order by the commission under this subchapter, the retail public utility shall provide notice of issuance of the emergency order to all affected ratepayers, the TCEQ, and all regulatory authorities having original jurisdiction over the retail public utility's rates and service policies. If the emergency order is for a rate change pursuant to §24.14(a)(4) of this title (relating to Emergency Orders and Emergency Rates), the retail public utility will provide the notice within ten days of the issuance of the emergency order or before the next billing cycle in which the new rate will be imposed, whichever is first. Otherwise, the retail public utility will provide the notice within ten days of the issuance of the emergency order. A copy of the notice shall also be filed with the commission along with a signed affidavit as proof that the notice was provided. The notice shall include:

(1) The name of the retail public utility for which the emergency order was issued, its corresponding certificate of public convenience and necessity number(s), and all relevant TCEQ issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;

(2) The address of the office for the retail public utility identified in paragraph (1) of this subsection;

(3) An emergency contact name and phone number(s) for the retail public utility identified in paragraph (1) of this subsection;

(4) The start and end date of the emergency order; and

(5) A brief statement explaining how the customers of the retail public utility identified in paragraph (1) of this subsection will be affected by the issuance of the emergency order.

(e) If a retail public utility required to provide notice pursuant to subsection (d) of this section has abandoned operation of its facilities or the owner of such a retail public utility has abandoned the system, as described in Texas Water Code §13.412(a)(1) - (2) and (f), then the retail public utility's receiver appointed pursuant to Texas Water Code §13.412 or temporary manager authorized pursuant to Texas Water Code §13.4132 shall provide notice as required by subsection (d) of this section. If no receiver or temporary manager has been appointed or authorized, commission staff shall take reasonable efforts to ensure that customers are provided the notice required by subsection (d) of this section or other reasonable notice.

§22.295. Request [~~Application~~] for Emergency Order.

(a) A person seeking an emergency order under this subchapter shall submit a written request [application] to the commission.

(b) For a requesting person [an applicant] other than commission staff, the request [application] must:

(1) (No change.)

(2) state whether the requesting person [applicant] is also seeking or has obtained an emergency order from the TCEQ [Texas Commission on Environmental Quality];

(3) state the name, address, and telephone number of the requesting person [applicant], the person submitting the request [application] on the requesting person's [applicant's] behalf, and the person signing the request [application] on the requesting person's [applicant's] behalf;

(4) state the name of the retail public utility, its corresponding certificate of public convenience and necessity number(s), and its corresponding TCEQ issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;

(5) [(4)] contain information sufficient to identify the facility(ies) [facility] and location(s) [location] to be affected by the order;

(6) [(5)] describe the condition(s) [condition] of emergency or other condition(s) [condition] justifying the issuance of the order;

(7) [(6)] allege facts to support any findings required under this subchapter;

(8) [(7)] estimate the dates on which the proposed order should begin and end and the dates on which the activity proposed to be allowed, mandated, or prohibited should begin and end;

(9) [(8)] describe the action sought and the activity proposed to be allowed, mandated, or prohibited;

(10) [(9)] include any other statement or information required by this subchapter; and

(11) [(10)] shall be signed as follows:[.]

(A) For a corporation, the request [application] shall be signed by an executive officer or by a [responsible] corporate official who has been delegated appropriate authority by an executive officer.

(B) For a partnership or sole proprietorship, the request [application] shall be signed by a general partner or the proprietor, respectively.

(C) For a municipality, state, federal, or other public agency, the request [application] shall be signed by a person authorized to make the representation(s) contained in the request on behalf of the municipality or agency [either a principal executive officer or a ranking elected official].

(D) A person signing a request [an application] shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered [gather] and evaluated [evaluate] the information submitted. Based on my inquiry of the person or persons who manage the retail water or sewer system(s) or the retail public utility, [system,] or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For a request [an application] by commission staff, the request [application] must:

(1) contain the items specified in subsection (b)(2) - (10) [(b)(2) - (9)] of this section; and

(2) be signed by commission staff.

§22.296. Additional Requirements for Emergency Rate Increases.

(a) If an emergency rate increase is granted pursuant to §24.14(a)(4) of this title (relating to Emergency Orders and Emergency Rates), the commission shall schedule a hearing and establish a final rate prior to the expiration of the emergency rate order. The final rate must be established and implemented no more than 15 months after the emergency rate increase takes effect. [An emergency rate increase may be granted under this subchapter for a period not to exceed 15 calendar months from the date on which the increase takes effect. The commission shall schedule a hearing to establish a final rate within that period and require the utility to provide notice of the hearing to each customer.]

(b) A utility is required to provide notice of the hearing to establish a final rate set pursuant to subsection (a) of this section to all customers at least ten days before the date of the hearing. A copy of the notice shall also be filed with the commission along with a signed affidavit as proof that the notice was provided. [The additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.]

(c) A request for an emergency rate increase must be filed by the utility in accordance with, and must contain the information required by §22.295 of this title (relating to Request [Application] for Emergency Order) and must also contain the following:

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

[(d) The effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission.]

[(e) Any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission.]

(d) [(f)] Consistent with the notice requirements set forth in §22.293(d) of this title (relating to Notification of Emergency Order), a [A] utility receiving authorization for an emergency rate increase shall provide notice of the increase to each ratepayer within ten days of issuance of the order, or before the next billing cycle in which the rate will be in effect, whichever is first [as soon as possible, but no later than the effective date for the emergency rate]. The notice shall contain the following:

(1) the utility's name and address, the previous rates, the emergency rates, the effective date of the rate increase, and the classes of utility customers affected; and

(2) this statement: "This emergency rate increase has been approved by the Public Utility Commission of Texas under authority granted by the Texas Water Code [§5.508 and] §13.4133 to ensure the provision of continuous and adequate service to the utility's customers. The commission is also required to schedule a hearing to establish a final rate within 15 months after the date on which the emergency rates take effect. The utility is required to provide notice of the hearing to all customers at least ten [10] days before the date of the hearing. The

additional revenues collected under this emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service."

[~~(g) The utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.31 of this title (relating to Cost of Service).~~]

[~~(h) During the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).~~]

§22.297. Notice and Opportunity for Hearing.

(a) (No change.)

(b) A law under which the commission acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an emergency order issued pursuant to the Texas Water Code, Chapter 13, Subchapter K-1 unless the law specifically requires notice for an emergency order. The commission shall give notice of the hearing as it determines is practicable under the circumstances. [~~An emergency order issued under this subchapter without a hearing is not subject to the requirements of the Texas Administrative Procedure Act.~~]

(c) If notice and opportunity for a hearing is practicable, the commission shall provide the notice not later than the tenth day before the date set for the hearing. [~~If an emergency order is issued under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the order to be held before the commission or SOAH as soon as practicable after the order is issued.~~]

(d) If notice and opportunity for a hearing is not practicable and the emergency order is issued without a hearing: [~~Except as otherwise provided by this subchapter, notice of a hearing to affirm, modify, or set aside an emergency order under this subchapter shall be given not later than the tenth day before the date set for the hearing. This notice shall provide that an affected person may request an evidentiary hearing on issuance of the emergency order.~~]

(1) issuance of the emergency order is not subject to the requirements of the APA; and

(2) the commission shall provide notice of a hearing to affirm, modify, or set aside an emergency order pursuant to §22.299 of this title (relating to Hearing Required to Affirm, Modify, or Set Aside) not later than the tenth day before the date set for the hearing, except as otherwise provided by this subchapter. The notice shall provide that an affected person may, consistent with the APA:

(A) request an evidentiary hearing to affirm, modify, or set aside the emergency order; and

(B) waive their right to a hearing, if applicable. The notice shall explain how such waiver may occur.

(e) The notice required under both subsections (c) and (d) of this section shall also include the notice requirements provided in §22.183(b)(1) and (2) of this title (relating to Disposition by Default). [~~A hearing to affirm, modify, or set aside an emergency order under this subchapter is subject to the Texas Administrative Procedure Act.~~]

§22.298. Contents of Emergency Order.

An emergency order issued under this subchapter shall contain at least the following:

(1) the name and address of the requesting person [~~applicant~~], if any, and information sufficient to identify the facility(ies) [~~facility~~] or location(s) [~~location~~] affected by the order;

(2) a description of the condition(s) [~~condition~~] justifying the issuance of the order;

(3) (No change.)

(4) a statement of the term of the order, including the dates on which it shall begin and end, in accordance with §24.14 of this title (relating to Emergency Orders and Emergency Rates);

(5) (No change.)

(6) if the order was issued without a hearing, a statement to that effect, and if the emergency order was issued pursuant to §24.14(a)(2) - (3) of this title, a provision setting a time and place for a hearing before the commission or SOAH; [~~and~~]

(7) the procedure by which a person waives a right to a hearing; and

(8) [~~(7)~~] any other statement or information required by this subchapter.

§22.299. Hearing Required to Affirm, Modify, or Set Aside.

(a) A hearing shall be held either before or after the issuance of each emergency order, unless all persons affected by the order waive the right to a hearing. Notice of a hearing to affirm, modify, or set aside an emergency order shall be given in accordance with §22.297(d) of this title (relating to Notice and Opportunity for Hearing). [~~If no hearing is held before the issuance of an emergency order, a hearing to affirm, modify, or set aside the order shall be held before the commission or SOAH as soon as practicable after the order is issued.~~]

(b) A hearing to affirm, modify, or set aside an emergency order under this subchapter is subject to the APA.

(c) In a hearing to affirm, modify, or set aside an emergency order under this subchapter, the applicant shall be given the opportunity to:

(1) present evidence under oath;

(2) present rebuttal evidence under oath; and

(3) cross-examine witnesses under oath.

(d) If no hearing is held before the issuance of an emergency order, the commission or the executive director shall set a time and place for a hearing to be held before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued. For emergency orders issued pursuant to §24.14(a)(2) or §24.14(a)(3) of this title (relating to Emergency Orders and Emergency Rates) without a hearing, the order shall set a time and place for a hearing before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued.

(e) At a hearing required under this section, or within a reasonable time after the hearing, the commission shall affirm, modify, or set aside the emergency order.

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

Filed with the Office of the Secretary of State on March 4, 2016.

TRD-201601112

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 936-7223

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16 TAC §22.294

The repeal is proposed under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§22.294. Emergency Orders and Emergency Rates.

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

Filed with the Office of the Secretary of State on March 4, 2016.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 936-7223

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CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §24.14, relating to Emergency Orders, and §24.22, relating to Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871. Consistent with 1 TAC §91.35(d), the commission also proposes amendments to Chapter 22 of the commission's rules in a separate notice preamble as part of this project.

The proposed amendments will allow the commission's substantive rules relating to emergency orders to conform to §§2, 3, 5, 6, and 8 - 10 of Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended chapters 5 and 13 of the Texas Water Code Annotated (West 2008 & Supp. 2015) (TWC). The proposed amendments will also allow provisions relating to notice of ratemaking proceedings in §24.22 to implement §5 and §6 of SB 1148, which grant the commission the authority to delegate to the State Office of Administrative Hearings (SOAH) the responsibility and authority to give reasonable notice of hearings in Class A and Class B rate cases. Project Number 45115 is assigned to this proceeding.

Tammy Benter, Division Director of the commission's Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be compliance with SB 1148. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on May 10, 2016. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 40 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to amend the identified sections. All comments should refer to Project Number 45115.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §24.14

This amendment is proposed under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§24.14. Emergency Orders and Emergency Rates.

(a) The commission may issue emergency orders in accordance with the Texas Water Code Chapter 13, Subchapter K-1 under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

(1) to appoint a person under §24.142 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.143 of this title (relating to Operation of a Utility by a Temporary Manager), or Texas Water Code §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the Office of the Texas Attorney General for the appointment of a receiver under Texas Water Code §13.412.

(2) [~~(1)~~] to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience

and necessity to provide continuous and adequate retail water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or inactions. [or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;]

(3) [(2)] to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if [service] discontinuance of service or serious impairment in service is imminent or has occurred.[; and/or]

[(3) to establish reasonable compensation for the temporary service required under paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to raise its rate structure to ensure proper payment.]

(4) to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate retail water or sewer service to the utility's customers pursuant to Texas Water Code §13.4133:

(A) for a utility for which a person has been appointed under Texas Water Code §13.4132 to temporarily manage and operate the utility; or

(B) for a utility for which a receiver has been appointed under Texas Water Code §13.412.

(5) to compel a retail public utility to make specified improvements and repairs to the water or sewer system(s) owned or operated by the utility pursuant to Texas Water Code §13.253(b):

(A) if the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area;

(B) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission; and

(C) if the retail public utility has provided financial assurance under Texas Health and Safety Code §341.0355 or Texas Water Code Chapter 13.

(6) to order an improvement in service or an interconnection pursuant to Texas Water Code §13.253(a)(1) - (3).

(b) The commission may establish reasonable compensation for temporary service ordered under subsection (a)(3) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment. [The commission may also issue orders under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities):]

[(1) to appoint a temporary manager under TWC §5.507 and §13.4132; and/or]

[(2) to approve an emergency rate increase under TWC §5.508 and §13.4133 in certain circumstances:]

[(A) for which a temporary manager has been appointed under TWC §13.4132; or]

[(B) for which a receiver has been appointed under TWC §13.412; and]

[(C) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.]

(c) For an emergency order issued pursuant to subsection (a)(4) of this section and in accordance with §22.296 of this title (relating to Additional Requirements for Emergency Rate Increases): [If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.]

(1) the commission shall coordinate with the TCEQ as needed;

(2) an emergency rate increase may be granted for a period not to exceed 15 months from the date on which the increase takes effect;

(3) the additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service;

(4) the effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission;

(5) any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission;

(6) the utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.31 of this title (relating to Cost of Service); and

(7) during the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(d) The costs of any improvements ordered pursuant to subsection (a)(5) of this section may be paid by bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

(e) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.

(f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days.

(g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued pursuant to subsection (a)(4) of this section.

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

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TRD-201601109

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 936-7223

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SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §24.22

This amendment is proposed under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.451(f), which grants the commission the authority to adopt rules necessary to administer subchapter K-1 of the TWC, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and §13.451 and SB 1148.

§24.22. Notice of Intent and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871.

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

(c) Notice requirements specific to applications filed pursuant to TWC §13.187.

(1) (No change.)

(2) Notice of the hearing. After the rate application is set for a hearing, the commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.

(d) Notice requirements specific to applications filed pursuant to TWC §13.1871.

(1) (No change.)

(2) Notice of the hearing. After the rate application is set for a hearing, the following notice requirements shall apply.

(A) The commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county.

(B) (No change.)

(e) - (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.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes amendments to §102.1, concerning the Board's fee schedule. The amendment adds an eight dollar licensure fee for dentists related to Senate Bill 195, to be paid to the Texas State Board of Pharmacy for operation of the prescription monitoring program.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for local government as a result of enforcing or administering the amendments to the rule. Kelly Parker has determined that the fiscal implications for state government are no more than the changes to the relevant fees listed in the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefits anticipated as a result of administering this section will be to ensure that dentists are prescribing appropriately and give board investigators access to the prescription monitoring database to verify prescriptions written by dentists and determine if violations of the Dental Practice Act and board rules are occurring. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule is no more than the relevant fees listed in the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

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

These amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. These amendments are also proposed under Texas Occupations Code §§101.307, 254.004(b) and (c), 257.002(d-1), Texas Government Code §2054.252(e), and Texas Health and Safety Code §467.0041, which give the Board authority to establish and charge fees.

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

§102.1. Fee Schedule.

Effective September 1, 2016 [~~2015~~], the Board has established the following reasonable and necessary fees for the administration of its function.

Figure: 22 TAC §102.1

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601132
Nycia Deal
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 475-0977

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.69

The State Board of Dental Examiners (Board) proposes the repeal of 22 TAC §107.69, concerning alternative informal assessment of administrative penalty.

The agency seeks to repeal §107.69 and replace it with proposed new rule §107.69. The current §107.69 is being moved to §107.201 in order to better organize the rules relating to assessing administrative penalties. The proposed new §107.69 provides procedural rules for temporary suspensions.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, the repealed rule will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Parker has also determined that for the first five-year period the proposed repeal is in effect, the repealed rule will ensure the protection of public health and safety. Ms. Parker has determined that for the first five-year period the proposed repeal is in effect, the repealed rule will not have foreseeable economic costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the repealed rule is enforced or administered.

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

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

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

§107.69. Alternative Informal Assessment of Administrative Penalty.

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

Filed with the Office of the Secretary of State on March 18, 2016.

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Nycia Deal
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 475-0977

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22 TAC §107.69

The State Board of Dental Examiners (Board) proposes new §107.69, concerning temporary suspensions in an emergency. The proposed new rule provides procedural guidelines when the board initiates a temporary suspension of a license.

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

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures when the board initiates a temporary suspension of a license. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

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

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

No statutes are affected by this proposed new rule.

§107.69. Temporary Suspension in Emergency.

(a) In accordance with §263.004(a) of the Act, a license, permit, or registration shall be temporarily suspended when the board or an executive committee of the board determines that the continued performance of the licensee, permit holder, or registrant (respondent) would constitute a clear, imminent, or continuing threat to a person's physical health or well-being.

(b) An executive committee of the board shall convene as follows:

(1) For each temporary suspension proceeding, the presiding officer of the board shall appoint a three-member executive committee, called "suspension panel," at least two of whom must be dentists, to consider the information and evidence presented by board staff. The presiding officer of the board shall name a chair of the suspension panel.

(2) In the event of the recusal of a suspension panel member or the inability of a suspension panel member to attend a temporary suspension proceeding, an alternate board member may serve on the suspension panel upon appointment by the presiding officer.

(3) Pursuant to §551.125 of the Texas Government Code, the suspension panel may convene via telephone conference call.

(c) Temporary Suspension Hearing. The meeting at which the suspension panel considers a temporary suspension is a temporary suspension hearing. At the temporary suspension hearing, board staff shall present evidence and information to the suspension panel that the continued practice by a person licensed or registered by the board, or the continued performance by a person licensed or registered by the board of a procedure for which the person holds a permit issued by the board, would constitute a clear, imminent, or continuing threat to a person's physical health or well-being.

(d) Order of Temporary Suspension. If a majority of the suspension panel votes to temporarily suspend a license, permit, or registration, the suspension shall have immediate effect, and the chair of the suspension panel will sign an Order of Temporary Suspension. The Order of Temporary Suspension shall include or attach a factual and legal basis establishing imminent peril to the public health, safety, or welfare, as required by §2001.054(c-1) of the Texas Government Code. The Order shall be sent by certified mail or hand-delivered to the respondent.

(e) Temporary Suspension Without Notice. In accordance with §263.004(b) of the Act, a license or permit may be suspended under this section without notice to the respondent if at the time of the suspension, board staff requests a hearing before the State Office of Administrative Hearings (SOAH) to be held no later than 30 days after the date the temporary suspension. The hearing is referred to as the "probable cause hearing."

(f) Notice, Continuance, and Waiver of Probable Cause Hearing. Board staff shall serve notice of the probable cause hearing upon the respondent in accordance with SOAH's rules. The respondent may request a continuance of the probable cause hearing or request to waive the probable cause hearing. If the Administrative Law Judge (ALJ) grants the continuance request or the respondent's request to waive of the probable cause hearing, the suspension remains in effect until the suspension is considered by SOAH at the continued probable cause hearing or at the final hearing. If the probable cause hearing is not held within 30 days, and the respondent did not request a continuance or waive the probable cause hearing, the suspended license, permit, or registration is reinstated.

(g) Probable Cause Hearing. At the probable cause hearing, an ALJ shall determine whether there is probable cause to continue the temporary suspension of the license, permit or registration and issue an order on that determination.

(h) Final Hearing. If the ALJ determines that probable cause exists to continue the temporary suspension, SOAH shall hold a second hearing no later than 60 days from the date of the temporary suspension hearing. At this hearing, board staff shall present evidence supporting the continued suspension of the license, permit, or registration and may present evidence of any additional violations related to the licensee, permit holder, or registrant. This hearing is referred to as the "final hearing."

(i) Notice and Continuance of Final Hearing. Board Staff shall send notice of the final hearing in accordance with SOAH's rules. The respondent may request a continuance of the final hearing. If SOAH does not hold a final hearing within 60 days of the date of the temporary suspension hearing, and the respondent has not requested a continuance, the license, permit, or registration is reinstated.

(j) Proposal for Decision. Following the final hearing, the ALJ shall issue a proposal for decision on the suspension and any other action to be taken against the license or permit holder, for consideration by the board at its next scheduled board meeting.

(k) A temporary suspension takes effect immediately and shall remain in effect until:

(1) a final or superseding order of the Board is entered; or

(2) the ALJ issues an order determining that there is no probable cause to continue the temporary suspension of the license, permit, or registration.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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Nycia Deal
General Counsel
State Board of Dental Examiners
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SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §§107.100 - 107.108, 107.110

The State Board of Dental Examiners (Board) proposes the repeal of 22 TAC §§107.100 - 107.108 and 107.110, concerning procedures for investigating complaints.

The agency seeks to repeal these sections and replace them with proposed new rules. The proposed new rules seek to better explain the board's process for receiving and investigating complaints.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, the repealed rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Parker has also determined that for the first five-year period the proposed repeals are in effect, eliminating the unclear rules will help ensure the protection of public health and safety. Ms. Parker has determined that for the first five-year period the proposed repeals are in effect, there will be no foreseeable economic costs to persons or small businesses previously required to comply with the rules. There is no foreseeable impact on employment in any regional area where the repealed rules were previously enforced or administered.

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

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

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

§107.100. Receipt, Processing, and Coordination of Complaints.

§107.101. Preliminary Inquiry of a Complaint.

§107.102. Commencement of an Official Complaint.

§107.103. Disposition of an Official Complaint.

§107.104. Confidentiality of Investigations.

§107.105. Request for Information and Records from Licensees.

§107.106. Use of Expert Panel.

§107.107. Selection of Expert Reviewers.

§107.108. Determination of Competency by the Expert Panel.

§107.110. Compliance.

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

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §§107.100 - 107.109

The State Board of Dental Examiners (Board) proposes new §§107.100, 107.101, 107.102, 107.103, 107.104, 107.105, 107.106, 107.107, 107.108, 107.109, concerning procedures for investigating complaints. The proposed new rules provide greater clarification and explanation of the board's internal processes from receiving an initial complaint through investigation.

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

Ms.Parker has also determined that for the first five-year period the proposed rules are in effect, the public benefit anticipated as a result of administering this section will be to clarify the board's internal processes concerning processing of complaints and investigations. Ms. Parker has determined that for the first five-year period the proposed rules are in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rules are enforced or administered.

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

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

No statutes are affected by this proposed new rules.

§107.100. Definitions.

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

(1) Act--Title 3, Subtitle D, Chapter 251-267, Texas Occupations Code.

(2) Complaint--The term complaint includes complaints submitted on the agency's official complaint form, complaints initiated internally on the agency's internal complaint form, and self-reports submitted by licensees pursuant to §108.6 of this title (relating to Report of Patient Death or Injury Requiring Hospitalization).

(3) Jurisdictional Complaint--A complaint received by the board that if true, would constitute a violation of the Act or board rules.

(4) Jurisdictional Not Filed Complaint--A jurisdictional complaint received by the board on which the board decides not to proceed with an official investigation. These complaints are closed during the preliminary investigation.

(5) Jurisdictional Filed Complaint--A jurisdictional complaint on which the board has determined to proceed with an official investigation.

(6) Preliminary investigation--An investigation conducted by the agency upon the receipt of a complaint to determine whether the complaint is jurisdictional and whether the complaint should be filed and an official investigation commenced.

(7) Official Investigation--An investigation conducted by the agency of a complaint that, after a preliminary investigation, is determined to be a jurisdictional filed complaint.

(8) Respondent--The subject of a complaint received by the agency. The Respondent may be a licensee or registrant of the board or a person or entity that does not hold the license or registration issued by the board that is required to engage in conduct in which the person or entity is alleged to have engaged.

§107.101. Responsibilities of Investigations Division and Dental Practice Division.

(a) The Investigations Division, under supervision of the Director of Investigations, processes and investigates complaints received by or initiated by the agency. All investigations shall comply with §255 of the Act.

(b) The Dental Practice Division, under supervision of the Dental Director, assists in the preliminary investigation of complaints related to professional competency and coordinates the official investigation of complaints related to professional competency, including the use of the Dental Review Panel in the official investigation.

§107.102. Complaints.

(a) Complaints shall be submitted on the official complaint form.

(b) Complaints shall contain the following information:

(1) the name and contact information of the complainant;

(2) the name of the person or entity against whom the complaint is filed;

(3) the time and place of the alleged violation of the Act or board rules; and

(4) if applicable, the name and birthdate of the patient who was treated.

(c) Jurisdictional complaints that are received by the board and do not comply with subsections (a) and (b) of this section may be closed as "Jurisdictional-Not Filed" during the preliminary investigation. The Director of Investigations or Dental Director may initiate an internal complaint based on the allegations made in such a complaint if the allegations made in the complaint, if true, would constitute a clear, imminent, or continuing threat to a person's physical health or well-being. These complaints name the State of Texas as the complainant.

§107.103. Preliminary Investigation of a Complaint.

(a) Each complaint received by the agency undergoes a preliminary investigation. The preliminary investigation determines the following:

(1) whether the board has jurisdiction over the subject of the complaint;

(2) whether the continued practice by a licensee/registrant or the continued performance by a licensee/registrant of a procedure for which the person holds a license or registration would constitute a clear, imminent, or continuing threat to a person's physical health or well-being; and

(3) whether there is probable cause to justify commencement of an official investigation.

(b) Determination of jurisdiction. A complaint is jurisdictional if it alleges conduct, that if true, would constitute a violation of the Act or board rules. A complaint is not jurisdictional if the complaint is received by the agency after the fourth anniversary of the date the act that is the basis of the complaint occurred; or the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint. A complaint that is closed in the preliminary investigation because the board has no jurisdiction over the complaint is a "Dismissed-Non Jurisdictional" complaint.

(c) If the board has jurisdiction over the complaint, board staff shall complete the preliminary investigation of the complaint not later than the 60th day after the date the agency received the complaint. If the complaint alleges a violation of the standard of care, board staff conducting the preliminary investigation of the complaint shall be or shall consult with a licensed dentist or dental hygienist.

(d) In the preliminary investigation, board staff shall determine whether the continued practice by a licensee/registrant or the continued performance by a licensee/registrant of a procedure for which the person holds a license or registration would constitute a clear, imminent or continuing threat to a person's physical health or well-being. If such determination is made, board staff may refer such complaint to the suspension panel of the board for a temporary suspension pursuant to §263.004 of Act.

(e) In the preliminary investigation, board staff may make reasonable efforts to contact the complainant concerning the complaint. Any additional information received from the complainant will be added to the information maintained on the complaint.

(f) In the preliminary investigation, the respondent may be given the opportunity to respond to the allegations. If the respondent is given this opportunity, the response must be received within the time prescribed by board staff. Any additional information received from the respondent will be added to the information maintained on the complaint.

(g) In the preliminary investigation of each jurisdictional complaint, the following minimum additional evidence will be gathered by the Investigations division:

(1) The history of the respondent collected and maintained by the agency;

(2) The history of the respondent maintained by the National Practitioner's Data Bank;

(3) Whether the respondent is a participant in the state Medicaid program and whether the allegations made in the complaint involve services provided under the state Medicaid program, for reporting purposes pursuant to §254.012 of the Act; and

(4) medical and dental records, as needed.

(h) At the conclusion of the preliminary investigation of a jurisdictional complaint, board staff shall determine whether commence an official investigation of the complaint. A jurisdictional complaint that is closed during the preliminary investigation without proceeding to an official investigation is considered "Jurisdictional-Not Filed." A complaint that proceeds to an official investigation is considered a "Jurisdictional-Filed" complaint.

(i) If board staff fails to complete the preliminary investigation within 60 days of receiving the complaint, the board's official investigation of the complaint commences on the 60th day, and the complaint is considered a "Jurisdictional-Filed" complaint.

§107.104. Official Investigation of a Complaint.

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

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

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

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

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

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

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

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

(6) Practicing Dentistry without a License.

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

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

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

(2) Priority 2 record-keeping violations, administrative violations, allegations of practicing dentistry without a license that do

not allege serious patient harm, and other allegations that do not allege serious patient harm.

(3) A complaint's priority classification may be changed following approval of the Director of Investigation or the Dental Director.

§107.105. Collection of Information and Records.

(a) Dental Records. Upon request by board staff, a licensee/registrant shall provide copies of dental records or original records. Board staff may require licensees/registrants to submit records immediately if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed.

(b) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a licensee/registrant shall respond in writing to all written board requests for information within ten days of receipt of such request.

(c) Business Records Affidavits. Dental records must be provided under a business records affidavit or as otherwise required by board staff.

(d) Failure to Comply. Failure to comply with board staff's request for records or information may be grounds for the issuance of an administrative penalty citation pursuant to §254.0115 of the Act. Failure to comply with board staff's request for records or information may be unprofessional and dishonorable conduct that is subject to disciplinary action by the board pursuant to §263.002 of the Act.

§107.106. Confidentiality of Investigations.

(a) Investigation files and other records are confidential, except board staff shall inform the license holder of the specific allegations against the license holder.

(b) No employee, agent, or member of the board may disclose confidential information except in the following circumstances:

(1) to another local, state or federal regulatory agency;

(2) to local, state or federal law enforcement agencies;

(3) to other persons if required during the course of the investigation;

(4) to other entities as required by law; and

(5) a person who has provided a statement may receive a copy of the statement.

(c) A final disciplinary action of the board is not excepted from public disclosure, including:

(1) the revocation or suspension of a license/registration;

(2) the placement on probation with conditions of a license/registration that has been suspended;

(3) the reprimand of a licensee/registrant;

(4) the issuance of a warning order to a licensee/registrant; and

(5) a final cease and desist order issued to a non-licensee.

(d) A final non-disciplinary public action of the board is not excepted from public disclosure, including:

(1) a remedial plan; and

(2) an administrative penalty citation.

(e) Files and other records collected during the investigation of a license application are confidential, except board staff shall maintain a public profile of each licensee that contains the following information:

(1) License name and former last name;

(2) License number;

(3) License status;

(4) License issue date;

(5) License expiration date;

(6) Primary address;

(7) Information related to issuance of nitrous and sedation/anesthesia permits;

(8) Area of practice reported by licensee/registrant;

(9) Dental school and year of graduation; and

(10) Year of birth.

§107.107. Use of Dental Review Panel.

(a) If the preliminary investigation finds that there is probable cause to indicate that an act by a licensee/registrant fell below the minimum standard of care, the relevant information and records collected by board staff shall be reviewed by a panel of experts during the official investigation. Each panel of experts shall include an initial and second reviewer and, if necessary, a third reviewer. The panel of experts for an investigation shall be selected from members of the Dental Review Panel.

(b) Composition and Duties. The Dental Review Panel shall be composed of dentists and dental hygienists appointed by the board to assist with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist reviewers.

(c) Qualifications. To be eligible to serve on the Dental Review Panel, a dentist or dental hygienist must meet the following criteria:

(1) licensed in Texas to practice dentistry or dental hygiene;

(2) no history of disciplinary action by the board in the ten years prior to application;

(3) acceptable malpractice complaint history;

(4) in active practice currently and at the time of the alleged violation, or supervising clinical care in an academic setting;

(5) demonstrated knowledge of accepted standards of dental care for the diagnosis, care and treatment related to the alleged violation; and

(6) demonstrated training or experience to offer an expert opinion regarding accepted standards of dental care.

(d) Term; Resignation; Removal.

(1) An expert reviewer shall serve on the Dental Review Panel until resignation or removal from the Dental Review Panel.

(2) An expert reviewer may resign from the Dental Review Panel at any time.

(3) An expert reviewer may be removed from the Dental Review Panel for good cause at any time on order of the Executive Director. Good cause for removal includes:

(A) failure to maintain the eligibility requirements set forth in subsection (c) of this section;

(B) failure to inform the board of potential or apparent conflicts of interest;

(C) repeated failure to timely review complaints or timely submit reports to the board;

(D) repeated failure to prepare the reports in the prescribed format; and

(E) direct contact with the complainant or the respondent.

(e) The presiding officer or board secretary may make an interim appointment of an expert reviewer to serve the board until the reviewer can be considered for appointment by the board at the next board meeting.

§107.108. Assignment of Dental Review Panel Members.

(a) Reviewers for a particular complaint shall be assigned from among those Dental Review Panel members who practice in the same or similar specialty as the licensee/registrant who is the subject of the filed complaint.

(b) If an assigned reviewer has a potential or apparent conflict of interest that would prevent the reviewer from providing a fair and unbiased opinion, that reviewer shall not review the case and another reviewer shall be assigned from among those Dental Review Panel members who practice in the same or similar specialty as the licensee/registrant who is the subject of the filed complaint.

(1) A potential conflict of interest exists if the selected reviewer lives or practices dentistry or dental hygiene in the same geographical market as the licensee/registrant who is the subject of the complaint and:

(A) is in direct competition with the licensee/registrant; or

(B) knows the licensee/registrant.

(2) An apparent conflict of interest exists if the reviewer:

(A) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(B) has a familial relationship within the third degree of affinity with any party or witness; or

(C) determines that the reviewer has knowledge of information that has not been provided by board staff and that the reviewer cannot set aside that knowledge and fairly and impartially consider the matter based solely on the information provided by board staff.

(c) If no reviewer agrees to review the case who can qualify under the requirements of subsections (a) and (b) of this section, a reviewer who has a potential conflict may review the case, provided the expert reviewer's report discloses the nature of the potential conflict.

(d) If any assigned reviewer has a potential or apparent conflict of interest, the reviewer shall notify board staff of the potential or apparent conflict.

§107.109. Review by Dental Review Panel Members.

(a) The initial reviewer shall review all the relevant information and records collected by the agency and determine whether the respondent has violated the standard of care applicable to the circumstances and issue a preliminary written report of that determination.

(b) The second reviewer shall review the initial reviewer's preliminary report and all the relevant information and records collected by the agency and determine whether the respondent has violated the standard of care applicable to the circumstances. If the second reviewer agrees with the conclusions of the initial reviewer, the second reviewer shall inform the initial reviewer and the initial reviewer shall issue a final written report on the matter. If the second reviewer does not agree with the conclusions of the initial reviewer, the second reviewer shall issue a secondary written report of his determination.

(c) If the initial and second reviewer do not agree on the determination, a third reviewer will be necessary. The third reviewer shall review the preliminary and secondary report and all the relevant information and records collected by the agency and determine whether the respondent has violated the standard of care applicable to the circumstances and issue a final written report of that determination. The final written report shall be issued by the third reviewer or the reviewer with whom the third reviewer concurs.

(d) The written reports shall include the following:

(1) the general qualifications of each reviewer; and

(2) the opinions of each reviewer regarding:

(A) the relevant facts concerning the dental care rendered;

(B) the applicable standard of care;

(C) the application of the standard of care to the relevant facts;

(D) a determination of whether the standard of care has been violated; and

(E) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports.

(e) The reviewers may consult and communicate with each other in formulating their opinions and reports.

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. DISPOSITION OF COMPLAINTS

22 TAC §§107.200 - 107.202, 107.205

The State Board of Dental Examiners (Board) proposes new rules §§107.200, 107.201, 107.202, and 107.205. The proposed new rules provide greater clarification and explanation of the board's disposition of filed complaints, including the ability to assess administrative penalties to resolve complaints.

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

Kelly Parker has also determined that for the first five-year period the proposed rules are in effect, the public benefit anticipated as a result of administering this section will be to clarify and explain the board's options to dispose of a filed complaint and the procedures for assessing administrative penalties. Ms. Parker

has determined that for the first five-year period the proposed rules are in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rules are enforced or administered.

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

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

No statutes are affected by these proposed new rules.

§107.200. Disposition of a Filed Complaint.

(a) During the official investigation of a filed complaint, board staff will determine whether a violation of the Act or board rules has occurred. If the complaint is related to professional competency, members of the Dental Review Panel shall assist with the determination, as described in Subchapter B of this Chapter.

(b) If the information and evidence gathered and the Dental Review Panel Report, if applicable, indicate that a violation of the Act has occurred, board staff shall initiate the appropriate action, including dismissal with board recommendation, disciplinary action, remedial plan, or cease and desist order, and obtain final approval of the board at a public board meeting, if required.

(c) If the information and evidence gathered and the Dental Review Panel Report, if applicable, is insufficient to support that a violation of the Act or board rules has occurred, board staff shall dismiss the complaint and advise the board of such dismissal at a public board meeting.

(d) If a complaint is dismissed, a letter shall be sent to the complainant informing him or her of the dismissal and explaining the reason for the dismissal.

(e) If the complaint is dismissed, a letter shall be sent to the respondent informing him or her of the dismissal. Board staff may also inform the respondent of any recommendations that may improve his or her practice.

§107.201. Procedures for Alternative Informal Assessment of Administrative Penalty.

(a) Purpose and construction. Section 264.0115 of the Act authorizes the board to assess administrative penalties against persons licensed or regulated under the Act for violations of the Act that do not involve the provision of direct patient care. Section 264.0115 of the Act authorizes the board to establish procedures for the alternative informal assessment of administrative penalties. Violations that are subject to an alternative informal assessment of administrative penalty are identified in §107.202(b) of this title (related to Alternative Informal Assessment of Administrative Penalty Schedule). The penalty amounts applicable to violations subject to an alternative informal assessment of administrative penalty are identified in §107.202(b) of this title (related to Alternative Informal Assessment of Administrative Penalty Schedule).

(b) Administrative Penalty Citation.

(1) If the board identifies a violation that is subject to an alternative informal assessment of administrative penalty, it may issue an administrative penalty citation (citation) to the licensee/registrant who is alleged to have committed the violation.

(2) The citation shall be served in-person or by certified mail upon the licensee/registrant who is alleged to have committed the violation.

(3) The citation shall include the following:

(A) a clear statement of the violation, including a citation to the relevant section of the board's rules and the Act;

(B) the amount of the penalty assessed for each violation; and

(C) a statement that the cited licensee/registrant may either pay the penalty or appeal the penalty in writing.

(4) The licensee/registrant must respond to the citation within thirty calendar days of in-person service of the citation or within thirty calendar days of the date the citation is mailed, by certified mail, to the licensee/registrant.

(c) Response to Administrative Penalty Citation. The licensee/registrant may respond to the citation by:

(1) paying the penalty; or

(2) appealing the citation in writing by requesting a hearing under Chapter 2001 of the Texas Government Code.

(d) The licensee/registrant is entitled to a hearing under Chapter 2001 of the Texas Government Code. If the licensee/registrant timely submits a written appeal of the penalty, board staff shall set a hearing at the State Office of Administrative Hearings to be held no later than 30 days from the date the board receives the written appeal/request for hearing.

(e) Reports of Administrative Penalty Citations.

(1) A citation shall be a public record.

(2) A citation shall not be considered a restriction or limitation on the license or registration of the licensee/registrant and shall not be reported to the National Practitioner Data Bank.

(3) The investigative file and other records related to the citation shall remain confidential, in accordance with §254.006 of the Act.

(4) A report of the citations issued and payments received, pursuant to this rule and §264.0115 of the Act shall be made to the board at each regularly scheduled meeting.

(f) Failure to respond. If a licensee/registrant fails to respond to a citation by the due date, staff shall set the citation for a hearing under Chapter 2001 of the Texas Government Code. Board staff may seek a penalty for failure to respond to the citation in addition to the penalty in the original citation.

(g) Nothing in this rule shall be construed to prohibit board staff from seeking disciplinary action or a remedial plan in lieu of an administrative penalty citation.

(h) A citation may be issued to address some violations identified in board staff's investigation of a complaint. Nothing in this rule shall be construed to prohibit board staff from seeking disciplinary action or a remedial plan to address remaining violations that were not resolved by the issuance of a citation.

(i) A citation may be issued to address all violations identified in board staff's investigation of a complaint. If a complaint is fully resolved by the issuance and payment of an administrative penalty citation, the complaint is closed with the disposition "CAP-Closed by Administrative Penalty."

§107.202. Alternative Informal Assessment of Administrative Penalty Schedule

(a) Pursuant to §264.0115 of the Act, administrative penalties may be imposed on a licensee or registrant for violation of the Dental Practice Act and/or Board rules and regulations.

(b) Alternative Informal Assessment of Administrative Penalty, Standard Schedule. The standard penalties outlined below shall apply to the alternative informal assessment of administrative penalty, described in §107.201 of this title (relating to Procedures for Alternative Informal Assessment of Administrative Penalty), and authorized under §264.0115 of the Act. These penalties are assessed through the issuance of administrative penalty citations (citations) for violations that do not involve the provision of direct patient care.

(1) A penalty assessed under this rule is a monetary penalty that shall not exceed $1,000 for each violation. The total amount of penalties assessed against a person pursuant to §264.0115 of the Act and §107.201 of this title (relating to Procedures for Alternative Informal Assessment of Administrative Penalty) may not exceed $3,000 in a calendar year.

(2) The following standard schedule identifies penalty amounts imposed by citations issued for the violations identified:

(A) Failure to make complaint information available to consumers--$250.00;

(B) Failure to post names of dentists--$250.00;

(C) Failure to display license or registration--$250.00;

(D) Failure to timely provide records to board--$500.00;

(E) Failure to provide records to patient within 30 days of request--$500.00;

(F) Failure to maintain current CPR/ALS/BLS training--$250.00

(G) Sanitation and infection control--$500.00:

(H) Failure to provide prosthetic identification--$250.00.

(I) Failure to respond to administrative penalty citation--$250.00.

(J) Non-compliance or untimely compliance with jurisprudence assessment requirement of Remedial Plan or Board Order--$250.00.

(K) Advertising/business promotion violation--$250.00;

(L) Practice while license expired; less than 90 days--$500.00.

(M) Allowing auxiliary personnel to practice with expired licenser/registration; less than 90 days--$250.00.

§107.205. Registration of Non-Profit Corporations Authorized To Hire Dentists.

(a) The State Board of Dental Examiners will approve and certify any health organization or other organization qualified to contract with or employ dentists upon submission of an application meeting the following requirements:

(1) A written request to the Board by the organization's chief executive officer will suffice as the application;

(2) The following documentation shall be submitted:

(A) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(B) written proof of a determination by the Internal Revenue Service that the organization is tax exempt under the Internal Revenue Code pursuant to §501(c)(3); and

(C) either written proof that the organization is:

(i) organized and operated as a migrant, community or homeless health center under the authority of and in compliance with 42 United States Code §254(b) or (c), or §256, or a federally qualified health center under 42 United States Code §1396d(1)(2)(B); or

(ii) written proof that the organization provides services at no fee or a reduced fee to underserved populations; or

(iii) written proof that the organization will hire dentists to staff a clinic that provides services primarily to persons having AIDS or the human immunodeficiency virus.

(b) For purposes of this rule, the terms "reduced fee" and "underserved populations" have the following meanings:

(1) Reduced fee--A fee that is less than that charged by other dental service providers in the area for the same service; or fees that are equal to or less than those provided by Medicaid for a service.

(2) Underserved populations--Individuals whose income, or individuals from families earning income that is below the federal poverty guidelines as established by the federal government.

(c) The Board may refuse to approve and certify or may revoke an approval or certification if in the Board's determination a health organization is established, organized, or operated in contravention of or with the intent to circumvent any of the provisions of the Dental Practice Act.

(d) A certified non-profit health organization shall notify the Board within thirty (30) calendar days of the discontinuation of business in the manner described in subsection (a)(2)(C) of this section.

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

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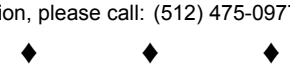

SUBCHAPTER C. ADMINISTRATIVE PENALTIES

22 TAC §107.202, §107.300

The State Board of Dental Examiners (Board) proposes the repeal of 22 TAC §107.202 concerning disciplinary guidelines and administrative penalty schedule, and §107.300, concerning registration of non-profit corporations authorized to hire dentists.

The agency seeks to repeal §107.202 and replace it with a proposed new rule. The proposed new rule seeks to better explain the board's procedures for issuing administrative penalties. The

agency seeks to repeal §107.300 and propose it in a new section--proposed new rule §107.205.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed repeals are in effect, the repealed rules will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Parker has also determined that for the first five-year period the proposed repeals are in effect, eliminating the unclear rules will help ensure the protection of public health and safety. Ms. Parker has determined that for the first five-year period the proposed repeals are in effect, there will be no foreseeable economic costs to persons or small businesses previously required to comply with the rules. There is no foreseeable impact on employment in any regional area where the repealed rules were previously enforced or administered.

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

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

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

§107.202. Disciplinary Guidelines and Administrative Penalty Schedule.

§107.300. Registration of Non-Profit Corporations Authorized to Hire Dentists.

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

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SUBCHAPTER D. COMPLIANCE PROGRAM

22 TAC §107.300

The State Board of Dental Examiners (Board) proposes new rule §107.300, concerning the compliance program. The proposed new rule provides more information about the duties and responsibilities of the compliance program.

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

Kelly Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the compliance program's role and responsibilities. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

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

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

No statutes are affected by this proposed new rule.

§107.300. Responsibilities of Compliance Division.

(a) The Director of Compliance shall ensure that a compliance monitoring program is established and maintained for those licensee/registrants who have received a disciplinary action, remedial plan, or administrative penalty citation.

(b) The monitoring program shall be maintained by board staff serving as compliance officers.

(c) Monitoring disciplinary action and remedial plans.

(1) The compliance officer shall provide the licensee/registrant with initial notification of the requirements imposed by the disciplinary action or remedial plan. The initial notification shall include a copy of the disciplinary action or remedial plan and a copy of the compliance program rules and procedures.

(2) The compliance officer shall make good faith efforts to assist the licensee/registrants in attaining and maintaining compliance with the disciplinary action or remedial plan.

(3) The compliance officer shall refer non-compliance with disciplinary action or remedial plans to the Director of Compliance to determine whether to initiate an investigation into non-compliance with the disciplinary action or remedial plan.

(d) Monitoring administrative penalty citations.

(1) The compliance officer shall monitor administrative penalty citations for the response required by §107.201 of this title (relating to Procedures for Alternative Informal Assessment of Administrative Penalty).

(2) The compliance officer shall refer timely requests for appeal of administrative penalty citations to the Director of Compliance to initiate the appeal.

(3) The compliance officer shall refer non-payment of the administrative penalty citation to the Director of Compliance to determine whether to initiate an investigation into non-payment of the administrative penalty citation.

(e) Applications for modification of a disciplinary action shall be made in accordance with §107.66 of this title (relating to Application for Modification of Board Order).

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 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.12

The State Board of Dental Examiners (Board) proposes amendments to §108.12, concerning the dental treatment of sleep disorders. The proposed amendments clarify what a dentist shall and shall not do in relation to obstructive sleep apnea.

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

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures when a Respondent does not appear at a hearing. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

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

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

No statutes are affected by this proposed amendment.

§108.12. Dental Treatment of Obstructive Sleep Apnea [~~Sleep Disorders~~].

(a) A dentist shall not independently diagnose obstructive sleep apnea (OSA). A dentist may fabricate an oral appliance for treatment of OSA only in collaboration with a licensed physician. A dentist shall be responsible for monitoring and maintaining the oral appliance to ensure the patient's dental health, while the physician should be responsible for monitoring the patient's medical condition. [~~A dentist may diagnose, treat, operate, or prescribe for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums and jaws, and provide surgical and adjunctive treatment for directly related and adjacent masticatory structures.~~]

(b) A dentist who treats OSA, as described above, shall complete, during the first year of treating OSA, 12 hours of minimum basic education in sleep-disordered breathing from an educational venue (a combination of didactic and clinical education). For each subsequent year that a dentist treats OSA, the dentist shall complete 3 hours of education in sleep-disordered breathing.

[~~(b) Screening for Sleep Disorders.~~]

[~~(1) A dentist may screen a dental patient for benign snoring and obstructive sleep apnea (OSA) by using validated subjective and objective screening tools. Subjective measures may include but not are limited to Epworth Sleepiness Scale, Stop-Bang Scoring Tool, and Apnea Risk Evaluation System. Objective measures may include but are not limited to evaluation of the oropharyngeal areas, arch forms, tongue size, neck size, Mallampati classification, other morphometric measures, and sleep studies. Sleep studies must be interpreted by a Texas licensed physician.~~]

[~~(2) Any screening shall be for the sole purpose of identification of contraindications to dental treatment or identification of benign snoring and OSA in order to refer the patient to a Texas licensed physician to confirm or rule out OSA, and not be for the purpose of the dentist diagnosing or ruling out OSA.~~]

[~~(c) Dental Treatment.~~]

[~~(1) A dentist may independently diagnose, treat, and monitor any dental comorbidity related to benign snoring or OSA. A dental comorbidity may include, but is not limited to, periodontal disease, bruxism, occlusal disorders, temporomandibular joint disorders, and deformities of the soft palate, tongue, and uvula. A dentist should consider referral to a Texas licensed physician to diagnose or rule out OSA in accordance with the standard of care.~~]

[~~(2) A dentist may treat and monitor benign snoring, when no apneic episodes are reported or discovered, with an oral appliance only after consideration of referral to a Texas licensed physician in accordance with the standard of care.~~]

[~~(3) A dentist may not treat or monitor OSA without collaboration with a Texas licensed physician.~~]

[~~(4) An oral appliance shall only be fabricated by a Texas licensed dentist or by a Texas registered dental lab under a prescription or work order prepared by a dentist.~~]

[~~(d) A dentist who treats benign snoring or OSA must provide, on a yearly basis, adequate follow up of the orthotics, stability and health of occlusion and orofacial musculoskeletal system.~~]

(c) [~~(e)~~] A dentist treating a patient for [~~benign snoring or~~] OSA shall comply with the Dental Practice Act and Board Rules, including but not limited to provisions related to fair dealing, standard of care, records, and business promotion.

(d) [~~(f)~~] A dentist shall maintain records as required by the Dental Practice Act and Board Rules including, but not limited to records related to treatment planning, recommendations and options, informed consent, consultations and recommended referrals, and post treatment recommendations.

[~~(g) A dentist who treats or monitors benign snoring or OSA, as described above, shall complete, during the first year of treating or monitoring benign snoring or OSA, 12 hours of minimum basic education in sleep-disordered breathing from an educational venue (a combination of didactic and clinical education). For each subsequent year that a dentist treats or monitors benign snoring or OSA, the dentist shall complete 3 hours of education in sleep-disordered breathing.~~]

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

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 160. MEDICAL PHYSICISTS

22 TAC §§160.1 - 160.5, 160.7 - 160.30

The Texas Medical Board (Board) proposes new Chapter 160, §§160.1 - 160.5 and 160.7 - 160.30, concerning Medical Physicists.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR PROPOSED CHAPTER 160

Following a Sunset review of the Texas Department of Health Services and the Texas Board of Licensure for Professional Medical Physicists, the Texas legislature transferred the regulation of the licensing and discipline of the Medical Physicists to the Texas Medical Board through Senate Bill 202, 84th Legislature, Regular Session (2015). SB 202 which extensively revised Chapter 602 of the Texas Occupations Code authorized the Texas Medical Board to draft rules to implement Chapter 602.

The proposed new Chapter 160 is intended to implement the changes made to the structure of Occupations Code Chapter 602 as well as better align the new proposed Chapter 160 with the existing rules and procedures of the Texas Medical Board, the agency charged with the regulation. The majority of the rules proposed in Chapter 160 are taken from the rules governing medical physicists in 22 Texas Administrative Code §601.1 et seq. without amendment and have simply been re-numbered for inclusion in Chapter 160. Once these rules are adopted by the Texas Medical Board it is expected that DSHS will repeal the original rules governing Medical Physicists in 22 TAC Chapter 601.

SECTION-BY-SECTION SUMMARY

Section 160.1. Purpose, describes the intended purpose of Chapter 160 and sets forth its statutory basis.

Section 160.2, Definitions, provides definitions for important terms and phrases used in Chapter 160. New terms and phrases defined include: "advisory committee," "armed forces of the United States," "license", "military service member," "military spouse," military veteran," "physician," "submit," and "training license."

Section 160.3, Meetings, establishes procedural requirements for meetings of the Medical Physicist Licensure Advisory Committee.

Section 160.4, Specialty License, describes the requirement that a person may not practice medical physics without a license in one of the medical physics specialties listed in this section, and lists the four types of licensed specialties: (1) Diagnostic Radiological Physic; (2) Medical Health Physics; (3) Medical Nuclear Physics; (4) Therapeutic Radiological Physics.

New §160.5, Exemptions from License Requirement, sets forth the exemptions from licensing under the Texas Medical Physics Practice Act. This section was brought over from the original rules without change.

Section 160.7, Qualifications for License Requirement, sets forth requirements for licensing including requirements for: fees, good character, educational requirements, examination requirements, and alternative licensing requirements for military service members.

Section 160.8, Application Procedures, sets forth application procedures for applying for a medical physicist license, including procedures for appealing a determination of ineligibility through a contested case hearing at the State Office of Administrative Hearings ("SOAH").

Section 160.9, Licensure Documentation, sets forth specific requirements for the documentation required as part of a licensure application, including the requirement that all applicants for licensure submit finger prints for the purposes of the Board obtaining criminal history record information.

Section 160.10, Training License sets for the requirements for what was formerly referred to in the rules as a temporary license but is now referred to as a training license.

Section 160.11, Provisional License, sets for the requirements, procedures and rules regarding provisional licenses.

Section 160.12, License Renewal, sets for the requirement that medical physicists licensed by the Board by the Board register biennially and the rules and procedures regarding such registration and renewal of license. This section sets out rules for dealing with delinquent and expired registration permits.

Section 160.13, Criminal History Record Information Required for Renewal, requires that applicants renewing a license to submit fingerprints so that the Board may order a criminal record check. This requirement does not apply to individuals submitting requests for renewal who have submitted fingerprints for the initial issuance of a license or as part of a prior renewal.

Section 160.14, Relicensure, describes the requirement that medical physicist's whose licenses have been expired for one year or longer are required to re-apply comply with the requirements for obtaining an original license.

Section 160.15, Licenses and License Holder Duties, sets forth basic requirements related to a license holders duties in regard to providing the license on demand and notifying the board of changes in mailing address and/or employment.

Section 160.16, Continuing Education Requirements, sets forth the continuing education requirements for medical physicists, types of acceptable qualifying education, and board procedures for auditing continuing education compliance of licensed medical physicists.

Section 160.17, Medical Physicist Scope of Practice, defines the parameters of the scope of practice for the practice medical physics and all of the medical physicist specialties.

Section 160.18, Complaints and Complaint Procedure Notification, deals with the procedure for filing complaints against medical physicists and notifying medical physicist of such complaints.

Section 160.19, Subpoenas; Confidentiality of Information, addresses the subpoena authority of the executive director of the Board and subpoenas in general. This section also deals with the confidentiality of information and materials subpoenaed or compiled by the Board and explicitly exempts such information from publication under the Texas Public Information Act.

Section 160.20, Grounds for Denial of Licensure and Disciplinary Action, sets forth the board's authority to refuse to issue a license or to discipline a licensee for specified categories of actions.

Section 160.21, Disciplinary Guidelines, applies Chapter 190 of this title (relating to Disciplinary Guidelines), to the denial of a license or discipline of a licensed medical physicist. This section states that in cases of conflict with Chapter 190 of this title, that provision of Chapter 160 will apply.

Section 160.22, Procedural Rules for Hearings, applies Chapter 187 of Title 22, Part 9 of the Texas Administrative Code to hearings involving medical physicists.

Section 160.23, Disciplinary Process or Discipline of Medical Physicists, sets forth the actions and sanction types available to the Board if the Board finds a medical physicist has committed any of the acts set for the §§160.20, 160.24, and 160.25 of this chapter.

Section 160.24, Code of Ethics, sets out the detailed code of ethics and professional conduct to which medical physicists are bound and subject to discipline for their violation.

Section 160.25, Impaired Medical Physicists, sets out provisions regarding the Board' ability to require a mental or physical examination of a medical physicists whom the Board believes may be impaired. This section also states that Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) shall apply to medical physicists.

Section 160.26, Compliance, applies Chapter 189 of this title (relating to Compliance Program) to medical physicists under Board disciplinary orders.

Section 160.27, Voluntary Relinquishment or Surrender of a License, applies Chapter 189 of Title 22, Part 9 of the Texas Administrative Code to voluntary relinquishment or surrender of medical physicists licenses.

Section 160.28, Administrative Procedure, states that Chapters 2201 and 2002 of the Act and board rules for contested case hearings to contested case proceedings brought by the Board and this chapter.

Section 160.29, Criminal Convictions Related to the Profession of Medical Physics, addresses the Board's ability to suspend, revoke or disqualify a person from receiving a license based on certain types of criminal convictions. The rule defines which types of criminal convictions will be considered to directly relate to the practice of medical physics and which felonies and misdemeanors indicate an inability or tendency to be unable to properly engage in the practice of medical physics. Additionally, the rule sets out mandatory revocation provisions following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 160.30, Constructions, sets out provisions dealing with the interpretation of this chapter consistent with the statutory provisions of Medical Physicist Act and Medical Practice Act, and dealing with conflict between this chapter and provisions of the Act.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Scott Freshour, General Counsel for the Board, has determined that for the first five years the proposed rules are in effect, enforcing or administering the proposed rules will not have foreseeable implications relating to costs or revenues of state or local governments. Mr. Freshour has determined that the effect on individuals subject to the proposed rules will be the imposition of fees associated with licensure and registration, including new fees for fingerprinting and criminal background checks. The effect on small or micro businesses will be none.

PUBLIC BENEFITS AND COSTS

Scott Freshour, General Counsel for the Board, has determined that, for each of the first five years the proposed are in effect, the public benefit expected as a result of enforcing the proposed rules will be consistency with the new, amended provisions of the Occupations Code transferring the primary responsibility for licensing and regulation to the Texas Medical Board and converting Texas Board of Licensure for Professional Medical Physicists to an advisory committee to the Texas Medical Board. The rules will also have the benefit of aligning policies and procedures related to licensing and regulation of medical physicists with the Board's current policies and procedures. The rules will additionally benefit the public by insuring the safe practice of properly trained and qualified medical physicists. Additionally, the rules will provide an avenue for licensees to obtain treatment through the Texas Physician Health Program for health conditions that have the potential of impairing their practice of medical physics.

LOCAL EMPLOYMENT IMPACT STATEMENT

Scott Freshour, General Counsel for the Board, has 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 rules will be in effect and will impose no new requirements on local economies.

Mr. Freshour has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the proposed rules. Mr. Freshour has further determined that there is no anticipated economic cost to persons who are otherwise required to comply with the new rules. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS

Scott Freshour, General Counsel for the Board, has determined that the proposed rules are not subject to Texas Government Code §2001.0225 because they do not constitute a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT

Scott Freshour, General Counsel for the Board, has determined that the promulgation and enforcement of proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed rules do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the rules do not impose a burden nor restrict or limit the owner's right to property. Therefore, the proposed rules do not constitute a taking under Texas Government Code Chapter 2007.

SUBMITTAL OF COMMENTS

Comments on the content of this proposal will be accepted for 30 days following publication and may be submitted to Robert Blech, P.O. Box 2018, Austin, Texas 78768-2018 or e-mailed to rules.development@tmb.state.tx.us.

STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Occupations Code Annotated, §602.151(a)(1), which provides author-

ity for the Board to adopt rules reasonably necessary to properly perform its duties under this chapter

No other code or statute is affected by the new rules.

§160.1. Purpose.

(a) These rules are promulgated under the authority of the Medical Practice Act Title 3, Subtitle B, Texas Occupations Code and the Medical Physics Practice Act, Texas Occupations Code Annotated Chapter 602, concerning the licensure and regulation of medical physicists. The purpose of these rules is to:

(1) protect the health, safety, and welfare of the citizens of this state from harmful effects of radiation;

(2) protect the public from the practice of medical physicists by incompetent licensees.

(b) This chapter will protect the public from the dangers described by subsection (a)(1) and (2) of this section by:

(1) establishing minimum standards of education, training, and competency for persons engaged in the practice of medical physics; and

(2) ensuring that the privilege of practicing in the field of medical physics is entrusted only to those persons licensed under the Act.

§160.2. Definitions.

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

(1) Act--Title 3, Subtitle K, Texas Occupations Code Annotated Chapter 602.

(2) Active duty--A person who is currently serving as full-time military service member in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(3) Address of record--The mailing address of each licensee or applicant as provided to the agency pursuant to the Act.

(4) Advisory committee--The Medical Physicist Licensure Advisory Committee, an informal advisory committee to the board whose purpose is to advise the board regarding rules and the licensure, enforcement, and discipline of medical physicists.

(5) APA--Administrative Procedure Act, Texas Government Code, Chapter 1601 as amended.

(6) Applicant--A person seeking a medical physicist license from the board.

(7) Armed forces of the United States--Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(8) Board--The Texas Medical Board.

(9) Diagnostic radiological physics--The branch of medical physics that deals with the diagnostic application of x-rays, gamma rays from sealed sources, ultrasound radiation, or radiofrequency radiation and the use of equipment associated with the production and use of that radiation.

(10) License--A certificate issued by the Board that authorizes the holder to engage in the practice of medical physics.

(11) Licensed medical physicist--A person who holds a license issued under the Act.

(12) Medical health physics--The branch of medical physics that deals with the safe use of x-rays, gamma rays, particle beams, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

(13) Medical nuclear physics--The branch of medical physics that deals with the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes, but including therapy with radiolabeled microspheres and with the use of equipment associated with the production and use of radionuclides.

(14) Military service member--A person who is on active duty.

(15) Military spouse--A person who is married to a military service member.

(16) Military veteran--A person who served on active duty and who was discharged or released from active duty.

(17) Physician--A person licensed to practice medicine by the Texas Medical Board under Texas Occupations Code, Chapter 152, or if out-of-state a person who holds a valid license to practice medicine in that state or territory.

(18) Practice of medical radiological physics--The use of principles and accepted protocols of physics to assure the correct quality, quantity, and utilization of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful radiation. The term includes radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation-emitting equipment and radiopharmaceuticals, and consultation with a physician to assure accurate radiation dosage to a specific patient.

(19) Practitioner--A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed in this state and who prescribes radiologic procedures for other persons.

(20) Provisional license--An authorization to practice medical physics for a period not to exceed 180 days for individuals currently licensed or certified in another jurisdiction.

(21) Quality assurance--An all encompassing term that includes data recording, patient management, outcome analysis and equipment performance monitoring.

(22) Quality control--A subset of quality assurance that concerns monitoring the performance of imaging, treatment and associated radiological equipment.

(23) Radiation--Ionizing and/or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

(24) Radiological physics--The branch of medical physics that includes diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, and medical health physics.

(25) Radiological procedure--A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures.

(A) The activities and services which fall within the definitions in the Act of the practice of medical radiological physics,

diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics are not radiological procedures.

(B) The activities and services which fall within the Texas Regulations for Control of Radiation, as defined in 25 TAC §289.201(b) (relating to General Provisions for Radioactive Material) and §289.231(c) (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation), concerning radiographic entrance exposure rates; entrance exposure rates for fluoroscopy; dose measurements of the radiation output of computed tomography (CT) x-ray systems; equipment performance evaluations; surveys, calibrations, and spot checks for therapeutic radiation systems operating above 150 kVp up to 1MeV, and surveys, calibrations, and spot checks for therapeutic radiation systems operating at energies of 1MeV and above, are not radiological procedures.

(26) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(27) Supervision--To oversee the work of a medical physicist holding a training license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement, the supervisor shall be responsible for the training licensee's work during this period. The supervisor assumes the responsibility, and must have the authority, to observe and correct the actions of the individual being supervised. There are three levels of supervision as described in subparagraphs (A) - (C) of this paragraph.

(A) General Supervision--The training licensee works under the overall control and direction of the supervisor, but the supervisor's presence is not required during the performance of the work.

(B) Direct Supervision--The supervisor is present in the building or institution and immediately available to furnish assistance and direction throughout the work. The supervisor need not be in the room where the work is being performed.

(C) Personal Supervision--The supervisor is physically present in the room where the training licensee is working.

(28) Training License--A certificate authorizing an individual to practice medical physics under the supervision of a licensed medical physicist.

(29) Therapeutic radiological physics--The branch of medical physics that deals with the therapeutic application of x-rays, gamma rays, particle beams, or radiations from radionuclide sources and the use of equipment associated with the production and use of that radiation.

(30) Upper division semester hour credits--Third-level or above (junior, senior or graduate) course work completed from a regionally accredited college or university.

§160.3. Meetings.

(a) The advisory committee shall meet as requested by the board to carry out the mandates of the Act.

(b) A meeting may be held by telephone conference call.

(c) Special meetings may be called by the president of the board, upon written request by the presiding officer of the committee signed by at least three members of the committee.

(d) Except as otherwise provided by this subchapter, the advisory committee is subject to Chapters 551, 552, and 1601 of the Texas Government Code.

(e) A majority of advisory committee members constitutes a quorum for all purposes, except when advisory committee members are participating in a proceeding of the board as described by Texas Occupations Code §602.151(b).

(f) Advisory committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the board adopts a different procedure.

(g) All issues requiring a vote of the committee shall be decided by a simple majority of the members present.

§160.4. Specialty License.

(a) A person may not practice medical physics without a license in one of the medical physics specialties listed in subsection (b)(1) - (4) of this section.

(b) A medical physicist may not practice the following specialties unless a person hold a license for that specialty:

(1) Diagnostic Radiological Physics;

(2) Medical Health Physics,

(3) Medical Nuclear Physics;

(4) Therapeutic Radiological Physics.

§160.5. Exemptions from License Requirement.

(a) This section sets out persons who are exempt from the Texas Medical Physics Practice Act (Act) and persons who must be licensed under the Act.

(b) Except as specifically exempted by subsection (c) of this section, the provisions of the Act and this chapter apply to any person who engages in the practice of medical physics.

(c) The Act and this chapter do not apply to:

(1) practitioners in the performance of radiological procedures;

(2) a person practicing under the Medical Radiologic Technologist Certification Act (Texas Occupations Code, Chapter 601);

(3) persons who perform radiological procedures under a practitioner's instruction or supervision;

(4) persons performing beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for procedures not involved with the diagnosis or treatment of disease or other medical or dental conditions in humans; or

(5) a person employed by a federal or state regulatory agency who is performing duties within the scope of his or her employment.

(d) Activities that do not fall within the definition of medical physics are not governed by the Act or this chapter.

§160.7. Qualifications for Licensure.

(a) General. Except as otherwise provided, an individual applying for licensure must:

(1) submit completed application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function as a medical physicist; and

(4) be of good moral character.

(b) Eligibility. To be eligible for a license, a person must:

(1) have an earned master's or doctoral degree:

(A) from a program of study in medical physics that is accredited by the Commission on Accreditation of Medical Physics Education Programs (CAMPEP);

(B) from a regionally accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses; or

(C) from a regionally accredited college or university:

(i) in physical science (including chemistry), applied mathematics or engineering; and

(ii) have twenty semester hours (30 quarter hours) of upper division semester hour credit or graduate level physics courses, if offered:

(I) by the faculty of a Department of Physics and would be acceptable in meeting undergraduate or graduate degree requirements in physics of the offering department; or

(II) by the faculty of a program accredited in medical physics by the CAMPEP; or

(III) by the faculty of another science department and acceptable to the board.

(2) have demonstrated, to the board's satisfaction, the completion of at least two years of full-time work experience in the medical physics specialty for which the application is made.

(3) have work experience in more than one specialty to include six additional months of full-time equivalent work experience in each additional medical physics specialty for which the application is made.

(c) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week. All work experience must have been completed in the five years preceding the date of application for licensure as a medical physicist, or training license in the medical physics specialty for which application is made.

(d) International academic credit. Degrees and course work received at international universities shall be acceptable only if such course work could be counted as transfer credit by regionally accredited universities. An applicant having an international degree(s) must furnish at the applicant's own expense a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an International Credential Evaluation from the Foreign Credential Service of America (FCSA), or another similar entity as approved by the board. The degree evaluation must be sent directly to the board by the evaluation service. An applicant must submit with the application complete certified copies of academic transcripts showing proof of the degree(s) awarded (masters or doctorate) and the date it was awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

(e) Approved specialty examination. An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

(1) for the therapeutic radiological physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in therapeutic radiological physics, radiological physics or therapeutic medical physics;

(B) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in general medical physics or radiation oncology physics;

(2) for the medical nuclear physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in medical nuclear physics radiological physics or nuclear medical physics;

(B) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(C) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation or in molecular imaging science; or

(D) the Canadian College of Physicists in Medicine or its successor organization in general medical physics or nuclear medicine physics;

(3) for the diagnostic radiological physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in diagnostic radiological physics, radiological physics or diagnostic medical physics;

(B) the American Board of Medical Physics or its successor organization in diagnostic imaging physics or diagnostic radiology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in general medical physics; or

(4) for the medical health physics specialty, the examination offered by:

(A) the American Board of Radiology or its successor organization in radiological physics;

(B) the American Board of Health Physics or its successor organization in health physic or comprehensive health physics;

(C) the American Board of Medical Physics or its successor organization in medical health physics;

(D) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection; or

(E) the Canadian College of Physicists in Medicine or its successor organization in general medical physics.

(f) Jurisprudence Examination. Applicants for licensure must pass a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the medical physicist profession in this state. The jurisprudence examination shall be developed and administered as follows:

(1) Questions for the JP Exam may be prepared by board staff with input from the Advisory Committee and board, or contracted out to a third party vendor. Board staff shall make arrangements for a facility by which applicants can take the examination;

(2) Applicants must pass the JP exam with a score of 75 or better within three attempts, unless the Board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the licensure committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the licensure committee to allow an applicant additional attempts to take the JP exam;

(3) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner;

(4) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action;

(5) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(g) Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted medical physicist license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas medical physicist license; or

(B) within the five years preceding the application date held a medical physicist license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described by this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this section shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §160.8(a)(2) of this title (relating to Application Procedures), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the 20 day deadline in §160.8(a)(6) of this title, may be considered for permanent licensure up to five days prior to the board meeting.

(h) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall credit, with respect to an applicant who is a military service member or military veteran as defined in §160.2 of this title (relating to Definitions), verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a medical physicist license suspended or revoked by another state or a Canadian province;

(B) holds a medical physicist license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

§160.8. Application Procedures.

(a) Except as otherwise provided, an applicant for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by Chapter 175 of this title (relating to Fees and Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) delay by board staff in processing an application due to an administrative error;

(B) application requires licensure committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) licensure committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the licensure committee;

(D) applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(3) who in any way falsifies the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are received by the board;

(6) must have the application for licensure complete in every detail at least 20 days prior to the board meeting at which the applicant is considered for licensure. An applicant may qualify for a training license prior to being considered by the board for licensure, as required by §160.10 of this title (relating to Training Licensure); and

(7) must complete an oath swearing that the applicant has submitted an accurate and complete application.

(b) The executive director or a designee of the executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director, a designee of the executive director, or board staff, may consult with a member(s) of the advisory committee as part of such application re-

view. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by the board's licensure committee within 20 days of receipt of such notice, and the executive director may refer any application to the licensure committee for a recommendation concerning eligibility.

(1) If the licensure committee finds the applicant ineligible for licensure, such recommendation, together with the reasons, shall be submitted to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination.

(2) The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure.

(3) A medical physicist whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Texas Government Code, Chapter 552. The board may disclose such reports to appropriate licensing authorities in other states.

§160.9. Licensure Documentation.

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) evidence of relevant work experience, including a description of the applicant's responsibilities and of the duties that were performed;

(2) Transcripts of courses taken and grades obtained from a college or university granting the applicant's degree and if required under these rules, a certificate of completion of training to demonstrate compliance with educational requirements of this chapter. If a college or university does not issue an official transcript, the board may accept another form of official documentation or sworn evidence of the degree or successful completion of courses.

(3) a statement of the medical physics specialty for which the application is submitted;

(4) three current professional references as follows:

(A) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application;

(B) one licensed physician practicing in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing in diagnostic radiology, radiation oncology, or nuclear medicine;

(C) if applying for a training license, post-secondary academic references may be substituted.

(5) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation, if necessary, to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(6) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(7) Examination verification. Each applicant for licensure must have the appropriate testing service(s) or testing boards, that administered the medical physicist specialty examination(s) required under this chapter, submit verification of the applicant's passage of the examination directly to the board.

(8) Training license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Training license Affidavit" prior to the issuance of a training license.

(9) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must submit a copy of the license, registration or certificate issued by the relevant state board.

(10) Criminal History record information.

(A) Each applicant for a license must submit a complete and legible set of fingerprints, on a form prescribed by the Board, to medical board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(B) the Board shall conduct a criminal history check of each applicant for a license using information:

(i) provided by the applicant for license under this subsection;

(ii) made available to the Board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(11) National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB). Each applicant must contact the NPDB-HIPDB and have a report of action submitted directly to the board on the applicant's behalf.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance disorder or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the inpatient treatment/hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance disorder must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Additional documentation. Any additional documentation required to facilitate the investigation of an application for licensure may be required of the applicant.

(d) The board may, in unusual circumstances, allow substitute documents where the applicant demonstrates exhaustive efforts to secure the required documents. These exceptions are reviewed by the board's executive director on a case-by-case basis.

§160.10. Training Licensure.

(a) To be eligible for a training license, a person must meet the educational requirements set out in §160.7 of this chapter (relating to Qualifications for Licensure).

(b) A training license shall be issued for each specialty for a one-year period.

(c) Each training license may be renewed annually up to three times. The licenses do not have to be for consecutive years.

(d) Subsequent renewals may be granted by the executive director if the licensee requests the renewal in writing prior to the expiration of the training license; and

(1) provides satisfactory evidence to the board that the renewal applicant has applied for or has been scheduled for examinations in the same specialty area for which renewal is requested. (The examination must occur during the period in which the renewal would be effective);

(2) provides satisfactory evidence to the board of continued efforts towards completion of an examination during the previous periods the licensee held a training license; and

(3) submits to the board the completed renewal form and the renewal fee.

(e) The application for renewal of a training license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(f) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area. The work experience must be completed in accordance with a supervision plan approved by the board, signed by both the supervisor and the training license holder. The supervision plan shall describe the duration of personal, direct and general supervision with particular attention to the aspects of the work of the training licensee that could have the greatest effect on the safety of patients, personnel or the public. The board may audit supervision plans for compliance with this section.

(g) A supervisor shall supervise no more than two training license holders or their full time equivalents, unless approved by the board.

(h) A supervisor shall assume responsibility for all of the work conducted under his or her supervision. A supervisor shall approve and sign all formal work product of the training license holder, such as reports of machine calibrations, shielding designs, treatment plan reviews, patient specific quality assurance measurements, treatment record reviews, and equipment evaluations.

(i) The application procedures set out in §160.8 of this chapter (relating to Application Procedures) shall apply.

§160.11. Provisional License.

(a) A provisional license may be issued to a person who is currently licensed or certified in another jurisdiction and who:

(1) has been licensed or certified in good standing as a practitioner of medical or radiological physics for at least two years in another jurisdiction, including a foreign county, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(2) has passed a national or other examination recognized by the board relating to the practice of medical or radiological physics;

(3) is sponsored by a person licensed as a medical physicist in Texas with whom the provisional license holder will practice under this section; and

(4) has submitted a complete and legible set of fingerprints for purpose of performing a criminal history check of the applicant for provisional license.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a provisional license if:

(1) the provisional license holder is eligible to be certified under §602.211 of the Act (relating to License by Endorsement or Reciprocity); or

(2) the provisional license holder passes the JP Exam; and

(A) the board verified that the provisional license holder meets the academic and experience requirement for a license under §160.7 of this title (relating to Qualifications for Licensure); and

(B) the provisional license holder satisfies any other licensing requirements under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt of pending examination results.

(e) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license.

(f) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical physicist license or denies the provisional license holder's application for a license; or

(2) upon determination by the executive director that the provisional license holder is ineligible for licensure.

(g) An applicant renewing a license shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant for provisional license as provided by §602.2081 of the Act.

§160.12. License Renewal.

(a) Medical physicists licensed by the board shall register biennially and pay a fee. A medical physicist may, on notification from the board, renew an unexpired licensed by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, residence, the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board may prorate the length of the initial medical physicist registration and registration fees, so that registrations expire on a single date, regardless of the board meeting at which the medical physicist is licensed.

(c) The board shall provide written notice to each licensee at the licensee's address of record at least 30 days prior to the expiration date of the license.

(d) Within 30 days of a medical physicist's change of mailing, residence or office address from the address on file with the board, a medical physicist shall notify the board in writing of such change.

(e) A licensee shall furnish a written explanation of his or her affirmative answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(f) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a medical physicist to denial of the renewal and/or to discipline pursuant to §602.301 of the Act.

(g) Expired Annual Registration Permits.

(1) If a medical physicist's registration permit has been expired for 90 days or less, the medical physicist may obtain a new permit by submitting to the board a completed permit application, the registration fee, and a penalty fee in an amount equal to one-half of the amount of the renewal fee.

(2) If a medical physicist's registration permit has been expired for longer than 90 days but less than one year, the medical physicist may obtain a new permit by submitting a completed permit application, the registration fee, and a penalty fee equal to the amount of the renewal fee.

(3) If a medical physicist's registration permit has been expired for one year or longer, the medical physicist's license is automatically canceled, unless an investigation is pending, and the medical physicist may not obtain a new permit.

(4) A medical physicist may not hold himself out as a licensed medical physicist if he holds an expired permit.

(h) A military service member who holds a medical physicist license in Texas is entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license.

§160.13. Criminal History Record Information Required for Renewal.

(a) An applicant renewing a license shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by §602.2081 of the Act.

(b) The medical board may not renew the license of a person who does not comply with the requirements of subsection (a) of this section.

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 602.2081 of the Act for the initial issuance of the license; or

(2) this section as part of a prior renewal of the license.

(d) If an applicant fails to comply with the requirements of this section for 120 days or longer the medical physicist's license shall be automatically canceled, unless an investigation is pending.

§160.14. Relicensure.

If a medical physicist's license has been expired for one year or longer, the license is considered to have been canceled, unless an investigation is pending, and the person may not renew the license. The medical physicist may obtain a new license by complying with the requirements and procedures for obtaining an original license.

§160.15. Licenses and License Holder Duties.

(a) A license certificate is the property of the board and must be surrendered on demand.

(b) A licensee shall display or make available the license in an appropriate manner.

(c) A licensee shall notify the board of any change in name, preferred mailing address, or place(s) of business or employment within 30 days of any change.

(1) Notification of changes shall be made in writing and be mailed to the board.

(2) Notification of name changes shall include a copy of a marriage certificate, court decree, or a social security card reflecting the change and the license replacement fee.

§160.16. Continuing Education Requirements.

(a) Content. This section establishes the continuing education requirements that a licensed medical physicist must complete biennially to maintain licensure. These requirements are intended to maintain and improve the quality of professional services in medical physics provided to the public, to keep the licensed medical physicist knowledgeable of current research, techniques, and practice, and to provide other resources which will improve skill and competence in the practice of medical physics.

(b) General. Continuing education requirements for license renewal shall be fulfilled biennially on or before the expiration of the license.

(c) Hour requirements for continuing education. A licensee must complete 24 contact hours of continuing education acceptable to the board.

(1) A contact hour shall be defined as 50 minutes of attendance and participation.

(2) A licensed medical physicist must complete acceptable continuing education as identified in subsection (d) of this section.

(3) A licensed medical physicist shall be presumed to have complied with this section if in the preceding 24 months the licensee becomes board certified or recertified by the American Board of Radiology (ABR), American Board of Medical Physics (ABMP), American Board of Science in Nuclear Medicine (ABSNM), or American Board of Health Physics (ABHP).

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience falls into one or more of the following categories:

(1) Attendance at courses, conferences, seminars or scientific sessions sponsored by the following national or regional organizations: American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), Health Physics Society (HPS), Society of Nuclear Medicine and Molecular Imaging (SNMMI), Radiological Society of North America (RSNA), American Society for Therapeutic Radiology and Oncology (ASTRO), or other professional organizations acceptable to the board;

(2) Participation in conferences sponsored by regulatory organizations or other organizations pre-determined as acceptable by the board;

(3) Participation in medical physics related courses, refresher courses, conferences, and seminars sponsored by state and private universities that have an accredited graduate medical physics program;

(4) Participation in a program of study in medical physics that is accredited by the American Association of Physicists in Medicine Commission on Accreditation of Medical Physicist Education Programs;

(5) Participation in a course of study from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering of other course of study acceptable to the board;

(6) Participation in a short course of study relating to basic and/or applied sciences in medicine; or

(7) Participation in a course of study that enhances the practice of medical physics.

(e) Reporting of continuing education. The licensee shall maintain documentation of continuing education.

(1) The board will select, at the time of license renewal, a random sample of licensed medical physicists to verify compliance with the continuing education requirements. The licensed medical physicists selected in the random sample shall submit to the board documentation of participation in and completion of acceptable continuing education and shall include:

(A) a certificate of completion or a certificate of attendance signed by the sponsoring organization; or

(B) a letter on letterhead of the sponsoring organization verifying attendance; or

(C) an official continuing education validation form of the sponsoring organization accompanied by a brochure, agenda, program, or other applicable information indicating content of the program; or

(D) evidence of registration and attendance at a scientific meeting; and

(E) any additional information or documentation deemed necessary by the board to verify the licensed medical physicist's compliance with the continuing education requirements.

(2) The board shall review the documentation submitted to verify compliance with the continuing education requirements, and notify the licensed medical physicist of the results.

(3) If the board determines that the licensed medical physicist failed to successfully complete the continuing education requirements or failed to submit the required documentation, disciplinary action may be taken against the licensee in accordance with §160.20 of this title (relating to Violations, Complaints, and Subsequent Actions).

(4) In the alternative, a licensed medical physicist may request an exemption as set out in subsection (g) of this section.

(f) A licensed medical physicist who has failed to complete the requirements for continuing education as specified in this section shall be referred for investigation and possible disciplinary action.

(g) Exemptions. The board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(1) A licensee is called to or is on active duty with the armed forces of the United States. The licensee must file a copy of orders to active military duty with the board; or

(2) A licensee submits proof of attendance as a student in an approved academic program.

§160.17. Medical Physicist Scope of Practice.

(a) Content. Recognizing that assessing the degree of radiation safety is a complex task of balancing radiation risk with optimizing the benefit of the procedure to the patient, rules are provided that identify certain specific activities or tests as the practice of medical physics. The purpose of the Act and the rules is to ensure the radiation safety of the citizens of Texas by restricting the practice of medical physics to qualified medical physicists.

(b) Role of the service engineers. Service engineers, when installing or maintaining medical equipment, conduct tests or perform activities that are similar or identical to tests or activities identified in these rules. Such tests and activities do not constitute the practice of medical physics provided that:

(1) neither the service engineer nor his employer represents that the outcome of the test or activity or the intent of performing the test or activity ensures the radiation safety of the use of the medical equipment for either the user, the patient, or a member of the public; and

(2) neither the service engineer nor his employer concludes that the medical equipment is radiologically safe, effective or suitable for use on humans based on the tests or activities performed by the service engineer; and

(3) neither the service engineer nor his employer certifies that the medical equipment is radiologically safe and consequently compliant with any state or federal regulation for the control of radiation; and

(4) the test or activity performed by the service engineer is required to install, maintain or repair the medical equipment.

(c) Scope of practice.

(1) The diagnostic radiological physics specialty services include, but are not limited to, the following:

(A) providing evidence that imaging equipment continues to meet applicable rules and regulations of radiation safety and performance standards required by accrediting and regulatory agencies;

(B) acceptance testing or monitoring of diagnostic imaging equipment;

(C) evaluating policies and procedures pertaining to radiation and its safe and appropriate application in imaging procedures;

(D) providing consultation in development and management of the quality control program;

(E) measurement and characterization of radiation from diagnostic equipment;

(F) specification of instrumentation to be used in the practice of diagnostic radiological physics;

(G) providing consultation on patient or personnel radiation dose (effective dose equivalent, fetal dose calculations, specific organ dose determination, etc.) and the associated risk;

(H) protective shielding design and evaluation of a diagnostic imaging facility;

(I) conducting performance evaluations of medical radiologic and fluoroscopic imaging systems which include the following physical tests and assessments:

(i) kilovolts peak (kVp) and timer accuracy;

(ii) exposure reproducibility and linearity;

(iii) exposure geometry, e.g. source to image distance (SID) and collimation;

(iv) entrance skin exposure and exposure rate;

(v) beam quality;

(vi) image quality; and

(J) use of assistants by the licensed medical physicist in accordance with the following: the medical physicist may be assisted by other properly trained individuals in obtaining test data for performance monitoring. These individuals must be properly trained and approved by the medical physicist in the techniques of performing the tests, the function and limitations of the equipment and test instruments, the reasons for the tests, and the importance of the test results. The tests will be performed by or under the general supervision of the medical physicist, who is responsible for and must review, interpret, and approve all data and provide a signed report.

(2) The therapeutic radiological physics specialty services include, but are not limited to, the following:

(A) development of specifications for radiotherapy treatment and simulation equipment;

(B) development of procedures for testing and evaluating performance levels of radiotherapy treatment and simulation equipment;

(C) acceptance testing of radiotherapy treatment and simulation equipment;

(D) calibration and characterization of radiation beams from therapeutic equipment including radiation quantity, quality, and distribution characteristics, and assessment of the mechanical and geometric optics for proper placement of the beam;

(E) providing documentation that radiotherapy treatment and simulation equipment meet accreditation and regulatory compliance requirements;

(F) calibration and/or verification of the physical and radiological characteristics of brachytherapy sources;

(G) specification of the physics instrumentation used in the measurement and performance testing of therapeutic equipment;

(H) acceptance testing, management, and supervision of computer systems used for treatment planning and calculation of treatment times or monitor units. This includes measurement and input of dosimetry data base and verification of output for external beam radiotherapy and brachytherapy;

(I) implementation and management of dosimetric and beam delivery aspects of external beam and brachytherapy irradiation. External beam delivery aspects include treatment aids, beam modifiers, and geometrical arrangements. Special procedures are included for both external beam (e.g. radiosurgery, total body irradiation, total skin irradiation, intraoperative therapy) and brachytherapy (e.g. high dose rate, pulsed dose rate and radiolabeled microspheres);

(J) provision of consultation to the physician in assuring accurate delivery of prescribed radiation dosage to a specific human patient, and the associated risk;

(K) development and management of quality control program for a radiation treatment facility that includes applicable facility accreditation requirements, and the review of policies and procedures pertaining to therapeutic radiation and its safe and appropriate use;

(L) development and/or evaluation of a radiation safety program in a therapeutic radiation facility including written procedures for the protection of patients, workers, and the public; and

(M) protective shielding design and radiation safety surveys in a radiotherapy facility.

(3) The medical nuclear physics specialty services include, but are not limited to, the following:

(A) development of procedures for continuing evaluations of performance levels of radionuclide imaging devices and ancillary equipment;

(B) providing evidence that radionuclide imaging equipment continues to meet applicable rules and regulations of performance and radiation safety required by accrediting and regulatory agencies;

(C) acceptance testing of radionuclide imaging equipment;

(D) development and/or evaluation of a radiation safety program in a nuclear medicine facility;

(E) determination of radiation shielding necessary to protect workers, patients, and the public in a nuclear medicine facility;

(F) development of specifications for radionuclide imaging instrumentation or equipment;

(G) development and monitoring of a quality control program for radionuclide imaging equipment, computers and other patient related radiation detectors such as uptake probes, well counters and dose calibrators;

(H) providing consultation on patient or personnel radiation dose (effective dose equivalent, fetal dose calculations, specific organ dose determination, etc.) and the associated risk;

(I) evaluating policies and procedures pertaining to the safe and appropriate application of radionuclides;

(J) specification of instrumentation used in the practice of medical nuclear physics;

(K) verification of calculated radiation absorbed doses from unsealed radioactive sources and radiolabeled microspheres and the provision of consultation to the physician in assuring accurate delivery of prescribed radiation dosage to a specific human patient and the associated risk in therapeutic nuclear medicine procedures; and

(L) use of assistants by the licensed medical physicist in accordance with the following: the medical physicist may be assisted by other properly trained individuals in obtaining test data for performance monitoring. These individuals must be properly trained and approved by the medical physicist in the techniques of performing the tests, the function and limitations of the equipment and test instruments, the reasons for the tests, and the importance of the test results. The tests will be performed by or under the general supervision of the medical physicist, who is responsible for and must review, interpret, and approve all data and provide a signed report.

(4) The medical health physics specialty services include, but are not limited to, the following:

(A) planning and design of radiation shielding needed to protect workers, patients, and the general public from radiation produced incident to the diagnosis or treatment of humans. This includes calculation of required shielding thickness, selection of shielding material and specification of source-shield geometry;

(B) assessment and evaluation of installed shielding, installed shielding apparatus or portable shielding designed to protect workers, patients, and the general public from radiation produced incident to the diagnosis or treatment of humans. Such evaluation specifically includes determination of whether the shielding is adequate to ensure compliance with state or federal regulatory requirements for limiting the effective dose equivalent and organ dose equivalent of medical radiation workers and members of the public. This includes the selection of appropriate radiation measurement instrumentation to conduct such evaluation as well as the methodology to be employed;

(C) providing consultation, by which determination of the presence and extent of any radiological hazard, in any controlled, restricted, uncontrolled or unrestricted area, resulting from the use of ionizing radiation or radioactivity in the treatment or diagnosis of disease in humans, is made. This includes the design, conduct, and evaluation of results of radiation surveys of health care facilities and the immediate environs intended to determine whether occupancy by medical radiation workers, patients, and members of the public is compliant with state and federal regulations for the control of ionizing radiations. A survey includes the directing of physical measurements of radiation levels and radioactivity, the interpretation of those measurements, and the provision of any conclusions or recommendations intended to limit or prevent exposure of workers, members of the public, and patients;

(D) performing dose and associated risk assessment in which an effective dose equivalent, committed effective dose equivalent, organ dose equivalent, or committed organ dose equivalent is determined by measurement or calculation or both, to any worker, member of the public, fetus or patient who received exposure to ionizing radiation or radioactivity from radiation sources used to treat or diagnose disease in humans. This does not include either the prospective or retrospective determination of absorbed doses to patients undergoing radiation therapy;

(E) consultation which consists of the evaluation or assessment of the radiation safety aspects of policies or procedures which pertain to the safe and appropriate use of radiation or radioactivity, administered to human research volunteers or used to treat or diagnose conditions in humans, when such evaluation or assessment provides conclusions or recommendations regarding dose equivalent assessment, the overall radiation safety afforded to individuals resulting from activities conducted in compliance with the evaluated policies or procedures, or the compliance of any or all provisions of the policies or procedures with either state or federal regulatory requirements for the control of radiation; and

(F) use of assistants by the licensed medical physicist in accordance with the following: the medical physicist may be assisted by other properly trained individuals in obtaining test data for performance monitoring. These individuals must be properly trained and approved by the medical physicist in the techniques of performing the tests, the function and limitations of the equipment and test instruments, the reasons for the tests, and the importance of the test results. The tests will be performed by or under the general supervision of the medical physicist, who is responsible for and must review, interpret, and approve all data and provide a signed report.

§160.18. Complaints and Complaint Procedure Notification.

(a) Filing of complaints.

(1) Anyone may complain to the board alleging that a person or licensee has violated the Act or this chapter.

(2) A person wishing to complain against a medical physicist or other person shall notify the board and shall submit the complaint in writing.

(b) Complaint Procedure Notification.

(1) Pursuant to §602.152 and §602.153 of the Act, Chapter 178 of this title (relating to Complaints) shall govern medical physicists with regard to methods of notification for filing complaints with the agency.

(2) If the provisions of Chapter 178 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§160.19. Subpoenas; Confidentiality of Information.

(a) The executive director of the medical board, the director's designee, or the secretary treasurer of the medical board may issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a medical physicist;

(B) an alleged violation of this chapter or another law related to the practice of medical physics; or

(C) the provision of health care under this chapter; or

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a license under this chapter. If the request is approved, the executive director of the medical board, the director's designee, or the secretary treasurer of the medical board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the medical board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a license application.

(c) A subpoena may be served personally or by certified mail.

(d) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(e) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena.

(f) All information and materials subpoenaed or compiled by the medical board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the medical board or its agents or employees who are involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the medical board in disciplinary action against the holder of a license;

(2) professional medical physics licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the medical board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

§160.20. Grounds for Denial of Licensure and for Disciplinary Action.

Disciplinary action. The board may refuse to issue or renew a license, may suspend, suspend, restrict, or revoke a license, or may reprimand a licensee for any of the following:

(1) obtaining or renewing a license by means of fraud, misrepresentation, or concealment of material facts;

(2) having made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, subject to discipline, or revoked by that licensing authority;

(3) engaging in practice inconsistent with public health and welfare;

(4) engaging in unprofessional conduct that endangered or is likely to endanger the health, safety, or welfare of the public as described in §160.24 of this title (relating to Code of Ethics) or Chapter 190 of this title (referring to Disciplinary Guidelines);

(5) violating the Act, a lawful order or rule of the board, or the board's code of ethics; or

(6) being convicted of:

(A) felony; or

(B) misdemeanor involving moral turpitude or misdemeanor that relates to the person's duties as a licensed medical physicist.

§160.21. Disciplinary Guidelines.

(a) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to Medical Physicists regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:

(1) practice inconsistent with public health and welfare;

(2) unprofessional and dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) repeated and recurring meritorious health care liability claims; and

(5) aggravating and mitigating factors.

(b) If the provisions of Chapter 190 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§160.22. Procedural Rules for Hearings.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to hearings involving medical physicists where applicable. If the provisions of Chapter 187 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§160.23. Disciplinary Process or Discipline of Medical Physicists.

(a) The board, upon finding a medical physicist has committed any of the acts set forth in §§160.20, 160.24, and 160.25 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action, Code of Ethics and Impaired Medical Physicists), may enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice as a medical physicist;

(2) administer a public reprimand;

(3) order revocation, suspension, limitation, or restriction of a medical physicist's license, or other authorization to practice as a medical physicist, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a medical physicist or stipulating periodic board review;

(4) require a medical physicist to submit to care, counseling, or treatment by a health care practitioner designated by the board;

(5) order the medical physicist to perform public service;

(6) require the medical physicist to complete additional training;

(7) require the medical physicist to participate in continuing education programs; or

(8) assess an administrative penalty against the medical physicist.

(b) The board may stay enforcement of any order and place the medical physicist on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or to impose any other remedial measures or sanctions authorized by subsection (a) of this section in addition to or instead of enforcing the original order.

(c) The time period of an order shall be extended for any period of time in which the person subject to an order subsequently resides or practices outside this state or for any period during which the person's license is subsequently canceled for nonpayment of licensure fees.

§160.24. Code of Ethics.

(a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage. The provisions of the Health and Safety Code, §161.091 relating to the prohibition of illegal remuneration apply to medical physicists.

(b) A licensee shall maintain confidentiality of medical records in accordance with the Medical Practice Act, Texas Occupations Code, Chapter 152, and other state or federal statutes or rules where such statutes or rules apply to a licensed medical physicist.

(c) A licensee shall not misrepresent any professional qualifications or associations.

(d) A licensee shall not knowingly misrepresent services or attributes of any health care agency, facility, or organization.

(e) A licensee shall not make misleading, deceptive, or false claims about the efficacy of any medical physicist's services or allow a client to hold exaggerated ideas about the efficacy of the services.

(f) A licensee shall not use illegal drugs of any kind or promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

(g) A licensee shall not use alcohol or any drug in any manner that adversely affects his or her practice of medical physics.

(h) A licensee shall report alleged violations of the Act or this chapter to the board.

(i) A licensee shall not claim or advertise expertise in a specialty area or practice in an area of specialty unless the medical physicist holds a license in that specialty.

(j) A licensee shall not direct, aid, or abet the practice of any other person in violation of the Act.

(k) A licensee shall not make any false statements regarding his or her provision of services as a medical physicist.

(l) A licensee shall make a reasonable attempt to notify each contractor, employer or client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification:

(1) on each written contract for services of a licensee; or

(2) on a sign prominently displayed in the primary place of business of each licensee; or

(3) in a bill for service provided by a licensee to a contractor, employer, client, or third party.

(m) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's service with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that is anonymous or is not readily verifiable;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(n) A licensee shall not undertake work or agree to perform activities for which the licensee is not qualified by education, experience, or training. A licensee shall disclose known limitations in the licensee's ability, if applicable or relevant. A licensee shall seek additional education, training, or consultation when appropriate.

(o) A licensee shall ensure, to the extent possible, that documents, data, and work product are accessible to the licensee's employer, client, or other relevant parties in the event the business or employment relationship is terminated, or in case of the disability or death of the licensee.

(p) A licensee who is providing supervision to a training licensee shall comply with board rules relating to supervision and with the terms of supervision plans approved by the board. A training licensee shall also comply with board rules relating to supervision and with the terms of supervision plans approved by the board.

(q) A licensee shall not:

(1) engage in sexual contact with a patient or a supervisee;

(2) engage in sexually inappropriate behavior or comments directed towards a patient or supervisee;

(3) become financially or personally involved with a patient or supervisee in an inappropriate manner.

(r) A licensee shall cooperate with the board by furnishing documents or information and by responding to a request for information from or a subpoena issued by the board or its authorized representative. A licensee shall not interfere with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(s) A licensee shall practice in accordance with applicable state and federal statutes and rules.

§160.25. Impaired Medical Physicists.

(a) Mental or physical examination requirement. The board may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the board, medical board, or the State Office of Administrative Hearings that a certain licensee is impaired;

(2) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(3) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(4) evidence of repeated arrests of a licensee for intoxication;

(5) evidence of recurring temporary commitments of a licensee to a mental institution; or

(6) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice.

(b) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) shall be applied to medical physicists who are believed to be impaired and eligible for the Texas Physician Health Program. Rehabilitation orders entered into on or before January 1, 2010 shall be governed by law as it existed immediately before that date.

§160.26. Compliance.

Chapter 189 of this title (relating to Compliance Program) shall be applied to medical physicists who are under board orders. If the provisions of Chapter 189 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§160.27. Voluntary Relinquishment or Surrender of a License.

Chapter 196 of this title (relating to Voluntary Relinquishment or Surrender of a Medical License) shall govern procedures relating to medical physicists where applicable. If the provisions of Chapter 196 of this title conflict with the Medical physicist Act or rules under this chapter, the Medical physicist Act and provisions of this chapter shall control.

§160.28. Administrative Procedure.

Chapters 2001 and 2002, Government Code, and board rules for a contested case hearing apply to a contested case proceeding brought by the board under this subchapter.

§160.29. Criminal Convictions Related to Profession of Medical Physics.

(a) The Board may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted, suspended or revoked a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;

(3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure;

(5) This subsection does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor.

(b) Criminal convictions which directly relate to the profession of medical physics shall be considered as follows.

(1) The board may suspend or revoke any existing license, disqualify a person from receiving any license, reprimand a licensee, or place a licensee on probation because of a person's conviction of a felony or misdemeanor if the crime:

(A) directly relates to the duties and responsibilities of a licensed medical physicist; or

(B) involves moral turpitude as defined in §190.8(6)(B)(v) of this title (relating to Violation Guidelines).

(2) In considering whether a criminal conviction directly relates to the profession of medical physics the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes of licensure as a medical physicist;

(C) the extent to which any license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a medical physicist. In making this determination, the board shall apply the criteria outlined in Texas Occupations Code, Chapter 53.

(c) The following felonies and misdemeanors directly relate to a license of a medical physicist because these criminal offenses indicate an inability or a tendency to be unable to properly engage in the practice of medical physics:

(1) a conviction under the Texas Medical Physics Practice Act (Act), §602.302;

(2) a conviction involving moral turpitude as defined by statute or common law;

(3) a conviction relating to deceptive business practices;

(4) a conviction relating to practicing another health care related profession without a license, certificate, or other approval required by state or federal law;

(5) a conviction relating to controlled substances, dangerous drugs, other illegal substances, or alcohol;

(6) a conviction under the Atomic Energy Act of 1954;

(7) a conviction under the Texas Radiation Control Act, Health and Safety Code, Chapter 401;

(8) a conviction for assault;

(9) an offense under various titles of the Texas Penal Code:

(A) offenses against the person (Title 5);

(B) offenses against property (Title 7);

(C) offenses against public order and decency (Title 9);

(D) offenses against public health, safety, and morals (Title 10);

(E) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(F) insurance claim fraud under the Penal Code, §32.55; and

(10) other misdemeanors and felonies which indicate an inability or a tendency for the person to be unable to properly engage in the practice of medical physics. Other misdemeanors or felonies shall be considered in order to promote the intent of the Act, this chapter, and Texas Occupations Code, Chapter 53.

(d) The board shall be revoke a license holder's license upon the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§160.30. Construction.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Act and the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Acts, the provisions of the Acts shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Acts shall remain in effect.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601142
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-7016

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners proposes amendments to §329.2, regarding licensure by examination. The amendment is proposed to enable an applicant for licensure by examination who has reached the 6-time lifetime limit or 2 very low scores on the National Physical Therapy Examination (NPTE) a means of requesting that the Board appeal on their behalf to the Federation of State Boards of Physical Therapy (FSBPT).

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect there will be no adverse effect on public safety. The amendments will increase the opportunity for qualified applicants to demonstrate competency through the national physical therapy examination.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: *karen@ptot.texas.gov.* Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§329.2. Licensure by Examination.

(a) (No change.)

(b) Re-examination.

(1) An applicant who fails the exam is eligible to take the examination again after submitting a re-exam application and fee.

(2) An applicant can take the exam a maximum of six (6) times.

(3) An applicant who receives two (2) very low scores on the exam (scale scores 400 or below) will not be eligible to test again.

(4) An applicant who has taken the exam six (6) times or received two (2) very low scores may appeal for one (1) additional attempt through the Board for reasons as set in policy by the Federation of State Boards of Physical Therapy (FSBPT).

(5) [~~(4)~~] An applicant can take the exam for PTs six (6) times and also take the exam for PTAs six (6) times if otherwise eligible to do so.

(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 March 4, 2016.

TRD-201601099
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-6900

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER D. LICENSE RENEWALS

22 TAC §571.59

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §571.59, concerning Expired Veterinary Licenses.

The Board proposes these amendments to reflect the correct title of Board rule §571.17.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed.

Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the reference to rule §571.17 contains the correct rule title.

Ms. Oria has determined that there will be no economic costs to persons required to comply with the amended rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendments to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

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

§571.59. Expired Veterinary Licenses.

(a) A veterinarian's license expires on the first day of the month following his/her birth month and is considered delinquent. Within 90 days of the last day of the month of a licensee's birth month, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) A veterinary licensee who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. Subject to subsections (c) and (d) of this section, the licensee must take and pass the SBE and comply with §571.3 of this title (relating to Criminal History Evaluation Letters).

(c) A military spouse, military veteran, or military service member, as defined by Chapter 55, §55.001, of the Texas Occupations Code, who has failed to renew his or her Texas license for a period of one year or more may receive a license in accordance with §571.17 of this title (relating to Expedited and Alternative Licensure Procedure for Military [~~Spouses~~]) if the military spouse, military veteran, or military service member meets the requirements of §571.17.

(d) A licensee who has failed to renew his or her license for a period of one year or more may reinstate the licensee's expired license without taking and passing the SBE if the licensee:

(1) previously had a Texas license and lived and/or practiced in Texas;

(2) moved to another state and is licensed and practices in that state;

(3) has been practicing in the other state during the past two years preceding application for reinstatement in Texas;

(4) intends to return to and practice in Texas;

(5) furnishes a letter of good standing from all states where the licensee is currently licensed; and

(6) submits a complete application for license reinstatement within two years of the date the license expired and could not be renewed.

(e) A veterinary licensee who has failed to renew his or her license for a period of one year or more, shall have his or her license cancelled.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601089
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-7555

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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §571.60, concerning Expired Licenses for Equine Dental Providers and Licensed Veterinary Technicians.

The Board proposes these amendments in accordance with Senate Bill 1307 (84th Legislature, 2015) to allow military spouses, military veterans, and military service members, as defined by Chapter 55, §55.001, of the Texas Occupations Code, to receive a license even if they have failed to renew their license for a period of one year or more and if they meet the requirements of §571.17 for expedited licensure. The amendments are also proposed to ensure that references to licensed veterinary technicians and equine dental providers appear in the same order in the rule title and throughout the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed.

Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to provide military spouses, military veterans, and military service

members additional time to maintain their licenses. A further public benefit will be that the two licenses affected by the rule are referenced in a consistent way.

Ms. Oria has determined that there will be no economic costs to persons required to comply with the amended rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendments to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

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

§571.60. Expired Licenses for [~~Equine Dental Providers and~~] Licensed Veterinary Technicians and Equine Dental Providers.

(a) Licensed veterinary technician and equine dental provider licenses expire on the first day of the month after his/her birth month and are considered delinquent. Within 90 days of the last day of a licensee's birth month, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) A licensed veterinary technician or an equine dental provider licensee, who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license, may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. The licensee must take and pass the [~~EDPE or the~~] LVTE or the EDPE, as appropriate for his or her license.

(c) A military spouse, military veteran, or military service member, as defined by Chapter 55, §55.001, of the Texas Occupations Code, [~~licensed veterinary technician or an equine dental provider licensee, who is the spouse of a person serving on active duty as a member of the armed forces of the United States~~] who [~~held an equine dental provider or veterinary technician license in Texas within the past five years, and~~] has failed to renew his or her license for a period of one year or more [~~while the licensee was living in another state for at least six months,~~] may receive a [~~reinstate his or her~~] license in accordance with §571.17 of this title (relating to Expedited and Alternative Licensure Procedure for Military) if the military spouse, military veteran, or military service member meets the requirements of §571.17 [~~without appearing before the Board. The licensee must still take and pass the EDPE or the LVTE, as appropriate for his or her license~~].

(d) A licensed veterinary technician or equine dental provider licensee, who had failed to renew his or her license for a period of one year or more, shall have his or her license cancelled.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-7555

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.20

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §577.20, concerning Employee Education and Training.

The Board proposes these amendments in accordance with House Bill 3337 (84th Legislature, 2015) to impose certain requirements and limitations on training and education for agency employees.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed.

Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the agency has rules in place that comply with requirements in the State Employees Training Act.

Ms. Oria has determined that there will be no economic costs to persons required to comply with the amended rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendments to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

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

§577.20. Employee Education and Training.

(a) The board may use state funds to provide education and training for its employees in accordance with the State Employees

Training Act (Texas Government Code, §§656.041 - 656.104). To be eligible for training and education supported by the board, an employee must:

(1) remain employed by the board for the duration of the training or education;

(2) receive approval for the training or education from the employee's supervisor; and

(3) accept the obligation to successfully complete the education or training program.

(b) The education or training shall be related to the employee's current position or prospective job duties at the board.

(c) The board's education and training program benefits both the board and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the board has difficulty in recruiting and retaining employees; and

(4) increasing the competence of agency employees.

(d) Board employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(e) Participation in an education or training program requires the appropriate level of approval prior to participation and is subject to the availability of funds within the agency's budget.

(f) The employee education and training program for the board may include:

(1) mandatory agency-sponsored training required for all employees;

(2) education relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) board-funded external education; and

(6) other board-sponsored education and training determined by the board to fulfill the purposes of the State Employees Training Act.

(g) The board's Human Resources Director is designated as the administrator of the board's education and training program.

[~~(h) The administrator or the administrator's designee shall develop policies for administering each of the components of the employee education and training program. These policies shall include:~~]

[~~(1) eligibility requirements for participation;~~]

[~~(2) approval procedures for participation; and~~]

[~~(3) obligations of program participants.~~]

(h) [~~(i)~~] Approval to participate in any portion of the board's education and training program shall not in any way affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

(i) [~~(j)~~] Permission to participate in any education and training program may be withdrawn if the board determines, in its sole discretion, that participation would negatively impact the employee's job duties or performance.

(j) If an employee seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by Texas Education Code §61.003, Education Code, the board may only pay the tuition expenses for a program course successfully completed by the employee at an accredited institution of higher education. Before an employee may be reimbursed for training under this subsection, the Board's Executive Director must authorize the reimbursement.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601091
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-7555

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER C. BREAST AND CERVICAL CANCER SERVICES

25 TAC §61.33

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §61.33, concerning the Breast and Cervical Cancer Services (BCCS) Program.

BACKGROUND AND PURPOSE

The BCCS Program provides access to high-quality breast and cervical cancer screening and diagnostic services for eligible Texas women who are unable to access the same care through other funding sources or programs. Services may include clinical breast examinations and mammograms to screen for breast cancer, and pelvic examinations and Pap tests to screen for cervical cancer. Diagnostic services and case management are also provided for women with abnormal breast or cervical cancer screening results.

The BCCS Program is the access point for women to apply for Medicaid for breast and cervical cancer in order to access cancer treatment. Services are provided through contracts with nonprofit agencies, local health departments, hospitals, and community health centers.

The purpose of the amendment is to revise language describing which providers are eligible to apply and be reimbursed for providing services in the BCCS Program. The amendment is neces-

sary to comply with Article II, Rider 72 (relating to the BCCS Program) of the General Appropriations Act for State Fiscal Years 2016 and 2017 (House Bill 1, 84th Legislature, Regular Session, 2015, art. II, at II-72). Article II, Rider 72 specifies that BCCS funds may be used to compensate only providers that satisfy the eligibility requirements for the Texas Women's Health Program (TWHP), except in very limited circumstances. Accordingly, BCCS providers must be eligible to participate in the TWHP and comply with the relevant TWHP statute, which can be found in Texas Human Resources Code, §32.024(c-1), and rules in 25 Texas Administrative Code (TAC), §39.33 and §39.38. Rider 72 also enables the department to compensate local providers, for BCCS purposes, that are not eligible to participate in the TWHP if the department is unable to locate a sufficient number of TWHP eligible providers in a certain region.

SECTION-BY-SECTION SUMMARY

Proposed new §61.33(a) requires BCCS providers to be eligible to participate in the TWHP in order to participate in BCCS and to be reimbursed for services provided in the BCCS Program. Specifically, §61.33(a) requires BCCS providers to comply with the TWHP requirements set forth under 25 TAC, Subchapter B, §39.33 (relating to Definitions) and §39.38 (relating to Health-Care Providers), including the requirement that providers do not perform or promote elective abortions, and are not affiliates of entities that perform or promote elective abortions. The term "affiliate" is defined in §39.33(1), and the term "promote" is defined in §39.38(c).

Proposed new §61.33(b) allows the department to contract with providers, for purposes of the BCCS Program, that are not eligible to participate in the TWHP, if the department is unable to locate a sufficient number of TWHP eligible providers in a certain region. Section 61.33(b) sets forth a list of non-exhaustive factors that the department will use when determining whether a certain region has a sufficient number of TWHP eligible providers.

Proposed new §61.33(c) requires BCCS providers to provide the department, or its designee, with all requested information to determine the provider's compliance with program requirements.

Proposed new §61.33(d) provides that if the department, or its designee, determines that a BCCS provider has failed to comply with the requirements of this section, then the department, or its designee, will disqualify the provider from BCCS.

Proposed new §61.33(e) provides that if a BCCS provider is disqualified, the department, or its designee, will take appropriate action to assist an impacted BCCS client to find an alternative provider, and will recoup any funds paid to the disqualified provider for BCCS performed during the period of disqualification.

FISCAL NOTE

Lesley French, Director, Office of Women's Health, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed. The proposed rule does not change current program structure and implementation. The amendment is necessary to comply with Article II, Rider 72 of the 2016-2017 General Appropriations Act.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. French also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. French has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be continued access to breast and cervical cancer screening and diagnostic services for eligible, low-income women in Texas.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tori Jones, Mail Code 1923, Breast and Cervical Cancer Services Program, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or by email to BCCSProgram@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code, §531.0055(e), and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human

services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment affects Texas Government Code, Chapter 531; and Texas Health and Safety Code, Chapter 1001.

§61.33. Providers.

(a) Health care providers must be eligible to participate in the Texas Women's Health Program (TWHP) in order [~~serving women with incomes at or below 200% of the federal poverty level are eligible~~] to apply as providers for and be reimbursed for services provided in the Breast and Cervical Cancer Services (BCCS) Program, except in very limited circumstances. Providers that are eligible to apply also include providers that do not provide the required TWHP service package but are otherwise eligible to participate in the TWHP. Healthcare providers must ensure compliance with the requirements set out in Subchapter B, §39.33 of this title (relating to Definitions) and §39.38 of this title (relating to Health-Care Providers). [~~providers. Eligible applicants include, but are not limited to, community health centers, migrant health centers, local and regional health departments, family planning clinics, community cancer centers, hospitals, primary care programs, and other providers of health services to the target and priority populations.~~]

(b) Exempted Providers. If the BCCS Program is unable to locate a sufficient number of TWHP eligible providers in a certain region, the BCCS Program may compensate other local providers for the provision of breast and cervical cancer screening and diagnostic services. Methodologies for determining if a certain region has a sufficient number of TWHP eligible providers may include, but are not limited to the:

(1) estimated number of clients in need;

(2) amount of funds available for allocation;

(3) service capacity of the proposed provider for the provision of breast and cervical cancer screening and diagnostic services; and

(4) distance and/or time clients must travel to receive services.

(c) Compliance Information. Upon request, BCCS providers must provide the department or its designees with all information the department or its designees require to determine the provider's compliance with the program requirements.

(d) Provider Disqualification. If, after the effective date of this section, the department or its designee determines that a BCCS provider fails to comply with this section, the department or its designee will disqualify the provider from BCCS.

(e) Recoupment. If a BCCS provider is disqualified, the department or its designee will take appropriate action to:

(1) assist a BCCS client to find an alternative provider; and

(2) recoup any funds paid to the disqualified provider for BCCS services performed during the period of disqualification.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601060
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

SUBCHAPTER B. FIRE SUPPRESSION RATINGS OVERSIGHT

28 TAC §§34.201 - 34.204

The Texas Department of Insurance proposes new 28 TAC Chapter 34, Subchapter B, §§34.201 - 34.204, relating to oversight of fire suppression ratings. These new sections are necessary to implement Government Code §417.0083 and to specify by rule the state fire marshal's procedures to perform oversight of fire suppression ratings as directed by the commissioner.

EXPLANATION.

History of fire ratings

Until 1991, key rate inspections were conducted by TDI and its predecessors. In 1991, the inspection duty was transferred to the Texas Commission on Fire Protection (TCFP) and performed by the state fire marshal. From 1991 to 1998, the state fire marshal conducted inspections of local fire department facilities as part of a process to establish key rates. The state fire marshal was part of the TCFP until the legislature transferred the state fire marshal to TDI.

Key rates were part of a formula used to determine fire insurance premiums for individual properties in cities, towns, and districts. The Texas State Archives maintains copies of key rate analyses, reports, correspondence, maps, proposed key rate schedules, city ordinances, city codes, photographs, water and wastewater master plans, clippings, lists, notes, and blueprints from 1893 for cities and towns in Texas for fire protection and insurance purposes. The TCFP conducted key rate inspections and recommended a key rate to the (former) State Board of Insurance for the board's final approval. If the key rate was not approved, the board would inform TCFP of the reason and recommend another key rate. Effective January 1, 1997, all existing key rates for cities, towns, and districts were frozen. Texas was the last state to continue using a key rate schedule.

In 1916 an industry standard was produced, the Standard Grading Schedule of Grading Cities and Towns. Texas adopted an evaluation process in 1918, based on the 1916 standards, to establish a methodology for establishing fire insurance key rates for individual properties and communities. The majority of the 1916 key rate schedule did not change for the next 80 years. Items evaluated to determine the key rates included the fire department's method for receiving and handling of fire alarms, the capability of the fire department to fight fires, and the capability of the community's existing water supply to fight fires. The more proficient a community was in fighting fires, the lower the key rate, resulting in lower fire insurance premiums for the individual properties within that community.

Commissioner's Order No. 96-1377 (November 25, 1996), repealed the existing Texas Key Rate Schedule used for grading public fire protection of cities, towns, and districts in Texas. The Commissioner's Order also adopted the Fire Suppression Rating

Schedule and Texas Addendum; the Public Protection Classification system for cities, towns, and districts in Texas, effective January 1, 1997; and specified procedures for state fire marshal oversight of property protection classifications. Insurance Services Office, Inc (ISO) a private organization, has produced the detailed reports of inspection since 1998.

Analysis

The ISO is a licensed advisory organization under Insurance Code Chapter 1805, and currently submits fire ratings to TDI, based on its fire suppression and mitigation grading schedule. Section 1805.053 provides that an advisory organization may file with the commissioner prospective loss costs, supplementary rating information, and policy forms. A filing made by an advisory organization is subject to the provisions of the Insurance Code and other laws of this state governing rate filings. A fire suppression and mitigation grading schedule is supplementary rating information. Insurance Code §2251.101 specifies that all rates, as well as supplementary rating information, must be filed as required by the commissioner by rule.

This proposed subchapter does not alter or amend the filing requirements under Insurance Code Chapter 2251 or §38.002. The proposed new subchapter specifies the procedure for monitoring the application of fire suppression and mitigation grading schedules in determining fire ratings for communities, fire districts, or other jurisdictions.

Government Code §417.0083 provides that the state fire marshal will perform duties as directed by the commissioner relating to TDI's fire suppression ratings schedule. Commissioner's Order 96-1377 directs the state fire marshal to continue to exercise the responsibilities under the Government Code as it exercised under TDI's key rate schedule, including recommending the grading for individual municipalities for approval. These proposed rules codify the procedures and responsibilities of the state fire marshal pertaining to oversight of fire ratings. Government Code §417.005 provides that the commissioner may adopt necessary rules to guide the state fire marshal in the performance of duties for the commissioner.

The Insurance Code contains two provisions relating to providing additional credit for certain improved fire protection methods. Insurance Code §2003.003 provides that the commissioner may give a locality, municipality, or other political subdivision credit for the reduction of fire hazards, for improvements that tend to reduce fire hazards, and for a good fire record. Insurance Code §2003.004 provides that the commissioner may require an insurer to give credit to a policyholder for the reduction of fire hazards through a policyholder credit. To implement these two sections, the commissioner directs the state fire marshal to exercise oversight related to fire ratings. The proposed new subchapter ensures that the credit created by §2003.003 and §2003.004 is maintained in the application of any fire suppression ratings schedule.

Proposed Subchapter

Section 34.201 of the subchapter specifies that the applicability of the subchapter is for an advisory organization or other filer that determines a fire rating based on a fire suppression and mitigation grading schedule. The filing of a fire suppression and mitigation grading schedule is a filing that a filer must make in accordance with Insurance Code Chapter 2251, and is not the subject of this subchapter. ISO has filed a fire suppression and mitigation rating schedule. Other advisory organizations or insurers could enter the marketplace to provide fire ratings. The proposed subchapter would apply to all fire suppression and mitigation grading schedules where a filer recommends a fire rating.

Section 34.202 defines certain terms used in the subchapter.

Section 34.203 specifies the process for submission of fire ratings, how the fire rating will be verified, the approval or disapproval of the fire rating, and appeals procedures. The section includes a 30-day deemer provision so that inaction does not delay the approval of otherwise compliant fire ratings. The review period can be extended if the filer agrees. The procedures are proposed in accordance with the authority to establish summary procedures for routine matters under Insurance Code §36.102.

Section 34.204 specifies the process for the appeal of a community fire-rating determination. The procedures are proposed in accordance with Insurance Code §36.103, concerning to Review of Action on a Routine Matter.

FISCAL NOTE. Chris Connealy, state fire marshal, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Connealy, has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be the accurate and consistent application of fire suppression and mitigation grading schedules. The probable economic cost to persons required to comply with the sections will be the administrative costs to submit proposed fire ratings or objections to a proposed fire rating.

The proposed subchapter's submission and review procedure are similar to those required by Commissioner's Order No. 96-1377. TDI anticipates that the proposed rule will not materially differ from existing procedure required to comply with Insurance Code §2003.003 and §2003.004.

Submission Costs

Though TDI has identified factors attributable to the administrative cost of the subchapter, it cannot estimate the total annual costs because of several nonquantifiable cost factors, including the unknown methodology required by future fire suppression and mitigation grading schedules and the unknown degree of complexity in a particular fire rating. While it is not feasible to determine the actual cost of each activity for all submitting entities, TDI has provided information about factors that will generate costs under this proposal.

For each proposed fire rating submitted to TDI, TDI estimates that each submitter will incur personnel costs. TDI anticipates compliance involves administrative and management personnel. It is not feasible for TDI to determine the actual employee costs for filing entities; however, the United States Department of Labor, Bureau of Labor Statistics' May 2012, *Occupational Employment Statistics* report indicates that the hourly mean wages for the professions in Texas, as referenced in this cost analysis, are $26.15 for office and administrative workers (www.bls.gov/oes/CURRENT/oes431011.htm) and $56.85 for general and operations managers (www.bls.gov/oes/CURRENT/oes111021.htm). In New Jersey, where ISO is headquartered, the hourly mean wage for office and administrative workers is $28.82, and the mean wage for general and operations managers is $77.58. TDI estimates that preparation of a fire rating submission as specified in §34.203 will likely

require one to two hours of administrative staff time and one to four hours of operations manager time. In 2014, the State Fire Marshal's Office processed 278 fire-rating submissions. For 2016, the state fire marshal anticipates the number of fire-rating submissions will exceed 300.

TDI estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate. TDI estimates the cost of a mail submission to be less than $5 in aggregate for postage, envelope, paper, and mail preparation.

Appeal Costs

If a fire rating were to be appealed to a hearing, TDI estimates that each submitter will incur additional personnel costs. Additional hourly wages for office and administrative workers and general and operations managers will be required. Each hearing would be different, but TDI anticipates that preparing for a hearing would require 10 to 20 hours of time from office and administrative workers and 20 to 40 hours of time from general and operations managers. Additional labor may be required from an attorney. The United States Department of Labor, Bureau of Labor Statistics' May 2012, *Occupational Employment Statistics* report indicates that the hourly mean wage for attorneys in Texas, as referenced in this cost analysis, is $67.91 (www.bls.gov/oes/current/oes231011.htm). TDI estimates an attorney may require between 20 and 80 hours to prepare for and attend a hearing.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposal does not apply to any small or micro businesses. Instead, it only relates to certain advisory organizations or filers that file supplementary rating information used as fire suppression ratings. The only currently licensed advisory organization or insurer that has filed fire suppression and mitigation grading schedules is not a small or micro business.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, 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 p.m., Central time, on April 18, 2016. Please send one copy of your comments to Norma Garcia, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Chris Connealy, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If you wish to request a public hearing on this proposal, you must submit your request separate from your comments to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under Government Code §417.0083 and §417.005, and Insurance Code §§2003.003, 2003.004, 36.102, 36.103, and 36.001.

Government Code §417.0083 provides that the state fire marshal must perform duties as directed by the commissioner relating to TDI's fire suppression ratings schedule.

Government Code §417.005 provides that the commissioner may adopt necessary rules to guide the state fire marshal in the performance of duties for the commissioner.

Insurance Code §2003.003 provides that the commissioner may give a locality, municipality, or other political subdivision credit for the reduction of fire hazards, for improvements that tend to reduce fire hazards, and for a good fire record.

Insurance Code §2003.004 provides that the commissioner may require an insurer to give credit to a policyholder for the reduction of fire hazards through a policyholder credit.

Insurance Code §36.102 provides that TDI may create a summary procedure for routine matters if the activity is voluminous, repetitive, believed to be noncontroversial, and of limited interest to anyone other than persons involved in or affected by the proposed TDI action.

Insurance Code §36.103 provides that the commissioner may adopt rules relating to an application for review of a routine matter taken under a summary procedure adopted under Insurance Code §36.102.

Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed new subchapter implements Government Code §417.0083 and Insurance Code §2003.003 and §2003.004.

§34.201. Applicability.

This subchapter applies to an advisory organization or other filer that determines a fire rating for a community, fire district, or other jurisdiction based on a fire suppression and mitigation grading schedule.

§34.202. Definitions.

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

(1) Advisory organization--An advisory organization licensed under Insurance Code Chapter 1805.

(2) Fire rating--A rating, or evaluation of fire suppression and mitigation capabilities, for a community based on the criteria in a fire suppression and mitigation grading schedule.

(3) Filer--An advisory organization or insurer that files fire ratings.

(4) Fire suppression and mitigation grading schedule--A schedule with criteria for determining the fire rating for a community, fire district, or other jurisdiction. A fire suppression and mitigation grading schedule is supplementary rating information, as defined by Insurance Code §2251.002.

(5) Community--A community, fire district, jurisdiction, or other definite geographic area.

(6) Survey--The results of an inspection to evaluate a community's fire suppression and mitigation capabilities.

§34.203. Review of Community Fire Ratings.

(a) Submission. A filer must submit a proposed fire rating for a community to the State Fire Marshal's Office. A submission must contain:

(1) a recommended fire rating based on the filer's survey;

(2) justification for the recommended fire rating, consistent with the applicable fire suppression and mitigation grading schedule;

(3) identification of the fire suppression and mitigation grading schedule used to determine the fire rating;

(4) the primary contact information, including telephone and email, for the person completing the survey; and

(5) an explanation indicating why a community did not achieve a better rating, if applicable.

(b) Verification. After receiving a completed proposed fire rating, the State Fire Marshal's Office may review the proposed fire rating for compliance with the applicable fire suppression and mitigation grading schedule and with state laws and regulations.

(c) Requests for additional information. If the state fire marshal determines that the filer's submission is incomplete or otherwise deficient, the State Fire Marshal's Office may request additional information from the filer.

(d) Approval.

(1) The State Fire Marshal's Office will approve proposed fire ratings that are:

(A) consistent with the applicable fire suppression and mitigation grading schedule; and

(B) consistent with all applicable state laws and regulations.

(2) A proposed fire rating will be deemed approved 30 days after the date it is filed only if it meets the criteria in paragraph (1) of this subsection, and is not disapproved within that 30-day period, unless:

(A) the State Fire Marshal's Office provides notice of proposed disapproval of the fire rating during the 30-day period; or

(B) the filer agrees to extend the period.

(3) The time between the date the state fire marshal requests additional information from the filer and the date the state fire marshal receives the information requested is not included in the computation of the 30-day period in paragraph (2) of this subsection.

(e) Disapproval. If a proposed fire rating is not consistent with the applicable fire suppression and mitigation grading schedule and not compliant with applicable state laws and regulations, the State Fire Marshal's Office will:

(1) notify the filer of a proposed negative action no later than the fifth day before the date the State Fire Marshal's Office proposes to take the action; and

(2) disapprove the proposed fire rating and provide a written explanation of the reasons for the disapproval.

(f) Community notification. The State Fire Marshal's Office may notify an affected community of the proposed fire rating.

(g) Notification. The State Fire Marshal's Office will notify the filer of the final approval or disapproval of a fire rating. Notification will be in the form of a letter or electronic notification and will contain the effective date of the approval or disapproval.

§34.204. Appeal of Community Fire Rating Determination.

(a) Appeal. A filer or person who does not agree with an approval or disapproval of a proposed fire rating may petition for appeal and a hearing to review the matter.

(b) Timeliness. A person must appeal an approval or disapproval not later than the 60th day after the date of the state fire marshal's approval or disapproval.

(c) Petition. A petition filed under this section must be in writing. The petition must identify the fire rating and specify why the approval or disapproval was inconsistent with the applicable fire suppression and mitigation grading schedule and state law and regulations. The petition must be filed with the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(d) Review. A person affected by the approval or disapproval of a fire rating is entitled to a review of the action under Government Code Chapter 2001.

(e) Proceeding. A hearing under this section will be conducted in accordance with the Insurance Code, the Administrative Procedure and Texas Register Act, and Chapter 1 of this title.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601151
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 676-6584

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code Chapter 34, Subchapter C, Standards and Fees for State Fire Marshal Inspections §34.302; Subchapter E, Fire Extinguisher Rules §§34.510, 34.514, 34.517, and 34.521; Subchapter F, Fire Alarm Rules §§34.609, 34.615, 34.616, and 34.622 - 34.624; Subchapter G, Fire Sprinkler Rules §§34.713, 34.716, 34.721, and 34.722; Subchapter H, Storage and Sale of Fireworks §§34.808, 34.818, 34.823, and 34.832; Subchapter M, Scheduled Administrative Penalties §34.1302; the repeal of Subchapter J, Stovetop Fire Suppression Device Approval §§34.1001 - 34.1004; and new §34.524 in Subchapter E, §34.631 in Subchapter F, §34.726 in Subchapter G, and §34.833 in Subchapter H. These amendments, repeals, and new sections are necessary to implement statutory changes made by HB 1150 84th Legislature (2015), SB 807, 84th Legislature (2015), and SB 1307, 84th Legislature (2015); clarify the intent of the regulations; revise tags, labels, and stamps; require certain conduct; prohibit certain other conduct; and to amend penalty schedules.

EXPLANATION. This proposal includes amendments, new sections, and repeals to various subchapters relating to the state fire marshal.

Throughout the proposed amendments nonsubstantive changes are proposed. These changes change "shall" to the more precise "must," "may," or "is." Other nonsubstantive changes include the addition of oxford commas, changes is capitalization, removing unnecessary "the" before code references, the substation of other punctuation for semicolons, and the removal of "and/or" in favor of simply "or." These changes are done for purposes of

matching agency style, consistency, and to improve readability. None of these nonsubstantive changes alter the meaning of the rules.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS

Section 34.302.

The department adds a definition to §34.302, to clarify the meaning of the term "authority having jurisdiction" with respect to state fire marshal inspections.

The definition clarifies that these are the standards adopted by a nationally recognized standards-making association for fire protection and the standards under which the state fire marshal will inspect, as contemplated in Government Code §417.008. Typically, the entity performing an inspection is also the entity with the authority to adopt a local fire code. But since state fire marshal inspectors conduct examinations of dangerous conditions statewide, including areas with locally adopted fire codes, the authority having jurisdiction may not be the inspecting entity. The proposed definition clarifies this relationship.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

Section 34.510.

The proposed amendment to §34.510, relating to Certificates of Registration, establishes what constitutes an adequately equipped business vehicle to ensure that licensees are properly equipped for the services they provide. The amendment parallels the equipment requirements for certain activities already described in the section. The adopted NFPA standard NFPA 10 specifically requires that the business vehicle be equipped with the applicable service manual when the licensee or licensed firm is servicing certain equipment. Failure to have these reference materials available in the field harms the licensee's or licensed firm's ability to adequately service life-saving fire extinguishing devices.

Section 34.514.

The proposed amendment to §34.514, relating to Applications, adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current rules, the department requests the applicant's criminal history report after it receives the application, which causes delays in processing the application. Requiring the applicant to provide their own criminal history report will expedite application processing. Some individuals, primarily those living outside of Texas, may need to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed.

Section 34.517.

The proposed amendment to §34.517, relating to Installation and Service, clarifies the requirements for fixed fire extinguisher systems. The amendment adds language that allows installation and servicing to comply with a standard adopted by the political subdivision in which the system is installed. In general, the state fire marshal adopts National Fire Protection Association (NFPA) standards, or other standards, when those standards are revised. Local governments may lag behind. This change provides greater flexibility in allowing licensed persons to perform services consistent with the standards adopted by the political subdivision where the system is installed. Another proposed change requires that the service tag indicates temperature and quantity for fusible metal alloy fixed-temperature sensing elements; this will help ensure the safe maintenance and service of these systems. New subsection (k) is added to address pre-engineered dry chemical fixed fire extinguishing systems requirements. This provision was previously in the section, but had been inadvertently deleted in an earlier rule adoption.

Section 34.521.

The proposed amendment to §34.521, relating to Red Tags, requires notification to the authority having jurisdiction (AHJ) when a tag is corrected. The rules already require the licensee or licensed firm to notify the AHJ when they identify a problem, but this amendment will help AHJs follow up with building owners or representatives to determine when they have fixed an unsafe condition. The proposed notification requirement is similar to the existing requirement for licensees or licensed firms to notify an AHJ of a tagged device, and it is consistent with NFPA 17A Standard for Wet Chemical Extinguishing Systems.

Section 34.524.

New §34.524, relating to Military Service Members, Military Veterans or Military Spouses reflects the statutory protections as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The new rule puts all military-related waivers and exemptions in one section so that affected persons are on notice that the provisions may apply to them. Subsection (a) implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, and military spouses. Subsection (b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Subsection (c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Subsection (d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER F. FIRE ALARM RULES

Section 34.609.

The proposed amendment to §34.609, relating to Approved Testing Organization, includes the fire marshal's recognition of another approved testing organization, the Electronic Security Association (ESA), as a testing standards organization for testing license applicants. Insurance Code §6002.156 provides that the state fire marshal may adopt rules as necessary to implement examination requirements. Insurance Code §6002.158 provides that training schools must be approved by the state fire marshal. The state fire marshal has reviewed ESA's application, course, and testing curriculum and has determined that it is an approved organization for purposes of the Fire Alarm Rules. The ESA materials and course for the residential alarm license provides an acceptable level of training.

Section 34.613.

The proposed amendment to §34.613, relating to Applications, adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current provisions, the department requests the criminal history from the Texas Department of Public Safety after receiving an application, which delays the application approval process. Requiring that applicants provide their criminal history report with their application will expedite the application approval process. The criminal history report process may re-

quire some applicants, primarily those living outside of Texas, to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed. Proposed §34.613(b)(1) includes additional language that specifies the general content for the qualifying test as part of a training school for a residential fire alarm technical license. The change clarifies an ambiguity that existed in the content of the residential fire alarm technician training school instruction. Other changes are proposed to accommodate ESA as a testing standards organization, and for consistency with the proposed changes to §34.609.

Section 34.615.

The proposed amendment to §34.615, relating to Test, are in conjunction with the approval of ESA in §34.609, and add ESA to the list of organizations that may conduct technical qualifying tests.

Section 34.616.

The proposal amends §34.616, relating to Sales, Installation, and Service. The amendments to §34.616(b)(1) specify that the licensee who plans fire detection and fire alarm devices or systems must be licensed under the primary registered firm. This amendment is congruent with the structure of the fire alarm licensing under Insurance Code Chapter 6002. The amendments to§34.616(b)(4) add servicing to the list of functions that must be done in accordance with the adopted standards. The amendments also delete the provision related to the Tentative Interim Amendment published by the NFPA and allow for system planning, installation, and servicing if it complies with a more recent standard adopted by the political subdivision in which the system is installed. This change allows greater flexibility in allowing licensed persons to perform services consistent with the standards adopted by the political subdivision. The amendments to §34.616(c) establish a two-year record keeping requirement for firms. This requirement is consistent with the adopted NFPA 72 requirements. Additionally, the amendment specifies that the state fire marshal or the state fire marshal's representative can examine the operation records for service, maintenance, testing, and certification. The requirements for storage and access of these records will assist the state fire marshal with fair, thorough, and consistent regulation of licensed firms.

Section 34.622.

The proposed amendment to §34.622, relating to Inspection/Test Labels, creates two new subsections for licensees and licensed firms to provide notice to AHJs when a new system is installed or a problem is corrected. The change will help AHJs follow up with building owners or representatives. Section 34.622(c) specifies that an inspection/test label may be applied only after an AHJ has approved the new installation. Section 34.622(e) requires notice to the AHJ when a fault or impairment has been corrected.

The department amends §34.622(h) to clarify the size of the adhesive inspection/test label. The amendment to Figure: 28 TAC §34.622(k) provides for indicating the name and address of the business where the inspection occurred. This will assist local AHJs with monitoring the inspections done in their jurisdiction.

Section 34.623.

The proposed amendment to §34.623, relating to Yellow Labels, requires the inspector or service provider to notify the AHJ when a tag is corrected. The rules already require the licensee or registered firm to notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. This submission of the revised status of a yellow label is similar to the existing requirement to notify an AHJ of a tagged device.

Section 34.624.

The proposed amendment to §34.624(d), relating to Red Labels, requires notification to the AHJ when a tag is corrected. The rules already require the licensee or registered firm to notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. Submission of the revised status of a red label is similar to the submission of the existing requirement to notify an AHJ of a tagged device.

Section 34.631.

New §34.631 reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55, and as amended by SB 807 and SB 1307. The new rule puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.631(a) implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.631(b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Section 34.631(c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Section 34.631(d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER G. FIRE SPRINKLER RULES

Section 34.713.

The proposed amendment to §34.713 deletes requirements to submit the examination test score. Proof of National Institute for Certification in Engineering Technologies (NICET) certification at Level II demonstrates sufficient training and knowledge. The proposed change also eliminates a potential redundancy for applicants who already have a Responsible Managing Employee (RME) General license, because RME general licensees already have demonstrated knowledge at a NICET Level III, which means they have demonstrated competency at least equivalent to NICET Level II. The proposed amendment to §34.713 also adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current provisions, the department requests the criminal history from the Texas Department of Public Safety after receiving the application, which delays the application approval process. Requiring that applicants provide their criminal history report with their application will expedite the application approval process. Some individuals, primarily those living outside of Texas, may need to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed.

Section 34.716.

The proposed amendment to §34.716, relating to Installation, Maintenance, and Service deletes language so that the system planning, installation, and servicing to comply with a standard adopted by the political subdivision in which the system is in-

stalled, and provides that it is consistent with similar provisions in this chapter. This change provides greater flexibility at the local level by allowing licensees to perform services consistent with the standards adopted by the political subdivision in which the system is installed. The amendments to §34.716(c) establish a record keeping requirement for firms. This requirement is consistent with the NFPA 13 requirements.

Section 34.721.

The proposed amendments to §34.721, relating to Yellow Tags, adds that the licensee or licensed firm is required to notify the AHJ when a tag is corrected. The rules already require the licensee or licensed firm notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. Submitting the notification of a revised status of a tag is similar to the existing requirement to notify an AHJ of a tagged device.

Section 34.722.

The proposed amendment updates Figure: 28 TAC §34.722(h) to provide for new exemplar years. The proposed amendment includes a specification that the inspection/test label be approximately three-inches high and three-inches wide.

Section 34.726.

New §34.726, relating to Military Service Member, Military Veterans or Military Spouses, reflect the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The proposed new rule puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.726(a) implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.726(b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Section 34.726(c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Section 34.726(d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER H. FIREWORKS RULES (formerly STORAGE AND SALE OF FIREWORKS)

The proposed name of the subchapter changes from "Storage and Sale of Fireworks" to the more concise "Fireworks Rules." This nonsubstantive change conforms the title of the subchapter to the similar Fire Extinguisher Rules, Fire Alarm Rules, and Fire Sprinkler Rules elsewhere in the chapter and is intended to improve clarity and organization of the rules.

Section 34.808.

The proposed amendments to §34.808, Definitions, add a definition of "immediate family member," as a family member that specifically includes the spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, and stepsibling; and a relationship established by adoption, as provided in Occupations Code §2154.254, relating to Employment of Minors. Cousins, aunts, uncles, nieces, and nephews are not included in the definition of immediate family member. These individuals could work at an owner's retail sales location, but would not fall under the specific allowance for individuals aged 12 to 15. Section 34.808 also amends the definition of "retail fireworks site" to include other structures, vehicles, or surrounding area subject to care and control of the retailer, owner, supervisor, or operator of the retail location. A related proposed change is made for §34.832, relating to fire safety hazards near the site. By amending the term to include those areas, retail fireworks site safety is more effectively ensured.

Section 34.818.

The proposed amendment to §34.818, relating to Specific Requirements for Retail Fireworks Stands, adds a requirement for the minimum distance between fireworks and the front of the customer counter and to the back side of the fireworks stand; and it prohibits fireworks from being displayed on the customer counter or in any manner that allows the customer to handle fireworks without the assistance of an employee. This additional requirement ensures that customers cannot endanger themselves or others. Customers may still examine and handle fireworks if an attendant is assisting the customer.

Section 34.823.

The proposed amendment to §34.823, relating to Bulk Storage of Fireworks 1.4G, establishes a requirement for a fire sprinkler system if a fireworks storage facility's floor space exceeds 12,000 square feet, and it allows for additional or more restrictive fire protections that may be adopted by a political subdivision. This proposed requirement will reduce the potential danger inherent in large fireworks storage facilities. Fire sprinklers can slow or stop small fires (reducing the likelihood of detonating the large quantities of explosive materials in fireworks storage facilities), giving the occupants additional time to exit the building and potentially providing emergency responders with additional time to reach the scene. The proposed change is consistent with the NFPA 1 Fire Code paragraph 13.3.2.23.1(2).

Section 34.832.

Section 34.832 relates to Specific Requirements for Retail Fireworks Sites Other Than Stands. The proposed amendment to §34.832(8) modifies the requirement for business owners to provide written notification to the local fire department and county fire marshal about the location of a building that sells or stores fireworks. HB 1150, 84th Legislature (2015), added additional dates during which fireworks can be sold. Some of these additional sales periods are other than the July Fourth sales period. So the proposed amendment removed the June 14 notice date and instead requires the licensee or licensed fireworks retailer to notify the AHJ about its intention to store or sell fireworks before the time period fireworks will be stored or sold. This amendment will allow local first responders and fire safety officials to continue to have timely notice about when and where fireworks are sold.

The proposed amendment to §34.832(11) provides that extension cords may not be plugged in to a power strip. Power strips are temporary wiring and are not designed to safely provide power to extension cords. This temporary wiring is not intended to be plugged in to one another, and doing so creates a dangerous fire hazard (NFPA 1, paragraph 11.1.6.2). The proposed amendment to §34.832(20) provides that an indoor fireworks retail site must not display fireworks on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

Section 34.833.

New §34.833, relating to Military Service Members, Military Veterans and Military Spouses reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The proposed rule puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.833(a) implements SB 807 and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.833(b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Section 34.833(c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Section 34.833(d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER J. STOVETOP FIRE SUPPRESSION DEVICE APPROVAL

Sections 34.1001 - 34.1004

The subchapter is proposed for repeal. SB 14, 78th Texas Legislature (2003), repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates, including credits or discounts for certain stovetop fire suppression devices.

SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES

Section 34.1302

The proposed amendment to §34.1302 amends the previous penalty schedules and creates a new penalty schedule. The amendment to the penalty schedule for fire sprinkler violations corrects the description for two listed violations. The existing penalty schedules in Figure: 28 TAC §34.1302(a), Figure: 28 TAC §34.1302(b), and Figure: 28 TAC §34.1302(c) are amended to include additional violations. The current department penalty schedules, in effect since 2013, have promoted efficient and timely resolution of minor administrative violations. The new schedule, Figure: 28 TAC §34.1302(e), provides similar penalties for minor violations of statute and rules related to fireworks distributors.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Ernest McCloud, director, State Fire Marshal's Office, has determined that for each year of the first five years the proposed amendments, repeals, and new sections 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. The proposal requires the licensee or licensed firm to notify AHJs about the correction of certain yellow- and red-tagged or labelled systems. These additional notifications are not expected to add additional costs to AHJs. Mr. McCloud does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. McCloud also determined that for each year of the first five years the proposed amendments, repeals, and new sections are in effect, the anticipated public benefit as a result of the proposal is the preservation of public health and safety through clarified regulations, better notice to AHJs of fire protection tag and label corrections, requirements for certain conduct, prohibitions on other certain conduct, and amended penalty schedules.

Cost of amendments to Subchapter C. Standards and Fees for State Fire Marshal Inspections.

The department does not expect additional costs of compliance because of the proposed definition.

Cost of amendments to Subchapter E. Fire Extinguisher Rules.

The department does not expect additional costs for affected persons to comply with the proposed amendment in §34.510, relating to Certificates of Registration, to adequately equip business vehicles. The department expects that licensees already have the tools and reference materials required to provide the services that licenses are contracted to perform. But, for those licensees who do not have adequately equipped vehicles, the department expects licensees to incur costs from $500 to $1,000 for tools and $500 to $1,000 for the adopted standards and reference materials. Each licensee can decide whether to provide hard copies of the adopted standards and other reference materials, or whether an electronic device to access to the standards is most cost effective and appropriate.

The department estimates that costs for affected persons to comply with the proposed amendment to §34.514, relating to Applications, will be approximately $5 per application. The Department of Public Safety provides a mechanism for individuals to order their own criminal history report. The cost of that criminal history report is $3 plus an added fee, the amount of which depends on the payment method the applicant uses. Applicants can determine the exact amount of the additional fee by logging on to the Department of Public Safety website, clicking on "purchase credits" under the criminal history section, and selecting a payment method. Currently, applicants who pay by credit card will pay an additional 2.25 percent of the order plus $0.25. Individuals living outside of Texas may be required by the Texas Department of Public Safety to have their fingerprints taken by the Texas Department of Public Safety's vendor. Currently, that vendor is MorphoTrust USA, and that entity charges approximately $40 to process fingerprints.

The department expects no additional costs for affected persons to comply with the proposed amendment to §34.517, relating to Installation and Service. The proposed amendment adds flexibility to allow system installation and servicing to conform to standards adopted by the political subdivision in which the system is installed. This flexibility will not add to the costs to affected persons, and may reduce them. The proposed amendment to indicate on the service tag the temperature and quantity for fusible metal alloy elements will require minimal additional time by licensed personnel. Licensees already complete the tag information, and recording the additional information should not require substantially more time. The proposed amendment also adds back a safety requirement related to pre-engineered dry chemical fixed fire extinguisher systems. The department expects that affected persons are already complying with the requirement, or they can alter their operations without additional costs.

The department expects that costs for affected persons to comply with the proposed amendments to §34.521, relating to Red Tags, to be approximately $5. Licensees already submit red tags to the AHJ when they identify a problem. Licensees should be able to estimate the costs of submitting the notice of correction of the problem to the AHJ, as required by the proposed amend-

ment, based on the costs associated with the current requirement to submit the tags to the AHJ. The department estimates that most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for filing entities; however, the United States Department of Labor, Bureau of Labor Statistics' May 2012 *Occupational Employment Statistics* report indicates that the hourly mean wages for professions in Texas, as referenced in this cost analysis, are $26.15 for office and administrative workers. Therefore, the department estimates the cost of complying with the proposed amendments to §34.521 to be approximately $5. The department estimates the cost of making an electronic submission to the AHJ will be minimal and it is impossible to pinpoint the exact cost; and the cost of a mail submission will be less than $5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect new costs for affected persons to comply with the proposed new §34.524, relating to Military Service Members, Military Veterans, or Military Spouses. The proposed new section restates the existing statutory provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

Cost of amendments to Subchapter F. Fire Alarm Rules.

The department does not expect additional costs for affected persons to comply with the proposed requirements in §34.609, relating to Approved Testing Organizations, or §34.615, relating to Test. The amendments to these two sections allow for ESA as a testing standards organization for testing license applicants. As a result of the proposed amendments, an additional testing standard organization is recognized.

The department expects that costs for affected persons to comply with the proposed amendment to §34.613, relating to Applications, will be approximately $5 per application. The Department of Public Safety provides a mechanism for individuals to order their own criminal history report. The cost for the report is $3 plus an added fee, the amount of which depends on the payment method the applicant uses. Applicants can determine the exact amount of the additional fee by logging on to the Department of Public Safety's website, clicking on "purchase credits" under the criminal history section, and selecting a payment method. Currently, applicants who pay with a credit card will incur a fee equaling 2.25 percent of the order plus $0.25. Individuals living outside of Texas may be required by the Texas Department of Public Safety to have their fingerprints taken by the Texas Department of Public Safety's approved vendor. Currently, that vendor is MorphoTrust USA, and that entity charges approximately $40 to process fingerprints. The other amendments to §34.613 are nonsubstantive clarifications and are not expected to create additional costs of compliance to licensees.

The department expects additional costs for affected persons to comply with the proposed amendment to §34.616, relating to Sales, Installation, and Service, but does not expect additional costs to comply with the proposed amendments to §34.616(b), which are substantive and nonsubstantive clarifications of existing requirements. The proposed amendments in this section also add flexibility to allow system installation and servicing to conform to standards adopted by the political subdivision in which the system is installed. This flexibility will not add to the costs to affected persons, and may reduce them.

The department expects that there may be costs for affected persons to comply with the proposed amendment to §34.616(d) regarding record keeping. The proposed two-year record keeping requirement for firms is consistent with NFPA standards, but is newly specified in the proposed rule. The department expects that firms may incur additional costs related to the administrative work of organizing and maintaining the records. It is not feasible for the department to determine the actual employee costs for these entities. As stated in the cost associated with §34.521, the hourly mean wages for office and administrative workers is $26.15, and the department estimates the proposed requirement will be 25 to 50 additional hours per year. The cost of complying with the proposed amendment to §34.521 could be $650 to $1,310. But many affected firms already have records retention policies consistent with this requirement, and will not incur additional costs.

The department expects that there may be costs for affected persons to comply with the proposed amendment to §34.622, relating to Inspection Test Labels, but does not expect a cost associated with the proposed new subsection (c), since the requirement only alters the timing of the placement of the inspection/test label. The department does expect administrative costs associated with affected persons complying with new proposed subsection (e). The proposed new subsections require licensees to send notices to AHJs with respect to the correction of a fault or impairment. Licensees should be able to estimate the costs of submitting the notice of correction to an AHJ, as required by the proposed amendment, based on the costs associated with the current requirement to submit tags to the AHJ. Most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for these entities. As stated in the cost estimate associated with §34.521, the hourly mean wages for office and administrative workers is $26.15, so the department estimates the cost of complying with the proposed amendment to §34.521 to be approximately $5. The department estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate, and the cost of a mail submission will be less than $5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect any additional costs associated with the proposed inspection/test adhesive label in §34.622. Affected persons may use their current supplies of adhesive labels, and additional inspection/test labels of the appropriate size will not cost substantially more. The proposed amendments also require recording the name and address of the business where the inspection occurred on the tag in Figure: 28 TAC §34.622(i). Licensees already complete the tag information, so recording the additional information will not require substantially more time.

The department expects that there may be costs for affected persons to comply with the proposed amendments to §34.623, relating to Yellow Labels, and §34.624, relating to Red Labels. The proposed amendments require the licensee to send notices of correction of a fault or impairment to the AHJ. Licensees should be able to estimate the costs of submitting the notice of correction to an AHJ, as required by the proposed amendment, based on the costs associated with the current requirement to submit tags to the AHJ. The department estimates that most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for filing entities. As stated in the cost estimated associated with §34.521, the hourly mean wages for office and administrative workers is $26.15, so the department estimates

the cost of complying with the proposed amendments to §34.521 will be approximately $5. The department estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate, but the cost of a mail submission will be less than $5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect costs for affected persons to comply with the proposed new §34.631, relating to Military Service Members, Military Veterans, and Military Spouses. The proposed new section restates the existing provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

Cost of amendments to Subchapter G. Fire Sprinkler Rules.

The department expects that there may be costs for affected persons to comply with the proposed amendments to §34.713, relating to Applications. The proposed change to delete the requirement to submit the examination test score will not result in additional costs. The department expects that costs to comply with the proposed amendment to §34.713(b)(1) requiring applicants to submit a criminal history report with an application to cost approximately $5 per application. The Department of Public Safety provides a mechanism for individuals to order a criminal history check. The cost is $3 plus an added fee, the amount of which depends on the payment method the applicant uses. Applicants can determine the exact amount of the added fee by logging on to the Department of Public Safety's website, clicking on "purchase credits" under the criminal history section, and selecting a payment method. Currently, applicants who pay with a credit card will incur a fee equaling 2.25 percent of the order plus $0.25. Individuals living outside of Texas may be required by the Texas Department of Public Safety to have their fingerprints taken by the Texas Department of Public Safety's vendor. Currently, that vendor is MorphoTrust USA, and that entity charges approximately $40 to process fingerprints.

The department does not expect costs for affected persons to comply with the proposed amendment to §34.716, relating to Installation, Maintenance, and Service. The proposed amendment adds flexibility to allow system planning, installation, and servicing to conform to standards adopted by the political subdivision in which the system is installed. This flexibility will not add to the costs to affected persons, and may reduce them.

The department expects that there may be costs for affected persons to comply with the proposed amendments §34.721, relating to Yellow Tags, and §34.722, relating to Red Tags. The proposed amendments require the licensee to send notices of a correction of a fault or impairment to the AHJ. Licensees should be able to estimate the costs of submitting the notice of correction to an AHJ based on the costs associated with the current requirement to submit tags to the AHJ. Most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for filing entities; however, as stated in the cost estimated associated with §34.521, the hourly mean wages for office and administrative workers is $26.15. Therefore, the department estimates that the cost of complying with the proposed amendment to §34.521 should be approximately $5. The department has determined that the cost of making an electronic submission to be minimal and impossible to reasonably estimate, and the cost of a mail submission will be less than $5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect a cost for affected persons as a result of the proposed amendment to §34.722, which updates Figure: 28 TAC §34.722(h) to provide for new exemplar years. "Exemplar" is the example date that is filled in on the tags, but the actual tags can be modified for the current year.

The department does not expect costs for affected persons to comply with the proposed new §34.726, relating to Military Service Members, Military Veterans, or Military Spouses. This proposed new section restates the existing statutory provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

Cost of amendments to Subchapter H. Storage and Sale of Fireworks.

The department does not expect costs for affected persons to comply with the proposed amendment to rename Subchapter H to Fireworks Rules.

The department does not expect affected persons to incur costs to comply with the proposed amendment to §34.808, relating to Definitions. The proposed amendment provides new definitions for what constitutes a retail fireworks site and who is an immediate family member, and so it will not create additional costs of compliance to licensees.

The department does not expect additional costs for affected persons to comply with the proposed amendment to §34.818, relating to Specific Requirements for Retail Fireworks Stands. The proposed amendment provides clarification on the minimum distance of fireworks displayed in a fireworks stand from the front of the customer counter to the back of the stand. The amendment also includes a requirement that fireworks must not be displayed on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer. The department expects that additional monitoring of customers will not require additional staffing or labor costs, and can be accomplished with reasonable planning in the display of fireworks during each sales period.

The department expects that there may be costs for affected persons to comply with the proposed amendments §34.823, relating to Bulk Storage of Fireworks 1.4G. The proposed amendment to §34.823(h) requires a fire sprinkler system if a fireworks storage facility's floor space is greater than 12,000 square feet, or additional or more restrictive fire protection requirements as adopted by an AHJ. The cost of a fire sprinkler system varies based on the size and location of the storage facility. Larger facilities, or facilities requiring supplementary water for supplying a fire sprinkler system, will increase the costs associated with a fire sprinkler system. The department expects that some fireworks storage facilities already have fire sprinkler systems. Because of the potential for costs to vary by facility size and location, the department cannot accurately estimate a specific range of potential costs; however, the department is aware that fire sprinkler systems can be costly. Cost for the installation of a new fire sprinkler system in an existing building can cost tens or hundreds of thousands of dollars.

The department does not expect costs for affected persons to comply with the proposed amendment to §34.832, relating to Specific Requirements for Retail Fireworks Sites Other Than Stands. The proposed amendment to clarify the timing of the notification of the local fire department and the county fire marshal in writing should not alter the costs of compliance with the

section. The department also does not expect additional costs for affected persons to comply with the specific prohibition of plugging an extension cord into a power strip. Most fire codes already prohibit these unsafe practices. Affected persons can comply with the amended subsection and avoid the hazard of temporary wiring by rearranging the temporary wiring, or by rearranging the devices powered by the temporary wiring.

The department does not expect additional costs for affected persons to comply with the proposed new §34.833, relating to Military Service Members, Military Veterans, or Military Spouses. The proposed new section restates the existing statutory provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

Cost of amendments to Subchapter J. Stovetop Fire Suppression Device Approval.

The department does not expect additional costs of compliance for affected persons because of the proposed subchapter repeal.

Cost of amendments to Subchapter M. Scheduled Administrative Penalties.

The amended penalty schedule and additional administrative penalty schedule may result in some additional costs to owners or operators of fire alarm, fire extinguisher, fire sprinkler, and fireworks firms. The anticipated costs are similar to those administrative costs proposed in the February 8, 2013, issue of the *Texas Register* (38 TexReg 627) and include costs related to responding to and correcting the alleged violation, and costs relating to the administrative penalty that will be paid.

Each time a penalty notice is sent, the costs to comply with existing §34.1301, relating to Schedule of Administrative Penalties, would be a separate, nonrecurring expense. The department estimates that each written response to accept the administrative penalty; request an opportunity to show compliance with the requirements of all applicable law and rules; or make a written request for a hearing to the state fire marshal on a determination, as required by Subchapter M, would cost between $14 and $16. The cost estimate includes an estimate of 30 minutes of the licensee's time to retrieve and print or copy the proof document or documents (with costs of between $.08 and $1.20 for printing or copying the proof document or documents), to be less than $3 for first class postage and an appropriately sized envelope. As stated in the cost estimate associated with §34.521, the hourly mean wage for office and administrative workers is $26.15, so the department estimates that the cost of complying with each written request would be approximately $15. Licensees electing to send documents through certified mail will incur additional charges. Total annual costs for compliance will vary based on the number of administrative penalty responses that the licensee submits.

Costs relating to the administrative penalty paid are as specified in the penalty schedule. Total annual costs for compliance will vary based on the amount and number of administrative penalties that the licensee pays.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small businesses, state agencies must prepare an economic impact statement that assesses the potential impact of the proposed rule on small businesses. State agencies must also prepare a regulatory flexibility analysis that considers alternative methods to achieve the purpose of the rule. Government Code §2006.001(2) defines a 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 million in annual gross receipts. Government Code §2006.001(1) defines a micro business similarly to a small business, but specifies that a micro business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined under Government Code §2006.002(b) - (d).

As required by Government Code §2006.002(c), the department has determined the proposal may have an adverse economic impact on small or micro businesses resulting from the costs to comply with the proposed amendments.

Based on data requested by its applicants, the department estimates that there are about 700 individuals and firms in Texas engaged in the business of fire extinguishers, including the leasing, selling, installing, and servicing of portable fire extinguishers; and the planning, certifying, installing, and servicing of fixed fire extinguisher systems. The Census Bureau has established the NAIC code 423990 (other miscellaneous durable goods merchant wholesalers) for use with fire extinguisher sales combined with rental or service, and merchant wholesalers. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 89 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts.

Based on data requested by its applicants, the department estimates that there are about 1400 individuals and firms in Texas engaged in the business of fire alarms, including the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 86 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts.

Based on data requested by its applicants, the department estimates that there are about 600 individuals and firms in Texas engaged in the business of fire sprinklers, including the relating to the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 80 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts.

Based on data requested by its applicants, the department estimates that there are about 60 individuals and firms in Texas engaged in the business of fireworks and pyrotechnics, including the manufacturing, selling, storing, possessing, or transporting fireworks; and the conduct of public fireworks displays. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 86 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts. For 2014, approximately 4000 fireworks permits were used by retail fireworks stands and indoor sites. It is likely that every fireworks permit is used by a small or micro business.

This proposal implements statutory changes; clarifies the intent of the regulations; revises tags, labels, and stamps; requires certain conduct; prohibits certain other conduct; and amends penalty schedules. All affected small or micro businesses in Texas will be required to comply with the proposed new requirements. The cost analysis in the Public Benefit and Cost Note part of this proposal is also applicable to these small and micro businesses.

In accordance with Government Code §2006.002, the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses. The other regulatory methods the department has considered include: (i) not proposing the amendments; (ii) proposing different requirements for small and micro businesses; and (iii) excluding small and micro businesses from applicability under the amendments and new sections included in this proposal.

Not proposing the amendments.

The purpose of this rule proposal is the preservation of public health and safety through clarified regulations, better notice to AHJs of fire protection tag and label corrections, requiring certain conduct, prohibiting other certain conduct, and amending penalty schedules.

Without the proposal and adoption of amended rules, affected persons would not benefit from clarifications and the public would not benefit from improved public health and safety requirements. Failure to propose and adopt new rules would also frustrate the purpose of Government Code §417.008, Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapters 55 and 2154. For these reasons, the department has rejected this option.

Proposing different requirements for small and micro businesses.

The department believes that proposing different standards for small and micro business than those included in this proposal would not provide a better option for these businesses. The department believes that the potential for public harm resulting from lessening regulatory requirements for small and micro businesses would outweigh the potential benefit to small or micro businesses. The proposed rule amendments increase public health and safety requirements, and regulations protecting the public are also important to achieving the regulatory purpose of the proposal. For these reasons, the department has rejected this option.

Excluding small and micro businesses from applicability under the new sections included in this proposal.

As addressed in the Public Benefit and Cost Note portion of this proposal, anticipated costs under the proposal are the result of the rule amendments. If the department excluded small and micro businesses under the amended sections, they would not incur the anticipated costs. But if the department excluded small and micro businesses under the new sections, the department would lack predictable and uniformly enforced public safety regulations. The department believes that the potential for lack of compliance with these provisions would create potential harm for affected persons, insureds, and the public that would outweigh the potential benefit to small or micro businesses. For this reason, the department has rejected this option.

Protection of Public Health and Safety

Government Code §2006.002(c-1) requires that the regulatory flexibility 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. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The amendments to Subchapters C, E, F, G, H, J, and M protect the health and safety of fire fighters, citizens, and structures in Texas through the efficient administration of Government Code §417.008, Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapters 55 and 2154. In order to protect life and property in this state, it is necessary that all businesses, regardless of size, comply with minimum safety requirements. Therefore, the department has determined, in accordance with Government Code §2006.002(c-1), that because the proposed amendments ensure the health, safety, and environmental and economic welfare of the state, there are no regulatory alternatives to the amendments to Subchapters C, E, F, G, H, J, and M in this proposal that will sufficiently protect the safety of fire fighters, citizens, and structures in this state.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department invites the public and affected persons to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on April 18, 2016, 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. Simultaneously submit a second copy of the comments to the Texas Department of Insurance, Ernest McCloud, Director, State Fire Marshal's Office, Mail Code 112-FM, P.O. Box 149104, Austin, Texas 78714-9104; or by email to ernest.mccloud@tdi.texas.gov. Requests for a public hearing on this proposal must be submitted to the department separately. To request a hearing, submit the request to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, written comments and public testimony presented at the hearing will be considered.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS

DIVISION 1. GENERAL PROVISIONS

28 TAC §34.302

STATUTORY AUTHORITY. The amendment is proposed under Government Code §417.005 and §417.008, and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appro-

priate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule must adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Government Code §417.008 is implemented by this rule.

§34.302. Definitions.

The following words and terms, when used in this subchapter, must [~~shall~~] have the following meanings, unless the context clearly indicates otherwise:

(1) Authority having jurisdiction (AHJ)--An organization, office, or individual responsible for enforcing the requirements of a code or standard.

(2) [~~(1)~~] Commissioner--The Commissioner of Insurance.

(3) [~~(2)~~] NFPA--The National Fire Protection Association, a nationally recognized standards making organization.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601143
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 676-6584

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SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §§34.510, 34.514, 34.517, 34.521, 34.524

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code §417.005 and §417.008, and Insurance Code §§6001.051, 6001.052, and 36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Insurance Code §6001.051(a) specifies that the department administers Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association, recognized by federal law or regulation, published by any nationally recognized standards-making organization, or contained in the 'manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner must adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Insurance Code Chapter 6001 is implemented by these rules.

§34.510. Certificates of Registration.

(a) Required. Each firm and each branch office engaged in the business must obtain a certificate of registration from the state fire marshal.

(b) Properly equipped licensed person. Before engaging in the business, each registered firm must have at least one licensed person who must [~~shall~~] be properly equipped to perform the act or acts authorized by its certificate.

(c) Types of certificates. The business activities authorized by the certificate is limited to the business activities authorized under the license of its employees. A separate Type C registration is required to engage in the business of hydrostatic testing of U.S. Department of Transportation (U.S. DOT) [~~DOT~~] specification fire extinguisher cylinders.

(d) Business location. Each registered firm must maintain a [~~A~~] specific business location and the business [~~must be maintained by each registered firm, the~~] location [~~of which~~] must be indicated on the certificate.

(e) Shop. A registered firm must establish and maintain a shop, whether at a specific business location or in a mobile unit designed so that servicing, repairing, or hydrostatic testing can be performed. The shop must be adequately equipped to service or test all fire extinguishers or systems the registered firm installs and services. At a minimum, a firm must maintain the following:

(1) a copy of the most recently adopted edition of NFPA 10;

(2) a copy of the most recently adopted Insurance Code Chapter 6001 and this chapter;

(3) a list of manufacturers [~~and/~~]or types of portable extinguishers serviced with their respective manuals [~~and/~~]or part lists;

(4) portable [~~weight~~] scale to accurately measure extinguisher gross weights;

(5) seals or tamper indicators;

(6) temporary fire extinguishers replacements;

(7) if performing annual maintenance on carbon dioxide extinguishers, at a minimum, the following additional items are required:

(A) conductivity tester, and

(B) conductivity test label.

(8) if performing internal maintenance for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the maintenance or, at a minimum, the following additional items are required:

(A) appropriate tools to remove and reinstall a valve head;

(B) charging adapters;

(C) Teflon tape, silicone grease, solvent, or other lubricant used;

(D) supply of spare parts for respective manufacturers and type of fire extinguishers serviced;

(E) appropriate recharge agents;

(F) agent fill funnels;

(G) light designed to be used for internal inspections;

(H) dry chemical closed recovery system or sufficient new dry chemical;

(I) leak test equipment;

(J) dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;

(K) verification collar rings; and

(L) six-year [~~six year~~] maintenance labels.

(9) if performing hydrostatic testing for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the test or, at a minimum, the following additional items are required:

(A) working hydrostatic test pump[~~,~~] with flexible connection, check valves, and fittings;

(B) protective cage or barrier;

(C) calibrated gauges;

(D) drying equipment;

(E) hydrostatic test log; and

(F) hydrostatic test labels.

(10) if performing maintenance for U.S. DOT specification portable fire extinguishers, a written notice must be kept on file indicating the registered firm that would perform the hydrostatic test when required or, at a minimum, the following additional items are required:

(A) a current Type C registration issued by [~~through~~] the State Fire Marshal's Office; and

(B) verification of registration through the U.S. [~~US~~] DOT.

(11) if installing or servicing a fixed fire extinguisher system, at a minimum, the following additional items are required:

(A) a copy of the latest adopted edition of applicable NFPA standards with respect to the type of system installed or serviced;

(B) applicable manufacturer's service manuals for the type of system; and

(C) any special tools or parts as required by the manufacturer's manual.

(f) Business vehicles. All vehicles used regularly in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one inch in height and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate-of-registration number must be designated in the following format: TX ECR-number. A business vehicle must be adequately equipped for the type of service that is being provided.

(g) Branch office initial certificate of registration fees and expiration dates [~~Office Initial Certificate of Registration Fees and Expiration Dates~~]. The initial fee for a branch office certificate of registration is $100 and is not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(h) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, the new owners must submit an application for a new certificate to the state fire marshal 14 days prior to the change.

(2) A partial change in a firm's ownership will require a revised certificate if it affects the firm's name, location, or mailing address.

(i) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require an application for a new or revised certificate.

(j) Duplicate certificates. A certificate holder must obtain a duplicate certificate from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(k) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the registered firm must submit written notification of the necessary change accompanied by the required fee to the State Fire Marshal's Office.

(l) Nontransferable. A certificate is neither temporarily nor permanently transferable from one firm to another.

(m) Initial alignment of the expiration and renewal dates of existing branches [~~Alignment of the Expiration and Renewal Dates of Existing Branches~~]. For branch offices in existence as of the effective date of this rule, branch office certificates of registration will expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration will prorate accordingly.

§34.514. Applications.

(a) Certificates of registration.

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire marshal and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the state fire marshal's office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must [~~also~~] be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6001 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax "Certificate of Good Standing" issued by the state comptroller's office.

(4) Applications for Type C certificates must be accompanied by a copy of the U.S. DOT letter registering the applicant's facility and that issues [~~which awards~~] a registration number to the facility.

(5) The applicant must comply with the following requirements concerning liability insurance.

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files a proof of liability insurance with the State Fire Marshal's Office [~~state fire marshal's office~~] proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office [~~state fire marshal's office~~] the certificate of insurance as required.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.154, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) If a certificate of registration is to be issued in the name of a corporation, the corporate name must be used on the applicable insurance forms. If the corporation is obtaining a certificate of registration in an assumed name, the insurance must be issued to the corporation doing business as (dba) the assumed name. Example: XYZ Corporation dba XXX Extinguisher Service.

(E) Insurance issued for a partnership must be issued to the name of the partnership or to the names of all the individual partners.

(F) Insurance for a proprietorship must be issued to the individual owner. If an assumed name is used, the insurance must be issued to the individual doing business as (dba) the assumed name. Example: William Jones dba XXX Extinguisher Service.

(b) Fire extinguisher licenses.

(1) Original applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by a criminal history report from the Texas Department of Public Safety, and all other information required by Insurance Code Chapter 6001 and this subchapter.

(2) Applications for Type A and Type K licenses must be accompanied by a written statement from the certificate holder (employer) certifying that the applicant meets the minimum requirements of §34.511(f)(4) of this title [~~subchapter~~] (relating to Fire Extinguisher Licenses) and is competent to install or service fixed systems.

(3) Applications for Type PL licenses must be accompanied by one of the following documents to evidence technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's (National Institute for Certification in Engineering Technologies) notification letter regarding the applicant's successful completion of examination requirements for certification at Level III for Special Hazard Systems Layout or Special Hazard Suppression Systems.

(4) All applications must indicate if the individual is an employee or agent of the registered firm.

(A) If the individual is an employee of the registered firm, the State Fire Marshal's Office may request from the registered firm verification of employment of the individual.

(B) If the individual is an agent of the fire extinguisher firm, the State Fire Marshal's Office may request the firm to provide a letter or other document acceptable to the State Fire Marshal's Office issued by the firm's insurance company, verifying the policy number and that the acts of the individual are covered by the same insurance policy required by this subchapter to obtain the firm's registration. If required, the verifying document must be submitted to the State Fire Marshal's Office before a license will be issued or when there is a change in the licensee's registered firm. Unless otherwise required by the State Fire Marshal's Office, renewal of a license does not require insurance verification unless there has been a change in the insurance carrier.

(c) Complete application required for renewal. Renewal applications for certificates of registration and licenses must be submitted on forms provided by the state fire marshal and accompanied by a criminal history report obtained through the Texas Department of Public Safety and all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office [~~state fire marshal's office~~].

(d) Timely filed. A license or registration will expire at 12:00 midnight on the d ate printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will have 30 days from the time the applicant is notified by the State Fire Marshal's Office [~~state fire marshal's office~~] of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(e) Requirements for applicants holding licenses from other states. An applicant holding a valid license in another state who desires to obtain a Texas license through reciprocity must submit the following documentation with the application in addition to all other information required by Insurance Code Chapter 6001 and this subchapter:

(1) a letter of certification from the licensing entity of another state certifying the applicant holds a valid license in that state; and

(2) additional information from the state detailing material content of any required examination used to qualify for license, including NFPA or other standards, if applicable.

(f) Apprentice permits. Each person employed as an apprentice by a firm engaged in the business must make application for a permit on a form provided by the state fire marshal and accompanied by the required fee.

(g) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office [~~department~~] of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter, or a new application must be submitted, including all applicable fees.

§34.517. Installation and Service.

(a) The following requirements are applicable to all portable extinguishers.

(1) Portable extinguishers must be installed, serviced, and maintained in compliance with the manufacturer's instructions and with the applicable standards adopted in this subchapter except when the installation or servicing complies with a standard that has been adopted by the political subdivision in which the system is installed.

(2) A service tag certifying the work the licensee performed must be securely attached to the portable extinguisher on completion of the work.

(3) When requested in writing by the owner, a portable fire extinguisher of the type described in subparagraphs (A), (B), or [~~and~~] (C) of this paragraph may be serviced according to the requirement of this subchapter, regardless of whether it carries the label of approval or listing of a testing laboratory approved according to this subchapter.

(A) All portable fire extinguishers serviced according to the requirements of the United States Coast Guard and installed for use in foreign shipping vessels;

(B) all portable carbon dioxide fire extinguishers serviced according to the requirements of the United States Department of Transportation; or

(C) cartridge-actuated [~~cartridge actuated~~] portable fire extinguishers used exclusively by employees of the firm owning the extinguishers.

(4) A licensee who services portable fire extinguishers according to paragraph (3) of this subsection, must comply with the following:

(A) The back of the service tag must be plainly marked with the words "No Listing Mark."

(B) All missing markings, code symbols, instructions, and information required by the applicable performance standard and fire test standard specified in §34.507(1) of this title [~~subchapter~~] (relating to Adopted Standards), except for the approving or listing mark of the testing laboratory, must be affixed to each extinguisher in the form of a label designated in the standard.

(b) The following requirements are applicable to all fixed fire extinguisher systems.

(1) Fixed systems must be planned, installed, and serviced in compliance with the manufacturer's installation manuals and specifications or the applicable standards adopted in this subchapter, except when the installation or servicing complies with a standard that has been adopted by the political subdivision in which the system is installed.

(2) On completion of the installation of a pre-engineered fixed fire extinguisher system, a licensee authorized to certify pre-engineered fixed fire extinguishing systems under the provisions of this subchapter must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(3) On completion of the installation of a fixed fire extinguisher system other than a pre-engineered system, a Type A or Type PL licensee must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications, plans developed by a Type PL licensee or professional engineer, or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(4) A service tag certifying the work the licensee performed must be securely attached to the system on completion of the work.

(c) Pre-engineered fixed fire extinguisher systems must be installed and serviced by a licensee authorized to install or service pre-engineered fixed fire extinguishing systems under the provisions of this subchapter.

(d) A pre-engineered fixed fire extinguisher system, except those covered by subsection (f) of this section, that [~~which~~] has been previously installed in one location may be reinstalled in another location if:

(1) the system is of the size and type necessary to protect all hazards;

(2) all parts and equipment, when installed, will function as designed by the manufacturer; and

(3) the system complies [~~must comply~~] with all applicable adopted standards.

(e) Fixed fire extinguisher systems other than pre-engineered systems must be planned, installed, or serviced by a Type PL licensee or professional engineer. Installation and servicing of these systems [~~such a system~~] may also be performed by or supervised by a Type A licensee. An employee of the registered firm may install these [~~such~~] systems, under the direct supervision of a Type A or PL licensee, without obtaining a license or permit.

(f) All pre-engineered fixed fire extinguishing systems, installed or modified after July 1, 1996, according to NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards[~~,~~] for the protection of commercial cooking areas, must meet the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300). After January 1, 2008, all existing pre-engineered fixed fire extinguishing systems, installed in accordance with [~~according to~~] NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial cooking areas, must meet the minimum requirements of UL Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300) or a red

tag must be attached following the procedures in §34.521 of this title [~~subchapter~~] (relating to Red Tags).

(g) If the installation or servicing of a fixed fire extinguishing system includes the installation or servicing of any part of a fire alarm or detection system or a fire sprinkler system other than the installation and servicing of mechanical or pneumatic detection or actuation devices in connection with the fire extinguishing system, the licensing requirements of the appropriate Insurance Code Chapters 6002 or 6003 must be satisfied.

(h) The fixed-temperature [~~fixed temperature~~] sensing elements of the fusible metal alloy type, replaced while servicing a kitchen hood fire extinguishing system, must bear the manufacturer's date stamp, which must be within one year of the date of the replacement. The year of manufacture, temperature, and quantity for new fusible links must be listed on the service tag under service performed.

(i) The disposable actuation cartridge, replaced while servicing a kitchen hood fire extinguisher system, must bear the date of replacement.

(j) After operating the pull pin or locking device during maintenance of a portable fire extinguisher, the flag of the new tamper seal must bear the year it was attached. The date must be imprinted or embossed on the flag of the new tamper seal. Dates applied with a marker are not allowed.

(k) All pre-engineered dry chemical fixed fire extinguishing systems, installed in new, remodeled, or relocated protected areas after January 1, 2006, must meet the minimum requirements of the second edition (1996) or more recent edition of Underwriters Laboratories, Inc., Standard 1254, Pre-engineered Dry Chemical Extinguishing System Units.

§34.521. Red Tags.

(a) If impairments exist that [~~which~~] make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's representative must be notified in writing of all impairments. The registered firm must notify the owner or the owner's representative immediately and must also notify the local authority having jurisdiction (AHJ) when available within 24 hours by phone, fax, or email describing the impairments or deficiencies. A copy of the written notice to the owner must be submitted to the AHJ within three business days. A completed red tag must be attached to indicate that corrective action or replacement is necessary. The signature of the licensee on the tag certifies that the impairments listed indicate that the equipment is unsafe or inoperable. A service tag must not be attached until the impairments have been corrected or the portable extinguisher or fixed system is replaced and the extinguisher or fire extinguisher system re-inspected [~~reinspected~~] and found to be in good operating condition. The local AHJ must be notified when corrections are made and a red tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red tag.

(b) Red tags must be the same size as service tags.

(c) Red tags must bear the following information in the format of the tag shown in subsection (e) of this section:

(1) "DO NOT REMOVE--EQUIPMENT IMPAIRED" (all capital letters, at least 10-point boldface type);

(2) firm's name and address;

(3) firm's certificate-of-registration number;

(4) licensee's name and license number;

(5) licensee's signature (a stamped signature is prohibited);

(6) date;

(7) list of impairments; and

(8) name and address of owner or occupant.

(d) A red tag may be removed only by an authorized employee of a registered firm who has corrected the impairments and certified the service, an employee of the State Fire Marshal's Office [~~state fire marshal's office~~], or an employee of another governmental agency with regulatory authority.

(e) Red tag:

Figure: 28 TAC §34.521(e)

§34.524. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601144
Norma Garcia
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.609, 34.615, 34.616, 34.622 - 34.624, 34.631

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code §417.005 and §417.008, and Insurance Code §§6002.051, 6002.052, and 36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association, standards recognized by federal law or regulation, or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Insurance Code Chapter 6002 is implemented by these rules.

§34.609. Approved Testing Organization.

The commissioner approves the following testing organizations as a testing standards organization for testing license applicants:

(1) National Institute for Certification in Engineering Technologies (NICET); and [~~as a testing standards organization for testing license applicants.~~]

(2) Electronic Security Association (ESA).

§34.613. Applications.

(a) Approvals and certificates of registration [~~Certificates of Registration~~].

(1) Applications for approvals, certificates, and branch office certificates must be submitted on the forms adopted by reference in §34.630 of this title [~~subchapter~~] (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by [~~the~~] Insurance Code Chapter 6002 and this subchapter. An application will not be deemed complete until all required forms, fees, and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative [~~representative~~] to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of [~~the~~] Insurance Code Chapter 6002 and this subchapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25 percent of the shares issued by the corporation; the corporate taxpayer identification number; the charter number; a copy of the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business; and a copy of the corporation's current franchise tax certificate of good standing issued by the comptroller.

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) Insurance is required as follows.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files with the State Fire Marshal's Office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation;[,] partners, if any;[,] or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) Applicants for a certificate of registration who engage in monitoring must provide the specific business locations where monitoring will take place and the name and license number of the fire alarm licensees at each business location. A fire alarm licensee may not serve in this capacity for a registered firm other than the firm applying for a certificate of registration. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the commissioner and a statement that the monitoring service is in compliance with NFPA 72 as adopted in §34.607 of this title [~~subchapter~~] (relating to Adopted Standards).

(8) Applicants for a certificate of registration--single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) Fire alarm licenses [~~Alarm Licenses~~].

(1) To be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by Insurance Code Chapter 6002 and this subchapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All appli-

cants for any type of license must successfully complete a qualifying test regarding Insurance Code Chapter 6002 and the Fire Alarm Rules as designated by the State Fire Marshal's Office. The qualifying test, given as part of the training for residential fire alarm technician license, must include questions regarding Insurance Code Chapter 6002 and the Fire Alarm Rules.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from NICET (National Institute for Certification in Engineering Technologies) or ESA (Electronic Security Association), confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office, or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET or ESA confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's or ESA notification letter confirming the applicant's successful completion of the test requirements for NICET or ESA certification at Level III for fire alarm systems.

(7) An applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

(c) Instructor and training school approvals [~~Training School Approvals~~].

(1) Instructor approvals. An applicant for approval as an instructor must:

(A) hold a current fire alarm planning superintendent [~~superintendent's~~] license, residential fire alarm superintendent license, or fire alarm technician license issued by the State Fire Marshal's Office;

(B) submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and

(C) furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems[~~,~~] unless the applicant has held a fire alarm planning superintendent [~~superintendent's~~] license, residential fire alarm superintendent license, or fire alarm technician license for three or more years.

(2) Training school approvals.

(A) An applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, to the State Fire Marshal's Office. To be complete, the application must be:

(i) signed by the applicant, the sole proprietor, by each partner of a partnership, or by an officer of a corporation or organization as applicable;

(ii) accompanied by a detailed outline of the proposed subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and

(iii) accompanied by all required fees.

(B) After review of the application for approval for a training school, the state fire marshal will approve or deny the application within 60 days following receipt of the materials. A letter of denial will state the specific reasons for the denial. An applicant that is denied approval may reapply at any time by submitting a completed application that includes the changes necessary to address the specific reasons for denial.

(d) Renewal applications [~~Applications~~].

(1) In order to be complete, renewal applications for certificates, licenses, instructor approvals, and training school approvals must be submitted on the forms adopted by reference in §34.630 of this title [~~subchapter~~] and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by the Insurance Code Chapter 6002 and this subchapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date that is before the expiration of the certificate or license being renewed.

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license; however, the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm.

(e) Complete applications [~~Applications~~]. The application form for a license, registration, instructor approval, and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6002 and this subchapter, or a new application must be submitted including all applicable fees.

§34.615. Test.

(a) Each applicant for a license must pass the appropriate tests. Tests may be supplemented by practical tests or demonstrations necessary to determine the applicant's knowledge and ability.

(1) The license test will include a section on this subchapter, [~~and the~~] Insurance Code Chapter 6002, and a technical qualifying test to be conducted by:

(A) the State Fire Marshal's Office;

(B) NICET (National Institute for Certification in Engineering Technologies); [~~or~~]

(C) ESA (Electronic Security Association); or

(D) [~~(C)~~] an outsource testing service.

(2) The standards used in tests will be those adopted in §34.607 of this title (relating to Adopted Standards).

(b) Examinees who fail the test must file a retest application accompanied by the required fee in order to be retested on the next scheduled test date.

(c) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test. No test is required for a licensee whose license is renewed within two years of expiration.

(d) An applicant may only schedule each type of test three times within a 12-month [~~twelve-month~~] period.

(e) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise[~~,~~] the test is voided and the individual will have to pass the test again.

§34.616. Sales, Installation, and Service.

(a) Residential alarm (single station) [~~Alarms (Single Station)~~].

(1) Registered firms may employ persons exempt from the licensing provisions of [~~the~~] Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of [~~the~~] Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those [~~said~~] employees regarding the provisions of [~~the~~] Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire detection and fire alarm devices or systems other than residential single station [~~Detection and Fire Alarm Devices or Systems Other than Residential Single Station~~].

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to [~~the~~] Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent[~~,~~] for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the ACR number of the primary registered firm. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent or a fire alarm planning superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system [~~and/~~]or a fire extinguisher system other than inspection and testing of detection or supervisory devices, the licensing requirements of [~~the~~] Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, [~~and~~] installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title [~~chapter~~] (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed [~~an adopted standard or a Tentative Interim Amendment published as effective by the NFPA~~].

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered repair. The equipment replaced must comply with the current adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local AHJ [~~authority having jurisdiction~~] must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements [~~Requirements~~].

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.25.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center, must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ [~~authority having jurisdiction~~] a minimum of seven days before terminating the monitoring service. If the monitored property is a one-

or two-family dwelling [~~two-family dwelling~~], notification of the local AHJ [~~authority having jurisdiction~~] is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

§34.622. Inspection/Test Labels.

(a) After the inspection and testing of a fire alarm system, a fire alarm inspection/test label must be completed in detail and affixed to either the inside or outside of the control panel cover or, if the system has no panel, in a permanent location. The signature of the licensee on the inspection/test label certifies that the inspection and tests performed comply [~~complies~~] with requirements of the adopted standards.

(b) If any service or maintenance is performed under [~~pursuant to~~] the inspection or test, a service label, in addition to the inspection/test label, must [~~shall~~] be completed and attached according to the procedures in this section.

(c) For new installation, an inspection/test label may only be applied after the system has been accepted by the local AHJ.

(d) [~~(c)~~] If, during any inspection or test, [~~it is observed that~~] the system does not comply with applicable standards adopted at the time the system was installed, has a fault condition, or is impaired from normal operation, the owner or the owner's representative and the local AHJ [~~authority having jurisdiction~~] must be notified of the condition and the licensee must attach, in addition to the inspection/test label, the appropriate yellow or red label, in accordance with the procedures in this section.

(e) The local AHJ must be notified when the fault or impairment has been corrected.

(f) [~~(d)~~] Inspection/test labels must [~~shall~~] remain in place for at least five years, after which [~~time~~] they may be removed by a licensed employee or agent of a registered firm. An employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess labels at any time.

(g) [~~(e)~~] The inspection/test label must be blue [~~in color~~] with printed black lettering.

(h) [~~(f)~~] The inspection/test label must be approximately three inches high and three inches wide and must have an adhesive on the back that allows for label removal.

(i) [~~(g)~~] Approximately a half-inch [~~1/2 inch~~] of the adhesive on the top back of the label should be used to attach the label over the previous inspection/test label to permit viewing of the previous label and the maintaining of a brief history.

(j) [~~(h)~~] Inspection/test labels must contain the following information in the format of the inspection/test label, as set forth in subsection (k) [~~(i)~~] of this section:

(1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (all capital letters in at least 10-point bold face type);

(2) INSPECTION/TEST RECORD (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm performing the inspection/test;

(4) the date of the inspection performed, the licensee's signature (a stamped signature is prohibited) and license number;

(5) the type of inspection/test performed to be marked, new installation, semi-annual, quarterly or annual;

(6) the last date of sensitivity test, if known; and

(7) the status after the inspection/test if [~~of~~] acceptable or if yellow label attached, or if red label attached.

(k) [~~(i)~~] Inspection/test label:
Figure: 28 TAC §34.622(k)
[~~Figure: 28 TAC §34.622(i)~~]

§34.623. Yellow Labels.

(a) If, after any service, inspection, or test, a system does not comply with applicable codes and adopted standards or is not being tested or maintained according to those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary.

(b) The signature of the licensee on a yellow label certifies that the conditions listed on the label cause the system to be out of compliance with applicable codes and standards.

(c) After attaching a yellow label, the licensee or the registered firm must notify the property owner, occupant or their representative, and the local AHJ [~~authority having jurisdiction~~] in writing indicating the conditions with which the system does not comply with the applicable codes and standards. The notification must be postmarked, emailed, faxed or hand delivered within five business days of the attachment of the yellow label.

(d) Yellow labels must remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The yellow label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office, or an authorized representative of a governmental agency with appropriate regulatory authority. The local AHJ must be notified when corrections are made and a yellow label is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the yellow label.

(e) Yellow labels must be approximately three inches high [~~in height~~] and three inches wide [~~in width~~] and must have an adhesive on the back that allows for label removal.

(f) Labels must be yellow [~~in color~~] with printed black lettering.

(g) Yellow labels must bear the following information in the format of the label, as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters in at least 10-point bold face type);

(2) "SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES & STANDARDS" (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the yellow label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the yellow label;

(h) Yellow label:
Figure: 28 TAC §34.623(h) (No change.)

§34.624. Red Labels.

(a) If, after any service, inspection or test, a system or any part thereof is inoperable, has a fault condition, or is impaired from normal operation, excluding the area(s) of a building under construction, a completed red label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location, to indicate that corrective action is necessary.

(b) The signature of the licensee on a red label certifies that the conditions listed on the label have caused the system to be inoperable, have a fault condition, or be impaired from normal operation.

(c) If the system is inoperable, immediately after attaching a red label[,] the licensee or the registered firm must orally notify the property owner, occupant or their representative, and the local AHJ, [~~authority having jurisdiction~~] where available, of all impairments and provide a written notification, emailed [~~e-mailed~~], faxed or hand delivered within the next business day of the attachment of the red label. If the system has a fault condition or is impaired from normal operation, after attaching a red label, the licensee or the registered firm must notify the property owner, occupant or their representative, and the local AHJ [~~authority having jurisdiction~~] in writing indicating the condition(s). The written notification must be postmarked, emailed [~~e-mailed~~], faxed or hand delivered within three business days of the attachment of the red label.

(d) Red labels must [~~shall~~] remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The red label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office, or an authorized representative of a governmental agency with appropriate regulatory authority. The local AHJ must be notified when corrections are made and a red label is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red label.

(e) Red labels must be approximately three inches high [~~in height~~] and three inches wide [~~in width~~] and must have an adhesive on the back that allows for label removal.

(f) Labels must be red [~~in color~~] with printed black lettering.

(g) Red labels must bear the following information in the format of the label as shown in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all in capital letters, at least 10-point bold face type);

(2) status of the system to be marked, inoperable or impaired or fault;

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the red label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the red label;

(h) Red label:
Figure: 28 TAC §34.624(h) (No change.)

§34.631. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

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Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 676-6584

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.713, 34.716, 34.721, 34.722, 34.726

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code §417.005, and Insurance Code §§6003.051, 6003.052, and 6003.054, and 36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule must adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Insurance Code §6003.051(a) specifies that the department administers Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insur-

ance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation, standards published by a nationally recognized standards-making organization' or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal must implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Insurance Code Chapter 6003 is implemented by these rules.

§34.713. Applications.

(a) Certificates of registration.

(1) Applications for certificates must be submitted on forms provided by the state fire marshal and must be accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, [~~or~~] by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation[~~,~~] or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant that permits [~~permitting~~] the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6003 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate of good standing issued by the state comptroller.

(4) An applicant must not designate as its full-time responsible managing employee (RME) a person who is the designated full-time RME of another registered firm.

(5) A registered firm must not conduct any business as a fire protection sprinkler contractor until a full-time RME, as applicable to the business conducted, is employed. An individual with an RME-General Inspector's license does not constitute compliance with the requirements of this subsection.

(6) A certificate of registration may not be renewed unless the firm has at least one licensed RME as a full-time employee before the expiration of the certificate of registration to be renewed. If an applicant for renewal does not have an RME as a full-time employee as a result of death or disassociation of an RME within 30 days preceding the expiration of the certificate of registration, the renewal applicant must inform the license section of the State Fire Marshal's Office [~~state fire marshal's office~~] of the employment of a full-time RME before the certificate of registration will be renewed.

(7) Insurance required.

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files with the state fire marshal's office a proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office [~~state fire marshal's office~~] the certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, as applicable. Failure to do so will be cause for administrative action.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.152, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or a certificate of insurance for surplus lines coverage, secured in compliance with Insurance Code Chapter 981, as contemplated by Insurance Code §6001.152(c).

(b) Responsible managing employee licenses.

(1) Original and renewal applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal, along with a criminal history report from the Texas Department of Public Safety, and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter.

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of NICET's (National Institute for Certification in Engineering Technologies) notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection systems layout.

(B) RME-Dwelling:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.

~~[*(ii)* a copy of the notification letter confirming at least a 70 percent grade on the test covering dwelling fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service, and one of the following:]~~

~~[*(I)* proof of license as an "RME-General"; or]~~

~~[(II) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of a current Texas master plumber license; or]~~

~~[(III) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.]~~

(C) RME-Underground Fire Main:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the notification letter confirming at least a 70[~~%~~] percent grade on the test covering underground fire mains for fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service.

(D) RME-General Inspector:

(i) a copy of NICET's notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for Inspection and Testing of Water-Based Systems; and

(ii) evidence of current employment by a registered fire protection sprinkler system contractor.

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter, or a new application must be submitted including all applicable fees.

§34.716. Installation, Maintenance, and Service.

(a) All fire protection sprinkler systems installed under Insurance Code Chapter 6003 must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) An [~~"~~]RME-General[~~"~~] may supervise the installation of any fire protection sprinkler system including one- and two-family dwellings.

(2) An [~~"~~]RME-Dwelling[~~"~~] may only supervise the installation of a fire protection sprinkler system in one- and two-family dwellings.

(3) An [~~"~~]RME-Underground Fire Main[~~"~~] may only supervise the installation of an assembly of underground piping or conduits[~~,~~] that conveys water with or without other agents[~~,~~] and used as an integral part of any type of fire protection sprinkler system.

(b) On completion of the installation, the licensed RME [~~responsible managing employee~~] type G, D, or U (as applicable) must have affixed a contractor's material and test certificate for aboveground or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate must be obtained from the State Fire Marshal's Office. The certificate must be distributed as follows:

(1) original copy kept at the site after completion of the installation;

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all [~~"~~]Contractor's Material and Test Certificates.[~~"~~] The certificates must be available for examination by the state fire marshal or the state fire marshal's representative on request. The certificates must be retained for the life of the system; and

(3) third copy to be sent to the local AHJ [~~authority having jurisdiction~~] within 10 days after completion of the installation.

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. The inspection, test, and maintenance service of a fire protection sprinkler system, except in a one- and two-family dwelling, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) The firm must keep complete records of all service, maintenance, testing, and certification operations. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

(e) All vehicles regularly used in service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one-inch high [~~one inches in height~~] and must be permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated in the following format TX: SCR-number.

(f) Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed by the firm.

(g) The planning of an automatic fire protection sprinkler system must be performed under the direct supervision of the appropriately licensed RME.

(h) The planning, installation, or service of a fire protection sprinkler system must be performed in accordance [~~accord~~] with the minimum requirements of the applicable adopted standards in §34.707 of this title (relating to Adopted Standards), except when the plan, installation, or service complies with a [~~more recent edition of the~~] standard that has been adopted by the political subdivision in which the system is installed.

§34.721. Yellow Tags.

(a) If a fire protection sprinkler system is found to be noncompliant with applicable NFPA standards, is not being tested or maintained according to adopted standards, or found to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency impairment, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and to indicate that corrective action is necessary.

(b) The signature of the service person or inspector on a yellow tag certifies the conditions that caused [~~listed on the tag cause~~] the system to be out of compliance with NFPA standards.

(c) After attaching a yellow tag, the service person or inspector must notify the building owner or the building owner's representative and the local AHJ [~~authority having jurisdiction~~] in writing of all noncompliant conditions. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the attachment of the yellow tag.

(d) A yellow tag may only be removed by an authorized employee of a registered firm or an authorized representative of a govern-

mental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the noncompliant conditions were corrected. The local AHJ must be notified when corrections are made and a yellow tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the date on which the yellow tag is removed.

(e) Yellow tags may be printed for multiple years.

(f) Yellow tags must be the same size as service tags, and must contain the following information in the format of the tag as set forth in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of items not compliant with NFPA standards.

(g) Sample yellow tag:
Figure: 28 TAC §34.721(g) (No change.)

§34.722. Red Tags.

(a) If a fire protection sprinkler system has an impairment which constitutes an emergency impairment, as defined in the adopted edition of NFPA 25, the service person or inspector must [~~shall~~] complete and attach a red tag to the respective riser of each system to indicate corrective action is necessary.

(b) Immediately after attaching a red tag, the inspector or service person must orally notify the building owner or the building owner's representative and, where available, the local AHJ [~~authority having jurisdiction~~] of all impairments. The inspector or service person must also provide written notice to the building owner or the building owner's representative and, where available, the local AHJ [~~authority having jurisdiction~~] of all impairments, and the written notice must be postmarked, emailed [~~e-mailed~~], faxed, or hand delivered within 24 [~~twenty-four~~] hours of the attachment of the red tag.

(c) The signature of the service person or inspector on the red tag certifies the impairments listed constitute an emergency impairment.

(d) A red tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the impaired conditions were corrected. The local AHJ must be notified when corrections are made and a red tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red tag.

(e) Red tags may be printed for a multiple period of years.

(f) Red tags must [~~shall~~] be the same size as service tags.

(g) Red tags must [~~shall~~] contain the following information in the format of the sample tag as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF THE TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of emergency impairments.

(h) Sample red tag:
Figure: 28 TAC §34.722(h)
[~~Figure: 28 TAC §34.722(h)~~]

§34.726. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

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SUBCHAPTER H. FIREWORKS RULES

28 TAC §§34.808, 34.818, 34.823, 34.832, 34.833

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code §417.005 and §417.008, Occupations Code §2154.051 and §2154.052, and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule must adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Occupations Code §2154.051 states the commissioner must determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 states that the commissioner must adopt and the state fire marshal must administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Occupations Code Chapter 2154 is implemented by these rules.

§34.808. Definitions.

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

(1) Acceptor building--A building that [~~which~~] is exposed to embers and debris emitted from a donor building.

(2) Agricultural, industrial, or wildlife control permits--Permits authorizing the holder to use Fireworks 1.3G for specified purposes in these business activities.

(3) Bare wiring--Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.

(4) Barricade--A natural or artificial barrier that will effectively screen a magazine, building, railway, or highway from the effects of an explosion in a magazine or building containing explosives. It must [~~shall~~] be of a [~~such~~] height that a straight line from the top of any side wall of a building, or magazine containing explosives to the eave line of any magazine, or building, or to a point 12 feet above the center of a railway or highway, will pass through such natural or artificial barrier.

(5) Barricade, artificial--An artificial mound or revetted wall of earth of a minimum thickness of one foot.

(6) Barricade, natural--Natural features of ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine or building containing explosives when the trees are bare of leaves.

(7) Barricade, screen type--Any of several barriers for containing embers and debris from fires and deflagrations in process buildings that could cause fires and explosions in other buildings. Screen type barricades must [~~shall~~] be constructed of metal roofing, inch or a half-inch [~~1/2 inch~~] mesh screen or equivalent material. A screen-type [~~screen type~~] barricade extends from the floor level of the donor building to a [~~such~~] height that a straight line from the top of any side wall of the donor building to the eave line of the acceptor building will go through the screen at a point not less than five feet from the top of the screen. The top five feet of the screen are inclined at an angle of between 30 and 45 degrees, toward the donor building.

(8) Breakaway construction--A general term that [~~which~~] applies to the principle of purposely providing a weak wall so that the explosive effects can be directed and minimized. The term "weak wall" as used in these sections refers to a weak wall and roof, or weak roof. The term "weak wall" is used in a relative sense as compared to the construction of the entire building. The design strength of the weak wall will vary as to the building construction, as well as to the type and quantity of explosive or pyrotechnic materials in the building. The materials used for weak wall construction are usually light gauge metal, plywood, hardboard, or equivalent lightweight material, and the material is purposely selected to minimize the danger from flying missiles. The method [~~Method~~] of attachment of the weak wall must [~~shall~~] be constructed [~~such as~~] to aid the relief of blast pressure and fireball.

(9) Bulk storage, Fireworks 1.4G--The storage of 500 or more cases of Fireworks 1.4G.

(10) Business--The manufacturing, importing, distributing, jobbing, or retailing of permissible fireworks;[~~,~~] acting as a pyrotechnic operator;[~~, the~~] conducting [~~of~~] multiple public fireworks displays; or[~~,~~] using fireworks for agricultural, wildlife, or industrial purposes.

(11) Buyer--Any person or group of persons offering an agreed upon sum of money or other considerations to a seller of [~~sales person for~~] fireworks.

(12) CFR--The Code of Federal Regulations, a codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. The Code is divided into 50 titles. The titles are divided into chapters, which are further subdivided into parts.

(13) Commissioner--The Commissioner of Insurance.

(14) Department--The Texas Department of Insurance.

(15) Donor building--A process building from which embers and burning debris are emitted during a fire.

(16) DOT--The United States Department of Transportation.

(17) Fireworks plant--All lands, and building thereon, used for or in connection with the manufacture processing of fireworks. It includes storage facilities used in connection with plant operation.

(18) Firm--A person, partnership, corporation, or association.

(19) Flame effects operator--An individual who, by experience, training, or examination[,] has demonstrated the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code.

(20) Generator--Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(21) Highway--The paved surface[,] or, where unpaved, the edge of a graded or maintained public street, public alley, or public road.

(22) Indoor retail fireworks site--A retail fireworks site other than a retail stand that [which] sells Fireworks 1.4G from a building or structure.

(23) Immediate family member--The spouse, child, sibling, parent, grandparent, or grandchild of an individual. The term includes a stepparent, stepchild, and stepsibling and a relationship established by adoption.

(24) [(23)] License--The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in [the] business.

(25) [(24)] Licensed firm--A person, partnership, corporation, or association holding a current license.

(26) [(25)] Magazine--Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

(27) [(26)] Manufacturing--The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when the [such] operation is otherwise lawful.

(28) [(27)] Master electric switch--Manually operated device designed to interrupt the flow of electricity.

(29) [(28)] Mixing building--A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(30) [(29)] Multiple public display permit--A permit issued for the purpose of conducting multiple public displays at a single approved location.

(31) [(30)] Nonprocess [Non-process] building--Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(32) [(31)] Open flame--Any flame that is exposed to direct contact.

(33) [(32)] Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(34) [(33)] Process building--A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.

(35) [(34)] Public display permit--A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location, and during a designated [time] period.

(36) [(35)] Retail fireworks site--The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale, and other structures, vehicles, or surrounding areas subject to the care and control of the retailer, owner, supervisor, or operator of the retail location.

(37) [(36)] Retail stand--A retail site that [which] sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.

(38) [(37)] Safety container--A container especially designed, tested, and approved for the storage of flammable liquids.

(39) [(38)] School--Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school[,] or institution of higher education.

(40) [(39)] Selling opening--An open area, including the counter, through which fireworks are viewed and sold at retail.

(41) [(40)] Storage facility--Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(42) [(41)] Supervisor--A person who is 18 years or older and who is responsible for the retail fireworks site during operating hours.

(43) [(42)] Walk door--An opening through which retail stand attendants can freely move but [and] which can be secured to keep the public from the interior of the stand.

§34.818. Specific Requirements for Retail Fireworks Stands.

A retail fireworks stand must [shall] comply with the following requirements:

(1) The fireworks stand in which Fireworks 1.4G are held for retail sale must [shall] be constructed of wood, metal, masonry, or concrete, or combinations thereof.

(2) Each stand of less than 16 feet in length must [shall] have at least one walk door that[, which] opens outward. Stands measuring 16 feet or longer must have at least two walk doors, one in each end, that [which] open outward.

(3) A minimum of combustible material such as posters, signs, and decorations may be used on interior walls.

(4) A minimum distance of six feet must [shall] be maintained from the front of the customer counter to the back side of the stand. Fireworks must not be displayed on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

(5) Electrical service to the stand must [shall] be installed at least eight feet above ground or buried underground according to standards acceptable to the local AHJ [authority having jurisdiction].

(6) Each stand that uses [utilizing] electricity must [shall] have a point of power interruption, either inside or outside the stand, (switch or switches) located near a walk [an exit] door, that [which] interrupts all electric supply to devices and equipment located inside and on the stand.

(7) All electrical wiring, equipment, and devices, both inside and outside the stand, must [shall] be UL approved, be securely mounted to the structure, and be installed and maintained to prevent electrical hazards. Splices in electrical wiring servicing equipment and devices inside the stand must [shall] be enclosed in junction boxes. Light fixtures and wiring used for illumination inside and outside of the stand must [shall] be installed and maintained to prevent accidental contact by the general public and employees.

(8) Drop cords with lights, extension cords, or bare wiring must [shall] not be used in any manner inside a retail stand.

(9) In stands where generator-created power is used, the generator must [~~shall~~] be located in an area free from grass, trash, and other flammable materials and at least 10 feet from the stand. Reserve fuel for the generator must be stored in an approved safety container and a portable fire extinguisher rated to at least 6 BC must [~~shall~~] be provided.

(10) Fireworks stands must [~~shall~~] not be illuminated or heated by any device that [~~which~~] requires open flame or exposed heating elements. Electric heaters must [~~shall~~] be equipped with a switching device to stop the flow of current should the heater be tipped over.

(11) If the fireworks stand is used for the overnight storage of Fireworks 1.4G, it must be equipped with suitable locking devices to prevent unauthorized entry.

§34.823. Bulk Storage of Fireworks 1.4G.

(a) General provisions.

(1) These provisions apply to licensees and retail storage of more than 500 cases of Fireworks 1.4G.

(2) Storage facilities containing Fireworks 1.4G must [~~shall~~] be of solid construction using sound engineering principles.

(3) Electrical installation, if used, must [~~shall~~] be in compliance with the National Electric Code, 1984. An outside electrical master switch must [~~shall~~] be provided at each storage facility location when electrical power is installed.

(4) Storage facilities containing Fireworks 1.4G must [~~shall~~] comply with the following.

(A) Storage facilities must [~~shall~~] be separated from inhabited buildings, passenger railways, and from the pavement or main travelled surface of any highway by a minimum distance of 50 feet and be in compliance with Table 1 in §34.824 of this title (relating to Distance Tables). Storage facilities in existence prior to January 1, 1986, and then conforming to existing warehouse distance separation rules for jobbers and distributors are exempt from compliance with Table 1, provided such facilities are not enlarged or expanded beyond their January 1, 1986, capacities. An office used for the operation of a storage facility or a retail/wholesale site established in conjunction with a storage facility is exempt from the distance requirements after notifying the state fire marshal. Subsequent construction by adjacent property owners or public authorities must [~~shall~~] not subject licensee to a distance regulation violation under this section, provided existing storage facilities are not enlarged or expanded after the subsequent construction.

(B) Storage facilities must [~~shall~~] not contain windows, and any other openings must [~~shall~~] be situated so that the rays of the sun do [~~shall~~] not come in contact with or shine through glass directly on [~~upon~~] fireworks stored in the facility. Skylights that [~~which~~] diffuse sun rays are permitted.

(C) No stoves, exposed flames, or electric heaters may [~~shall~~] be used in any part of storage facility except in a boiler room, machine shop, office building, pump house, or lavatory. Heating of storage facilities must [~~shall~~] be by means of steam, indirect hot air radiation, or hot water.

(D) Exit doors other than overhead or sliding doors must [~~shall~~] open outward, must [~~shall~~] be unlocked during operating hours, and must be clearly marked. Aisles and exit doors must [~~shall~~] be kept free of any obstruction.

(E) At least one approved Class A fire extinguisher must [~~shall~~] be provided for each 1,000 square feet of floor space in a storage facility.

(F) The land surrounding storage facilities must [~~shall~~] be kept clear of brush, dried grass, leaves, and similar combustibles for a distance of at least 10 feet.

(G) Smoking must [~~shall~~] not be permitted in storage facilities. There must [~~shall~~] be signs conspicuously posted with the words "Fireworks--No Smoking" in letters not less than four inches high.

(H) The facility must have a fire sprinkler system if it has greater than 12,000 square feet of floor space in a sales or storage facility, or if other additional or more restrictive fire protection requirements are adopted by a local AHJ.

(5) Storage buildings must [~~shall~~] have fencing in compliance with §34.821(a)(1) of this title (relating to Manufacturing Operations) or one of the following:

(A) personnel on the premises 24 hours per day, and the premises remains lighted at night; or

(B) a security alarm system.

(6) Bulk storage of Class I flammable liquids (such as gasoline) and flammable compressed gases must [~~shall~~] comply with provisions of §34.821(a)(7) of this title (relating to Manufacturing Operations).

(b) Operation of storage facilities.

(1) Storage facilities must at all time during operating hours [~~shall~~] be in the charge of a competent person [~~at all times during operating hours~~] who is [~~shall be~~] at least 18 years of age and[~~,~~] who is [~~shall be held~~] responsible for the enforcement of all safety precautions.

(2) Doors must [~~shall~~] be kept locked, except during hours of operation.

§34.832. Specific Requirements for Retail Fireworks Sites Other Than Stands.

Indoor retail fireworks sites must [~~shall~~] comply with the following requirements:

(1) The retail fireworks sales building must [~~shall~~] be a free standing durable structure with only one story of space accessible to the public. It must [~~shall~~] not be a tent, boat, or mobile vehicle. The fireworks sales area must [~~shall~~] not be part of a multi-use or multi-tenant building.

(2) The following distance requirements [~~shall~~] apply to an indoor retail fireworks site owned or leased by a fireworks licensee, which had a fireworks retail permit or a building permit in effect or was under construction on or before November 18, 2002, and stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must [~~shall~~] be a minimum distance of 60 feet from any inhabited building;

(B) The fireworks sales building must [~~shall~~] be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must [~~shall~~] meet the distance requirements of §34.824 Table 1 of this title (relating to Distance Tables), or have a minimum one-hour [~~1 hour~~] fire rated exterior wall with [~~a~~] minimum three-fourths-hour [~~3/4 hour~~] fire rated protected openings.

(D) An office area used for the operation of the site, separated by a one hour fire rated wall from the fireworks sales or storage area, may be exempt from the distance requirements after it is reported to and reviewed by the state fire marshal.

(3) The following distance requirements must [~~shall~~] apply to an indoor retail fireworks site owned or leased by a fireworks licensee[~~,~~] which did not have a fireworks retail permit or a building permit in effect or was not under construction on or before November 18, 2002, and which stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must [~~shall~~] be a minimum distance of 60 feet from any inhabited building.[~~;~~]

(B) The fireworks sales building must [~~shall~~] be a minimum distance of 30 feet from the property line.[~~;~~]

(C) The fireworks sales building must [~~shall~~] meet the distance requirements of §34.824 Table 1 of this title, or have a complete automatic fire sprinkler system installed in accordance with NFPA 13 ["]Standard for the Installation of Sprinkler Systems.["]

(4) Subsequent construction by adjacent property owners or public authorities will [~~shall~~] not subject licensee or permittee to a distance regulation violation under this section, provided existing facilities are not enlarged or expanded after the subsequent construction.

(5) Fireworks sales display areas must [~~shall~~] be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer. Sales display areas must include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. The height, weight, and stability of the restraint must be designed to prevent individuals from penetrating the barrier.

(6) Fireworks in the sales area must [~~shall~~] be limited to the displayed merchandise unless stored in closed cardboard boxes not accessible to the public.

(7) Access to fireworks when stored in a separate and distinct area away from general fireworks sales must [~~shall~~] be restricted to employees only and "No Smoking" signs must [~~shall~~] be posted inside.

(8) The local fire department and the county fire marshal, if one is appointed or elected in that county, must [~~shall~~] be notified in writing annually, before beginning sales operations [~~postmarked or faxed on or before June 14 of each year~~], of the business location, placement of fireworks in building or structure, maximum amount of fireworks in the building, and time period that fireworks will be stored or sold.

(9) Trash, rubbish, and unused boxes, except for small quantities stored in an orderly manner for reuse, must [~~shall~~] be removed from the sales, storage, and adjacent areas daily, or as often as necessary to prevent unsafe accumulation.

(10) Fireworks may [~~shall~~] not be displayed or stored behind glass through which direct sunlight can [~~will~~] shine on the fireworks.

(11) Extension cords may [~~shall~~] not be located where the general public could walk over them. An extension cord may be used to extend power to a single appliance or single power strip. An extension cord providing power to a power strip must [~~shall~~] be of the same or greater wire gauge. Power strips used for multiple appliances must contain an internal circuit breaker. Extension cords and power strips must [~~shall~~] be protected from accidental damage. Flexible cords and cables may [~~shall~~] not be used as a substitute for the fixed wiring of a structure. An extension cord may not be plugged into a power strip.

(12) A supervisor, 18 years of age or older, must [~~shall~~] be on duty during all phases of operation. All fireworks sales personnel must [~~shall~~] be 16 years of age or older. The permit holder and the supervisor must [~~shall~~] ensure that all sales personnel comply with this subchapter.

(13) All trash containers used by the general public must [~~shall~~] be metal or heavy plastic and be located 10 feet from any displayed or stored fireworks.

(14) An outside electrical master switch must [~~shall~~] be provided at each retail location.

(15) Portable space heaters must [~~shall~~] not be permitted in retail or storage areas.

(16) A retail sales permit, for other than a retail stand, is [~~shall~~] not [~~be~~] valid until a plan is on file at the state fire marshal's office showing the following:

(A) the address or location of the site;

(B) the name of the person to whom the permit is issued;

(C) the outline and length of all building exterior walls;

(D) the floor area, location, and dimensions used for fireworks sales;

(E) the floor area, location, and dimensions used for fireworks storage outside the sales area;

(F) the floor area, location, and dimensions used for other than fireworks sales and storage;

(G) the general location, description, and distances from the exterior walls to all buildings, fireworks storage magazines, highways, and equipment for storage or dispensing of flammable liquids or compressed gas;

(H) the location of the master electrical cut-off switch;

(I) the location and width of all building doors and paths of egress; and

(J) the maximum estimated number of cases of fireworks to be stored or displayed for sale in the site.

(17) Cooking equipment must [~~shall~~] not be used within rooms used for fireworks sales or storage.

(18) All fireworks retail sites with a sales area more than 2500 square feet, must [~~shall~~] have a minimum average ceiling height of 12 feet. The sales area is the total square feet of floor area used to sell or store fireworks in an indoor retail fireworks site. Each sales area may be separated from another sales area by a fire barrier having a resistance rating of not less than one hour, with all openings therein protected by a a three-fourths-hour [~~3/4 hour~~] fire protection-rated self-closing [~~self closing~~] fire doors.

(19) An indoor retail fireworks site must [~~shall~~] comply with the mercantile occupancy requirements of the standards adopted in §34.303 of this title (relating to Applicability of Rules). This standard, NFPA 101, Life Safety Code, is published by and is available from the National Fire Protection Association, Quincy, Massachusetts, 1-800-344-3555.

(20) An indoor fireworks retail site must have a minimum distance of 20 feet around the perimeter of the building that is kept free of high grass, empty cardboard boxes, and trash.

§34.833. Military Service Members, Military Veterans, or Military Spouses.

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 676-6584

SUBCHAPTER J. STOVETOP FIRE SUPPRESSION DEVICE APPROVAL

28 TAC §§34.1001 - 34.1004

STATUTORY AUTHORITY. The repeals are proposed under SB 14, 78th Legislature, Regular Session; Government Code §417.005; and Insurance Code §36.001.

In 2003, Senate Bill (SB) 14 repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. SB 14, 78th Legislature, Regular Session is implemented by these rules.

§34.1001. Purpose and Application.

§34.1002. Definitions.

§34.1003. Product Performance Standards.

§34.1004. Approval.

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 M. SCHEDULED ADMINISTRATIVE PENALTIES

28 TAC §34.1302

STATUTORY AUTHORITY. The amendment is proposed under Government Code §417.005 and §417.010, and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Section 417.010 provides that commissioner by rule must delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties. The commissioner must specify which types of disciplinary and enforcement actions are delegated to the state fire marshal. The commissioner must also outline the process through which the state fire marshal may impose administrative penalties or take other disciplinary and enforcement actions.

Section 417.010 also provides that the commissioner by rule must adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty is appropriate to the violation. This section requires the department to provide the schedule of administrative penalties to the public on request. The amount of an administrative penalty imposed must be based on the factors specified in §417.010(c). Section 417.010 also authorizes the state fire marshal to, instead of canceling, revoking, or suspending a license or certificate of registration, impose on the holder of the license or certificate an order directing the holder to cease and desist from a specified activity, pay an administrative penalty, or make restitution to a person harmed by the holder's violation of an applicable law or rule. Under §417.010, the state fire marshal may impose an administrative penalty in the manner prescribed in Subchapter B, Chapter 84, Insurance Code. The state fire marshal may impose an administrative penalty under the section without referring the violation to the department for commissioner action.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Government Code §417.010 is implemented by this rule.

§34.1302. Schedule of Administrative Penalties.

(a) The Fire Extinguisher Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(a)
[~~Figure: 28 TAC §34.1302(a)~~]

(b) The Fire Alarm Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(b)
[~~Figure: 28 TAC §34.1302(b)~~]

(c) The Fire Protection Sprinkler Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(c)
[~~Figure: 28 TAC §34.1302(c)~~]

(d) The Fireworks Indoor Retail Stand Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(d)
[~~Figure: 28 TAC §34.1302(d)~~]

(e) The Fireworks Retail Site [~~Stand~~] Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(e) (No change.)

(f) The Fireworks Distributor Licensing Retailer Permit Penalty specified as follows.
Figure: 28 TAC §34.1302(f)

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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General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER C. MEDICAL FEE GUIDELINES

28 TAC §134.202, §134.302

The Texas Department of Insurance, Division of Workers' Compensation (division) proposes the repeal of 28 TAC §134.202, concerning medical fee guideline and 28 TAC §134.302, concerning dental fee guideline. The repeal is necessary because the sections are no longer effective. Identical requirements of 28 TAC §134.202 were adopted in 28 TAC §134.203 and §134.204, which superseded the section for professional services and workers' compensation specific services provided on or after March 1, 2008. Title 28 TAC §134.302 was superseded by 28 TAC §134.303 for dental services on or after June 15, 2005. In conjunction with this proposal, the division proposes non-substantive amendments to 28 TAC §134.204 and new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250, concerning medical fee guideline for workers' compensation, which is also published in this issue of the *Texas Register.*

Mr. Matthew Zurek, Executive Deputy Commissioner of Healthcare Management and System Monitoring, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal impact to state or local governments as a result of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Zurek also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of proposed repeal is a more efficient use of the fee guidelines through elimination of outdated and redundant rules. There will be no economic cost to persons required to comply with the proposed repeal.

As required by the Government Code §2006.002(c), the division has determined that the proposed repeal will not have an adverse economic effect on small or micro business because it is a repeal of outdated and redundant rules. Therefore, in accordance with the Government Code §2006.002(c), the division is not required to prepare a regulatory flexibility analysis.

The division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on April 18, 2016. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

The repeal is proposed under Labor Code §402.00111 and §402.061.

Labor Code §402.00111 requires the commissioner of workers' compensation to exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

§134.202. Medical Fee Guideline.

§134.302. Dental Fee Guideline.

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

Filed with the Office of the Secretary of State on March 4, 2016.

TRD-201601113

Marisa Lopez Wagley
Acting General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

28 TAC §§134.204, 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, 134.250

The Texas Department of Insurance, Division of Workers' Compensation (division) proposes non-substantive amendments to 28 Texas Administrative Code (TAC) §134.204 and proposes new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250, concerning medical fee guidelines for workers' compensation. The division proposes to reorganize existing 28 TAC §134.204 by adding its requirements to new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 for workers' compensation specific codes, services, and programs provided on or after September 1, 2016. The new sections largely mirror existing 28 TAC §134.204 and include non-substantive changes. The division clarifies that the reorganization is non-substantive and does not include new requirements for system participants. The reorganization creates a more comprehensive format by separating the billing and reimbursement requirements for multiple services into new sections. The reorganization is necessary to streamline compliance for system participants and streamline future amendments to the guidelines. The reorganization will improve the division's ability to make future amendments to the multiple services without resulting in one complex rule project. The new sections consist of applicability, medical fee guideline for workers' compensation specific services, home health services, case management services, functional capacity evaluations, return to work rehabilitation programs, return to work and evaluation of medical care examinations, billing for work status reports, designated doctor examinations, maximum medical improvement evaluations and impairment rating examinations.

New 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 include non-substantive changes to conform to current agency style, correct grammatical errors, and renumber or reletter subsections. The division published an informal draft of the rules on its website on October 21, 2015.

In conjunction with this proposal, the division is proposing the repeal of 28 TAC §134.202, concerning medical fee guideline, and 28 TAC §134.302, concerning dental fee guideline. The proposed repeal is also published in this issue of the *Texas Register.* The division is not repealing 28 TAC §134.204 at this time. The division clarifies that existing 28 TAC §134.204 will remain applicable for workers' compensation specific codes, services and programs provided from March 1, 2008 until September 1, 2016. New 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 are expected to become applicable for workers' compensation specific codes, services and programs on or after September 1, 2016 to allow system participants sufficient time to adjust to the reorganization and new sections.

Amended 28 TAC §134.204. Amended 28 TAC §134.204 addresses the medical fee guideline for workers' compensation specific codes, services, and programs provided from March 1, 2008 until September 1, 2016. Amended 28 TAC §134.204(a)(2) deletes the phrase "on or after" and adds the word "from" and the phrase "until September 1, 2016." These amendments are necessary to prevent the applicability of existing 28 TAC §134.204 from running concurrently with new 28 TAC §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250. The new sections are expected to replace existing 28 TAC §134.204 for workers' compensation specific codes, services, and programs provided on or after September 1, 2016. The division clarifies that existing 28 TAC §134.204 and the new sections will not be applicable for workers' compensation specific codes, services, and programs at the same time. This delayed applicability date will allow system participants sufficient time to adjust to the reorganization and new sections before the new sections become applicable for workers' compensation specific codes, services and programs.

New 28 TAC §134.209. New 28 TAC §134.209 addresses the applicability for the medical fee guideline for workers' compensation specific codes, services and programs outlined in new §§134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250. New 28 TAC §134.209 largely mirrors existing 28 TAC §134.204(a), with non-substantive changes. New 28 TAC §134.209 does not include the title "Medical Fee Guideline for Workers' Compensation Specific Services" and instead includes the title "Applicability." The title "Applicability" better reflects the content of the new 28 TAC §134.209. The new section also does not include the phrase "applicability of this rule is as follows:" because the new section title is "Applicability" therefore including the phrase is redundant.

New 28 TAC §134.209(a)(1) - (5) largely mirrors existing 28 TAC §134.204(a)(1)(A) - (E), with non-substantive changes. New 28 TAC §134.209(a) does not include the phrase "This section applies" and instead includes the phrase "Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title apply" to specify the new citation numbers applicable to workers' compensation specific codes, services, and programs.

New 28 TAC §134.209(a) does not include subparagraphs (A) - (E) and instead includes paragraphs (1) - (5). The renumbering is necessary because the phrase "applicability of this rule is as follows:" is excluded.

New 28 TAC §134.209(a)(1) does not include the title of the referenced rule citation in existing 28 TAC §134.204(a)(1)(A) "(relating to Medical Fee Guideline for Professional Service)" to conform to current agency style.

New 28 TAC §134.209(b) largely mirrors existing 28 TAC §134.204(a)(2), with non-substantive changes. New 28 TAC §134.209(b) does not include the phrase "this section applies" and instead includes the phrase "Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title apply" to specify the new citation numbers applicable to workers' compensation specific codes, services, and programs.

New 28 TAC §134.209(b) does not include the date "March 1, 2008" and instead includes the date "September 1, 2016." This is necessary because the new sections will have a delayed applicability date. The delayed applicability date allows time for system participants to adjust to the reorganization and new sections before the new sections become applicable for workers' compensation specific services. The division expects the new sections

to become applicable to workers' compensation specific codes, services, and programs provided on or after September 1, 2016.

New 28 TAC §134.209(c) includes a severability clause. The inclusion is necessary to ensure that any invalidity of the rules will not affect parts of the rules given effect without the invalid provision or application.

New 28 TAC §134.209(d) largely mirrors existing 28 TAC §134.204(m), with non-substantive changes. New 28 TAC §134.209(d) does not include the introductory sentence "the following shall apply to Treating Doctor Examination to Define the Compensable Injury" to conform to current agency style.

New 28 TAC §134.209(d) does not include the phrase "this type of" because the phrase is no longer necessary without the introductory sentence "the following shall apply to Treating Doctor Examination to Define the Compensable Injury."

New 28 TAC §134.209(d) does not include the title of the referenced rule citation in existing 28 TAC §134.204(m) "(relating to Treating Doctor Examination to Define Compensable Injury)" to conform to current agency style.

New 28 TAC §134.209(d) includes the phrase "a treating doctor" and the phrase "to define the compensable injury" because the phrases are necessary to specify the type of examination.

New 28 TAC §134.210. New 28 TAC §134.210 addresses general provisions applicable to the medical fee guideline for workers' compensation specific services.

New 28 TAC §134.210 largely mirrors existing 28 TAC §134.204(a)(5), (b) - (d), and (n), with non-substantive changes. New 28 TAC §134.210 includes the title "Medical Fee Guideline for Workers' Compensation Specific Services" because the title reflects the content of the section.

New 28 TAC §134.210 does not include existing 28 TAC §134.204(a)(3) and (4) because the paragraphs contain rule citations that are no longer effective.

New 28 TAC §134.210(a) largely mirrors existing 28 TAC §134.204(a)(5), with non-substantive changes. New 28 TAC §134.210(a) does not include the phrase "the Texas Department of Insurance, Division of Workers' Compensation (Division)," and instead includes the word "division" to conform to current agency style.

New 28 TAC §134.210(a) does not include the title of the referenced rule citation in existing 28 TAC §134.204(a)(5) "(relating to MDR of Medical Necessity Disputes by Independent Review Organizations)" to conform to current agency style.

New 28 TAC §134.210(b)(1) - (3) largely mirrors existing 28 TAC §134.204(b)(1) - (3), with non-substantive changes. New 28 TAC §134.210(b) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(b)(1) does not include the introductory word "Billing" to conform to current agency style.

New 28 TAC §134.210(b)(1) includes the phrase "Current Procedural Terminology" before the abbreviation "CPT." The non-substantive change is necessary for clarity.

New 28 TAC §134.210(b)(1) does not include the word "codes" because the word is used twice to describe Level I and Level II Healthcare Common Procedure Coding System codes and the second use is repetitive.

New 28 TAC §134.210(b)(1) does not include the abbreviation "HCPs" and instead includes the phrase "health care providers." The non-substantive change is necessary for clarity.

New 28 TAC §134.210(b)(1) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(b)(2) does not include the introductory word "Modifiers" to conform to current agency style.

New 28 TAC §134.210(b)(2) includes the word "insurance" before the word "carriers" to conform to current agency style.

New 28 TAC §134.210(b)(2) does not include subsection "(n)" and instead includes subsection "(e)" because new 28 TAC §134.210(e) contains division-specific modifiers.

New 28 TAC §134.210(b)(3) does not include the introductory phrase "Incentive Payments" to conform to current agency style.

New 28 TAC §134.210(b)(3) does not include the phrase "subsections (d), (e), (g), (i), (j), and (k)" and instead includes the phrase "§§134.220, 134.225, 134.235, 134.240, and 134.250 of this title and subsection (d)" because the new sections reflect the content of existing 28 TAC §134.204(e), (g), (i), (j), and (k).

New 28 TAC §134.210(b)(3) does not include the title of the referenced rule citation in existing 28 TAC §134.204(b)(3) "(relating to Incentive Payments for Workers' Compensation Underserved Areas)" to conform to current agency style.

New 28 TAC §134.210(c) mirrors existing §134.204(c).

New 28 TAC §134.210(d)(1) - (3) largely mirrors existing 28 TAC §134.204(d)(1) - (3), with non-substantive changes. New 28 TAC §134.210(d) does not include the phrase "of the Labor Code" after the citation and instead includes the phrase "Labor Code" before the citation to conform to current agency style.

New 28 TAC §134.210(d)(2) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(d)(3) does not include the title of the referenced rule citation "(relating to Medical Reimbursement)" to conform to current agency style.

New 28 TAC §134.210(e)(1) - (24) largely mirrors existing 28 TAC §134.204(n)(1) - (24), with non-substantive changes. New 28 TAC §134.210(e) does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.210(e), (e)(1), and (18) do not include the abbreviation "HCP" and instead include the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.210(e)(14) and (15) do not include the word "of" in the phrase "of at least" to conform to current agency style.

New 28 TAC §134.210(e)(20) does not include the phrase "maximum medical improvement" and instead includes the abbreviation "MMI." The non-substantive change is necessary for consistency.

New 28 TAC §134.215. New 28 TAC §134.215 addresses the medical fee guideline for home health services. New 28 TAC §134.215 largely mirrors existing 28 TAC §134.204(f), with non-substantive changes. New 28 TAC §134.215 includes the title "Home Health Services" because the title reflects the content of the section.

New 28 TAC §134.215 does not include subsection "(f)" because new 28 TAC §134.215 is an independent section that contains

an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.215 does not include unnecessary punctuation because of the change to sentence structure.

New 28 TAC §134.215 includes the phrase "the maximum allowable reimbursement (MAR)" for clarity. New 28 TAC §134.215 does not include the phrase "to determine the MAR" because the MAR provided for home health services is 125% of the Texas Medicaid fee schedule. New 28 TAC §134.215 also does not include the phrase "the MAR" because the phrase "maximum allowable reimbursement (MAR)" is included and the phrase "the MAR" is repetitive.

New 28 TAC §134.220. New 28 TAC §134.220 addresses the medical fee guideline for case management services. New 28 TAC §134.220 largely mirrors existing 28 TAC §134.204(e), with non-substantive changes. New 28 TAC §134.220 includes the title "Case Management Services" because the title reflects the content of this section.

New 28 TAC §134.220 does not include a subsection "(e)" because new 28 TAC §134.220 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.220 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.220 does not include the word "is" and instead includes the word "are." The non-substantive change is necessary to correct a grammatical error.

New 28 TAC §134.220 does not include the abbreviation "HCP" and instead includes the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.225. New 28 TAC §134.225 addresses the medical fee guideline for functional capacity evaluations. New 28 TAC §134.225 largely mirrors existing 28 TAC §134.204(g), with non-substantive changes. New 28 TAC §134.225 includes the title "Functional Capacity Evaluations" because the title reflects the contents of this section.

New 28 TAC §134.225 does not include a subsection "(g)" because new 28 TAC §134.225 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.225 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.230. New 28 TAC §134.230 addresses the medical fee guideline for return to work rehabilitation programs. New 28 TAC §134.230 largely mirrors existing 28 TAC §134.204(h), with non-substantive changes. New 28 TAC §134.230 includes the title "Return to Work Rehabilitation Programs" because the title reflects the content of this section.

New 28 TAC §134.230 does not include a subsection "(h)" because new 28 TAC §134.230 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.230 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.230 includes the word "insurance" before the word "carrier" to conform to current agency style.

New 28 TAC §134.230(1)(A) includes the phrase "maximum allowable reimbursement (MAR)." The non-substantive change is necessary for clarity.

New 28 TAC §134.230(3)(B) does not include the numeral "8" and instead includes the word "eight" for consistency and to conform to current agency style.

New 28 TAC §134.235. New 28 TAC §134.235 addresses the medical fee guideline for return to work/evaluation of medical care examinations. New 28 TAC §134.235 largely mirrors existing 28 TAC §134.204(k), with non-substantive changes. New 28 TAC §134.235 includes the title "Return to Work/Evaluation of Medical Care Examinations" because the title reflects the content of this section.

New 28 TAC §134.235 does not include a subsection "(k)" because new 28 TAC §134.235 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.235 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.235 includes the phrase "maximum medical improvement/impairment rating (MMI/IR)." The non-substantive change is necessary for clarity.

New 28 TAC §134.235 does not include the phrase "subsection (i) of this section" and instead includes the phrase "§134.240 of this title." The non-substantive change is necessary because new 28 TAC §134.240 reflects the content of existing 28 TAC §134.204(i).

New 28 TAC §134.239. New 28 TAC §134.239 addresses billing for work status reports conducted separately from designated doctor examinations, maximum medical improvement evaluations, or impairment rating examinations. New 28 TAC §134.239 largely mirrors existing 28 TAC §134.204(l), with non-substantive changes. New 28 TAC §134.239 includes the title "Billing for Work Status Reports" because the title reflects the content of this section.

New 28 TAC §134.239 does not include a subsection "(l)" because new 28 TAC §134.239 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.239 does not include the sentence "the following shall apply to work status reports" because the sentence is no longer necessary to separate subsections.

New 28 TAC §134.239 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.239 does not include the phrase "subsections (i) and (j) of this section" and instead includes the phrase "§134.240 and §134.250 of this title" because new 28 TAC §134.240 and §134.250 reflect the content of existing 28 TAC §134.204(i) and (j).

New 28 TAC §134.239 does not include the title of the referenced rule citation in existing 28 TAC §134.204(l) "(relating to Work Status Reports)" to conform to current agency style.

New 28 TAC §134.240. New 28 TAC §134.240 addresses the medical fee guideline for designated doctor examinations. New 28 TAC §134.240 largely mirrors existing 28 TAC §134.204(i), with non-substantive changes. New 28 TAC §134.240 includes the title "Designated Doctor Examinations" because the title reflects the content of this section.

New 28 TAC §134.240 does not include a subsection "(i)" because new 28 TAC §134.240 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.240 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.240(1)(A) - (B) does not include the phrase "subsection (j) of this section" and instead includes the phrase "§134.250 of this title" because new 28 TAC §134.250 reflects the content of existing 28 TAC §134.204(j).

New 28 TAC §134.240(1)(C) - (F) and (2)(A) - (C) do not include the phrase "subsection (k) of this section" and instead includes the phrase "§134.235 of this title" because new 28 TAC §134.235 reflects the content of existing 28 TAC §134.204(k).

New 28 TAC §134.250. New 28 TAC §134.250 addresses the medical fee guideline for maximum medical improvement evaluations, and impairment rating examinations. New 28 TAC §134.250 largely mirrors existing 28 TAC §134.204(j), with non-substantive changes. New 28 TAC §134.250 includes the title "Maximum Medical Improvement/Impairment Rating Examinations" because the title reflects the content of this section.

New 28 TAC §134.250 does not include a subsection "(j)" because new 28 TAC §134.250 is an independent section that contains an implied subsection and the lettering is no longer necessary to conform to Texas Register requirements.

New 28 TAC §134.250 does not include unnecessary capitalization to conform to current agency style.

New 28 TAC §134.250(1) includes the phrase "maximum allowable reimbursement (MAR)." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(1)(D) does not include unnecessary punctuation to conform to current agency style.

New 28 TAC §134.250(1)(E) does not include the phrase "Act and Division rules in" and instead includes the phrase "Labor Code and" to conform to current agency style.

New 28 TAC §134.250(1)(E) does not include the title of the referenced rule citation in existing 28 TAC §134.204(j)(1)(E) "(relating to Impairment and Supplemental Income Benefits)" to conform to current agency style.

New 28 TAC §134.250(2) does not include the phrase "An HCP" and instead includes the phrase "A health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(2) does not include the phrase "Act and Division rules in" and instead includes the phrase "Labor Code and" to conform to current agency style.

New 28 TAC §134.250(3)(A)(ii) corrects punctuation to conform to current agency style.

New 28 TAC §134.250(3)(B) and (3)(B)(i) do not include unnecessary punctuation to conform to current agency style.

New 28 TAC §134.250(4)(A) does not include the abbreviation "HCP" and instead includes the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(4)(B) does not include the citation §130.6 because the citation 28 TAC §130.6 is obsolete.

New 28 TAC §134.250(4)(B) does not include the title of the referenced rule citation in existing 28 TAC §134.204(j)(4)(B) "(relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings)" to conform to current agency style.

New 28 TAC §134.250(4)(C)(ii)(I) does not include the numeral "4th" and instead includes the word "fourth" to conform to current agency style.

New 28 TAC §134.250(4)(C)(iv) does not include the title of the referenced rule citation in existing 28 TAC §134.204(j)(4)(C)(iv) "(relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment)" to conform to current agency style.

New 28 TAC §134.250(4)(C)(v) does not include the abbreviation "HCP" and instead includes the phrase "health care provider." The non-substantive change is necessary for clarity.

New 28 TAC §134.250(6) does not include the phrase "Act and Division Rules" and instead includes the phrase "Labor Code and" to conform to current agency style.

Mr. Matthew Zurek, Executive Deputy Commissioner of Healthcare Management and System Monitoring, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Zurek also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of the proposal will include ease of compliance for system participants through the more comprehensive format and continued access to health care and stability through consistent application of the division's adopted fee guidelines.

Mr. Zurek expects that there will be no costs to persons required to comply with the proposed sections. For the most part, the proposal simply reorganizes existing 28 TAC §134.204 so that future amendments to the medical fee guidelines for workers' compensation will not result in one complex rule project. To the extent that the rules may result in costs to system participants, the probable cost to persons required to comply with the proposal is minimal and most likely attributed to system participants making updates to their business processes to accommodate the new sections.

As required by the Government Code §2006.002(c), the division has determined that the proposed amendments and new sections will not have an adverse economic effect on small or micro businesses. Therefore, in accordance with the Government Code §2006.002(c), the division is not required to prepare a regulatory flexibility analysis.

The division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on April 18, 2016. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *Rulecomments@tdi.texas.gov* or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551

Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

The amendments and new sections are proposed under Labor Code §§402.00111, 402.061, 408.021, 408.0252, 413.002, 413.007, 413.011, 413.012, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031, and 413.0511.

Labor Code §402.00111 requires the commissioner of workers' compensation to exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.021 provides that an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code §408.0252 permits the commissioner to identify areas of this state in which access to health care providers is less available and may adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas. Labor Code §413.002 requires the division to monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner relating to health care, including medical policies and fee guidelines. Labor Code §413.007 requires the division to maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used in adopting and administering the medical policies and fee guidelines. Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems and the fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. Labor Code §413.012 requires the division to review and revise the medical policies and fee guidelines at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted. Labor Code §413.013 requires the commissioner to establish programs related to health care treatments and services for dispute resolution monitoring and review to ensure compliance with medical policies or guidelines. Labor Code §413.014 requires the commissioner to specify which health care treatments and services require preauthorization or concurrent review by insurance carriers. Labor Code §413.015 requires the commissioner to review and audit insurance carriers payments of charges for medical services to ensure compliance of medical policies and fee guidelines adopted by the commissioner. Labor Code §413.016 requires the division to order a refund of charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines and investigate the potential violation. Labor Code §413.017 provides for a presumption of reasonableness for medical services consistent with the medical policies and fee guidelines. Labor Code §413.019 provides for payment of interest on delayed payments, refunds, or overpayments. Labor Code §413.031 provides for medical dispute resolution for a medical service provided or a denied authorization of payment. Labor Code §413.0511 requires the medical advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by Labor Code §413.011.

§134.204. Medical Fee Guideline for Workers' Compensation Specific Services.

(a) Applicability of this rule is as follows:

(1) (No change.)

(2) This section applies to workers' compensation specific codes, services and programs provided from [~~on or after~~] March 1, 2008 until September 1, 2016.

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

(b) - (n) (No change.)

§134.209. Applicability.

(a) Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title apply to workers' compensation specific codes, services, and programs provided in the Texas workers' compensation system, other than:

(1) professional medical services described in §134.203 of this title;

(2) prescription drugs or medicine;

(3) dental services;

(4) the facility services of a hospital or other health care facility; and

(5) medical services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in §134.1 of this title and Insurance Code Chapter 1305.

(b) Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title apply to workers' compensation specific codes, services, and programs provided on or after September 1, 2016.

(c) If a court of competent jurisdiction holds that any provision of §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application and the provisions of §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 of this title are severable.

(d) When billing for a treating doctor examination to define the compensable injury, refer to §126.14 of this title.

§134.210. Medical Fee Guideline for Workers' Compensation Specific Services.

(a) Specific provisions contained in the Labor Code or division rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Independent review organization decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title, which are made on a case-by-case basis, take precedence, in that case only, over any division rules and Medicare payment policies.

(b) Payment policies relating to coding, billing, and reporting for workers' compensation specific codes, services, and programs are as follows:

(1) Health care providers shall bill their usual and customary charges using the most current Level I Current Procedural Termi-

nology (CPT) and Level II Healthcare Common Procedure Coding System (HCPCS) codes. Health care providers shall submit medical bills in accordance with the Labor Code and division rules.

(2) Modifying circumstance shall be identified by use of the appropriate modifier following the appropriate Level I (CPT codes) and Level II HCPCS codes. Where HCPCS modifiers apply, insurance carriers shall treat them in accordance with Medicare and Texas Medicaid rules. Additionally, division-specific modifiers are identified in subsection (e) of this section. When two or more modifiers are applicable to a single HCPCS code, indicate each modifier on the bill.

(3) A 10 percent incentive payment shall be added to the maximum allowable reimbursement (MAR) for services outlined in §§134.220, 134.225, 134.235, 134.240, and 134.250 of this title and subsection (d) of this section that are performed in designated workers' compensation underserved areas in accordance with §134.2 of this title.

(c) When there is a negotiated or contracted amount that complies with Labor Code §413.011, reimbursement shall be the negotiated or contracted amount that applies to the billed services.

(d) When there is no negotiated or contracted amount that complies with Labor Code §413.011, reimbursement shall be the least of the:

(1) MAR amount;

(2) health care provider's usual and customary charge, unless directed by division rule to bill a specific amount; or

(3) fair and reasonable amount consistent with the standards of §134.1 of this title.

(e) The following division modifiers shall be used by health care providers billing professional medical services for correct coding, reporting, billing, and reimbursement of the procedure codes.

(1) CA, Commission on Accreditation of Rehabilitation Facilities (CARF) accredited programs--This modifier shall be used when a health care provider bills for a return to work rehabilitation program that is CARF accredited.

(2) CP, chronic pain management program--This modifier shall be added to CPT code 97799 to indicate chronic pain management program services were performed.

(3) FC, functional capacity--This modifier shall be added to CPT code 97750 when a functional capacity evaluation is performed.

(4) MR, outpatient medical rehabilitation program--This modifier shall be added to CPT code 97799 to indicate outpatient medical rehabilitation program services were performed.

(5) MI, multiple impairment ratings--This modifier shall be added to CPT code 99455 when the designated doctor is required to complete multiple impairment ratings calculations.

(6) NM, not at maximum medical improvement (MMI)--This modifier shall be added to the appropriate MMI CPT code to indicate that the injured employee has not reached MMI when the purpose of the examination was to determine MMI.

(7) RE, return to work (RTW) and/or evaluation of medical care (EMC)--This modifier shall be added to CPT code 99456 when a RTW or EMC examination is performed.

(8) SP, specialty area--This modifier shall be added to the appropriate MMI CPT code when a specialty area is incorporated into the MMI report.

(9) TC, technical component--This modifier shall be added to the CPT code when the technical component of a procedure is billed separately.

(10) VR, review report--This modifier shall be added to CPT code 99455 to indicate that the service was the treating doctor's review of report(s) only.

(11) V1, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to a "minimal" level.

(12) V2, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to "self limited or minor" level.

(13) V3, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to "low to moderate" level.

(14) V4, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to "moderate to high severity" level and at least 25 minutes duration.

(15) V5, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to "moderate to high severity" level and at least 45 minutes duration.

(16) WC, work conditioning--This modifier shall be added to CPT code 97545 to indicate work conditioning was performed.

(17) WH, work hardening--This modifier shall be added to CPT code 97545 to indicate work hardening was performed.

(18) WP, whole procedure--This modifier shall be added to the CPT code when both the professional and technical components of a procedure are performed by a single health care provider.

(19) W1, case management for treating doctor--This modifier shall be added to the appropriate case management billing code activities when performed by the treating doctor.

(20) W5, designated doctor examination for impairment or attainment of MMI--This modifier shall be added to the appropriate examination code performed by a designated doctor when determining impairment caused by the compensable injury and in attainment of MMI.

(21) W6, designated doctor examination for extent--This modifier shall be added to the appropriate examination code performed by a designated doctor when determining extent of the injured employee's compensable injury.

(22) W7, designated doctor examination for disability--This modifier shall be added to the appropriate examination code performed by a designated doctor when determining whether the injured employee's disability is a direct result of the work-related injury.

(23) W8, designated doctor examination for return to work--This modifier shall be added to the appropriate examination code performed by a designated doctor when determining the ability of injured employee to return to work.

(24) W9, designated doctor examination for other similar issues--This modifier shall be added to the appropriate examination code performed by a designated doctor when determining other similar issues.

§134.215. Home Health Services.

The maximum allowable reimbursement (MAR) amount for home health services provided through a licensed home health agency shall be 125 percent of the published Texas Medicaid fee schedule for home health agencies.

§134.220. Case Management Services.

Case management responsibilities by the treating doctor are as follows:

(1) Team conferences and telephone calls shall include coordination with an interdisciplinary team.

(A) Team members shall not be employees of the treating doctor.

(B) Team conferences and telephone calls must be outside of an interdisciplinary program. Documentation shall include the purpose and outcome of conferences and telephone calls, and the name and specialty of each individual attending the team conference or engaged in a phone call.

(2) Team conferences and telephone calls should be triggered by a documented change in the condition of the injured employee and performed for the purpose of coordination of medical treatment and/or return to work for the injured employee.

(3) Contact with one or more members of the interdisciplinary team more often than once every 30 days shall be limited to the following:

(A) coordinating with the employer, employee, or an assigned medical or vocational case manager to determine return to work options;

(B) developing or revising a treatment plan, including any treatment plans required by division rules;

(C) altering or clarifying previous instructions; or

(D) coordinating the care of employees with catastrophic or multiple injuries requiring multiple specialties.

(4) Case management services require the treating doctor to submit documentation that identifies any health care provider that contributes to the case management activity. Case management services shall be billed and reimbursed as follows:

(A) CPT code 99361.

(i) Reimbursement to the treating doctor shall be $113. Modifier "W1" shall be added.

(ii) Reimbursement to the referral health care provider shall be $28 when a health care provider contributes to the case management activity.

(B) CPT code 99362.

(i) Reimbursement to the treating doctor shall be $198. Modifier "W1" shall be added.

(ii) Reimbursement to the referral health care provider shall be $50 when a health care provider contributes to the case management activity.

(C) CPT code 99371.

(i) Reimbursement to the treating doctor shall be $18. Modifier "W1" shall be added.

(ii) Reimbursement to a referral health care provider contributing to this case management activity shall be $5.

(D) CPT code 99372.

(i) Reimbursement to the treating doctor shall be $46. Modifier "W1" shall be added.

(ii) Reimbursement to the referral health care provider contributing to this case management activity shall be $12.

(E) CPT code 99373.

(i) Reimbursement to the treating doctor shall be $90. Modifier "W1" shall be added.

(ii) Reimbursement to the referral health care provider contributing to this case management action shall be $23.

§134.225. Functional Capacity Evaluations.

The following applies to functional capacity evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT code 97750 with modifier "FC." FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a division ordered test; a maximum of two hours for an interim test; and a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required. FCEs shall include the following elements:

(1) A physical examination and neurological evaluation, which include the following:

(A) appearance (observational and palpation);

(B) flexibility of the extremity joint or spinal region (usually observational);

(C) posture and deformities;

(D) vascular integrity;

(E) neurological tests to detect sensory deficit;

(F) myotomal strength to detect gross motor deficit; and

(G) reflexes to detect neurological reflex symmetry.

(2) A physical capacity evaluation of the injured area, which includes the following:

(A) range of motion (quantitative measurements using appropriate devices) of the injured joint or region; and

(B) strength/endurance (quantitative measures using accurate devices) with comparison to contralateral side or normative database. This testing may include isometric, isokinetic, or isoinertial devices in one or more planes.

(3) Functional abilities tests, which include the following:

(A) activities of daily living (standardized tests of generic functional tasks such as pushing, pulling, kneeling, squatting, carrying, and climbing);

(B) hand function tests that measure fine and gross motor coordination, grip strength, pinch strength, and manipulation tests using measuring devices;

(C) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill; and

(D) static positional tolerance (observational determination of tolerance for sitting or standing).

§134.230. Return to Work Rehabilitation Programs.

The following shall be applied to Return To Work Rehabilitation Programs for billing and reimbursement of Work Conditioning/General

Occupational Rehabilitation Programs, Work Hardening/Comprehensive Occupational Rehabilitation Programs, Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs, and Outpatient Medical Rehabilitation Programs. To qualify as a division Return to Work Rehabilitation Program, a program should meet the specific program standards for the program as listed in the most recent Commission on Accreditation of Rehabilitation Facilities (CARF) Medical Rehabilitation Standards Manual, which includes active participation in recovery and return to work planning by the injured employee, employer and payor or insurance carrier.

(1) Accreditation by the CARF is recommended, but not required.

(A) If the program is CARF accredited, modifier "CA" shall follow the appropriate program modifier as designated for the specific programs listed below. The hourly reimbursement for a CARF accredited program shall be 100 percent of the maximum allowable reimbursement (MAR).

(B) If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80 percent of the MAR.

(2) For division purposes, General Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Conditioning.

(A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT code 97545 with modifier "WC." Each additional hour shall be billed using CPT code 97546 with modifier "WC." CARF accredited programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $36 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

(3) For division purposes, Comprehensive Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Hardening.

(A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT code 97545 with modifier "WH." Each additional hour shall be billed using CPT code 97546 with modifier "WH." CARF accredited programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $64 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

(4) The following shall be applied for billing and reimbursement of Outpatient Medical Rehabilitation Programs.

(A) Program shall be billed and reimbursed using CPT code 97799 with modifier "MR" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $90 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

(5) The following shall be applied for billing and reimbursement of Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs.

(A) Program shall be billed and reimbursed using CPT code 97799 with modifier "CP" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $125 per hour. Units of less than one hour shall be prorated in 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

§134.235. Return to Work/Evaluation of Medical Care.

The following shall apply to return to work (RTW)/evaluation of medical care (EMC) examinations. When conducting a division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT code 99456 with modifier "RE." In either instance of whether maximum medical improvement/ impairment rating (MMI/IR) is performed or not, the reimbursement shall be $500 in accordance with §134.240 of this title and shall include division-required reports. Testing that is required shall be billed using the appropriate CPT codes and reimbursed in addition to the examination fee.

§134.239. Billing for Work Status Reports.

When billing for a work status report that is not conducted as a part of the examinations outlined in §134.240 and §134.250 of this title, refer to §129.5 of this title.

§134.240. Designated Doctor Examinations.

The following shall apply to designated doctor examinations.

(1) Designated doctors shall perform examinations in accordance with Labor Code §§408.004, 408.0041, and 408.151 and division rules, and shall be billed and reimbursed as follows:

(A) Impairment caused by the compensable injury shall be billed and reimbursed in accordance with §134.250 of this title, and the use of the additional modifier "W5" is the first modifier to be applied when performed by a designated doctor;

(B) Attainment of maximum medical improvement shall be billed and reimbursed in accordance with §134.250 of this title, and the use of the additional modifier "W5" is the first modifier to be applied when performed by a designated doctor;

(C) Extent of the employee's compensable injury shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier "W6;"

(D) Whether the injured employee's disability is a direct result of the work-related injury shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier "W7;"

(E) Ability of the employee to return to work shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier "W8"; and

(F) Issues similar to those described in subparagraphs (A) - (E) of this paragraph shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier "W9."

(2) When multiple examinations under the same specific division order are performed concurrently under paragraph (1)(C) - (F) of this section:

(A) the first examination shall be reimbursed at 100 percent of the set fee outlined in §134.235 of this title;

(B) the second examination shall be reimbursed at 50 percent of the set fee outlined in §134.235 of this title; and

(C) subsequent examinations shall be reimbursed at 25 percent of the set fee outlined in §134.235 of this title.

§134.250. Maximum Medical Improvement Evaluations and Impairment Rating Examinations.

Maximum medical improvement (MMI) and/or impairment rating (IR) examinations shall be billed and reimbursed as follows:

(1) The total maximum allowable reimbursement (MAR) for an MMI/IR examination shall be equal to the MMI evaluation reimbursement plus the reimbursement for the body area(s) evaluated for the assignment of an IR. The MMI/IR examination shall include:

(A) the examination;

(B) consultation with the injured employee;

(C) review of the records and films;

(D) the preparation and submission of reports (including the narrative report, and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets; and

(E) tests used to assign the IR, as outlined in the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Labor Code and Chapter 130 of this title.

(2) A health care provider shall only bill and be reimbursed for an MMI/IR examination if the doctor performing the evaluation (i.e., the examining doctor) is an authorized doctor in accordance with the Labor Code and Chapter 130 of this title.

(A) If the examining doctor, other than the treating doctor, determines MMI has not been reached, the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this section. Modifier "NM" shall be added.

(B) If the examining doctor determines MMI has been reached and there is no permanent impairment because the injury was sufficiently minor, an IR evaluation is not warranted and only the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this section.

(C) If the examining doctor determines MMI has been reached and an IR evaluation is performed, both the MMI evaluation and the IR evaluation portions of the examination shall be billed and reimbursed in accordance with paragraphs (3) and (4) of this section.

(3) The following applies for billing and reimbursement of an MMI evaluation.

(A) An examining doctor who is the treating doctor shall bill using CPT code 99455 with the appropriate modifier.

(i) Reimbursement shall be the applicable established patient office visit level associated with the examination.

(ii) Modifiers "V1," "V2," "V3," "V4," or "V5" shall be added to the CPT code to correspond with the last digit of the applicable office visit.

(B) If the treating doctor refers the injured employee to another doctor for the examination and certification of MMI (and IR); and the referral examining doctor has:

(i) previously been treating the injured employee, then the referral doctor shall bill the MMI evaluation in accordance with paragraph (3)(A) of this section; or

(ii) not previously treated the injured employee, then the referral doctor shall bill the MMI evaluation in accordance with paragraph (3)(C) of this section.

(C) An examining doctor, other than the treating doctor, shall bill using CPT code 99456. Reimbursement shall be $350.

(4) The following applies for billing and reimbursement of an IR evaluation.

(A) The health care provider shall include billing components of the IR evaluation with the applicable MMI evaluation CPT code. The number of body areas rated shall be indicated in the units column of the billing form.

(B) When multiple IRs are required as a component of a designated doctor examination under this title, the designated doctor shall bill for the number of body areas rated and be reimbursed $50 for each additional IR calculation. Modifier "MI" shall be added to the MMI evaluation CPT code.

(C) For musculoskeletal body areas, the examining doctor may bill for a maximum of three body areas.

(i) Musculoskeletal body areas are defined as follows:

(I) spine and pelvis;

(II) upper extremities and hands; and

(III) lower extremities (including feet).

(ii) The MAR for musculoskeletal body areas shall be as follows:

(I) $150 for each body area if the diagnosis related estimates (DRE) method found in the AMA Guides fourth edition is used.

(II) If full physical evaluation, with range of motion, is performed:

(-a-) $300 for the first musculoskeletal body area; and

(-b-) $150 for each additional musculoskeletal body area.

(iii) If the examining doctor performs the MMI examination and the IR testing of the musculoskeletal body area(s), the examining doctor shall bill using the appropriate MMI CPT code with modifier "WP." Reimbursement shall be 100 percent of the total MAR.

(iv) If, in accordance with §130.1 of this title, the examining doctor performs the MMI examination and assigns the IR, but does not perform the range of motion, sensory, or strength testing of the musculoskeletal body area(s), then the examining doctor shall bill using the appropriate MMI CPT code with CPT modifier "26." Reimbursement shall be 80 percent of the total MAR.

(v) If a health care provider, other than the examining doctor, performs the range of motion, sensory, or strength testing of the musculoskeletal body area(s), then the health care provider shall bill using the appropriate MMI CPT code with modifier "TC." In accordance with §130.1 of this title, the health care provider must be certified. Reimbursement shall be 20 percent of the total MAR.

(D) Non-musculoskeletal body areas shall be billed and reimbursed using the appropriate CPT code(s) for the test(s) required for the assignment of IR.

(i) Non-musculoskeletal body areas are defined as follows:

(I) body systems;

(II) body structures (including skin); and

(III) mental and behavioral disorders.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) When the examining doctor refers testing for non-musculoskeletal body area(s) to a specialist, then the following shall apply:

(I) The examining doctor (e.g., the referring doctor) shall bill using the appropriate MMI CPT code with modifier "SP" and indicate one unit in the units column of the billing form. Reimbursement shall be $50 for incorporating one or more specialists' report(s) information into the final assignment of IR. This reimbursement shall be allowed only once per examination.

(II) The referral specialist shall bill and be reimbursed for the appropriate CPT code(s) for the tests required for the assignment of IR. Documentation is required.

(iv) When there is no test to determine an IR for a non-musculoskeletal condition:

(I) The IR is based on the charts in the AMA Guides. These charts generally show a category of impairment and a range of percentage ratings that fall within that category.

(II) The impairment rating doctor must determine and assign a finite whole percentage number rating from the range of percentage ratings.

(III) Use of these charts to assign an IR is equivalent to assigning an IR by the DRE method as referenced in subparagraph (C)(ii)(I) of this paragraph.

(v) The MAR for the assignment of an IR in a non-musculoskeletal body area shall be $150.

(5) If the examination for the determination of MMI and/or the assignment of IR requires testing that is not outlined in the AMA Guides, the appropriate CPT code(s) shall be billed and reimbursed in addition to the fees outlined in paragraphs (3) and (4) of this section.

(6) The treating doctor is required to review the certification of MMI and assignment of IR performed by another doctor, as stated in the Labor Code and Chapter 130 of this title. The treating doctor shall bill using CPT code 99455 with modifier "VR" to indicate a review of the report only, and shall be reimbursed $50.

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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Marisa Lopez Wagley
Acting General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 804-4703

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8. DRAYAGE TRUCK INCENTIVE PROGRAM

30 TAC §114.680, §114.682

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §114.680 and §114.682.

If adopted, the amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

Under THSC, §386.183(f), the commission may modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan (TERP). The proposed amendments to the DTIP rules are intended to improve the effectiveness of the DTIP to reduce emissions at and near seaports and rail yards in the state's nonattainment areas. The proposed amendments would include non-road cargo handling equipment as eligible for replacement under the program and would remove the requirement that the drayage truck being purchased must have a day cab only. In addition, language would be added to the definition of a seaport to include publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. The Houston Ship Channel Security District (HSCSD) is the only district established in Texas under this provision.

In conjunction with this proposed rulemaking, the commission also anticipates proposing changes to the guidelines developed to help implement the DTIP affected by this proposed rulemaking and the guidelines developed to help implement the Diesel Emissions Reduction Incentive (DERI) Program established under THSC, Chapter 386, Subchapter C. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388).* The revisions to the DTIP guidelines would incorporate changes to be consistent with the changes proposed in this rulemaking, as well as other changes. The commission anticipates making the draft guideline revisions available for public review and comment concurrent with the public comment period for this proposed rulemaking. The commission will accept oral or written comments on the proposed guideline changes at the public hearings on this proposed rulemaking.

Section by Section Discussion

§114.680, Definitions

The commission proposes to amend §114.680(1) to remove the definition term, "Day cab," under the DTIP and to replace it with the term, "Cargo handling equipment." The removal of "Day cab" is proposed because, with the proposed change to

§114.682 to remove the requirement that a new drayage truck purchased under the DTIP have a day cab only, the definition would no longer be needed. The term "Cargo handling equipment" would be added in conjunction with the proposed addition of cargo handling equipment to §114.682 as eligible for replacement and purchase under the DTIP. The proposed definition of cargo handling equipment includes any heavy-duty, non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. The equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

The commission proposes to amend §114.680(6) to add language to the definition of "Seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

In the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located in proximity to, but not at, the cargo transfer locations. The HSCSD includes property where many businesses and facilities associated with port activities in some manner are located and provides an appropriate defined boundary that can be used to delineate an expanded area considered a seaport under the DTIP. The proposed addition to the definition of "Seaport" in §114.680(6) would make drayage trucks operating on or transgressing through the properties included in the HSCSD eligible for replacement under the DTIP.

§114.682, Eligible Vehicle Models

The commission proposes to amend §114.682(a)(1) to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. Based on visits to many of the rail and port facilities and discussion with port administrators and drayage truck owners, the commission has determined that the goals of the DTIP could be better addressed by allowing on-road heavy-duty vehicles with sleeper cabs to be eligible for purchase under the program. The commission has determined that a number of the drayage truck owners are individual truck owners who contract to provide drayage services and that use vehicles with sleeper berths. The commission proposes to remove the day cab requirement in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

The commission also proposes to amend §114.682(a)(3) and (b)(3) to add "other cargo handling equipment" to the list of drayage truck models eligible for replacement and purchase under the DTIP. Along with the proposed addition of a definition for cargo handling equipment in §114.680, this change would expand the program to include replacement and purchase of heavy-duty non-road, self-propelled vehicles or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. As noted under the proposed definition, this equipment would include, but would not be limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. The commission has determined that expanding the program to include other cargo handling equipment at seaports and rail yards would help achieve the goals of the DTIP and the TERP by further reducing the concentrated emissions associated with the movement of cargo at those facilities.

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 TERP programs that are the subject of this rulemaking are voluntary and the proposed changes would impose no new requirements or responsibilities on the regulated community.

The proposed rules would revise the DTIP to help the program achieve reductions in emissions from a broader range of sources associated with the movement of cargo to and from seaports and rail yards.

The DTIP provides incentives to reduce emissions from drayage trucks operating in and around seaports and rail yards located in the state's nonattainment areas. The rules developed to implement the DTIP include criteria for the models of drayage trucks eligible for replacement and purchase under the program and definitions of seaports and rail yards.

Current rules limit the drayage trucks purchased under the DTIP to those vehicles with a day cab only (no sleeper berth). Staff has determined that much of the drayage truck traffic at the eligible facilities is by individual truck owners contracting to provide drayage services. These truck owners commonly operate vehicles with sleeper berths. Staff proposes to remove the day cab requirement to expand eligibility to include those individual contract haulers that would not otherwise participate because of that requirement.

Also, current rules limit the DTIP eligible drayage trucks to on-road heavy-duty vehicles and non-road yard trucks. Other types of non-road equipment used to move cargo, referred to as cargo handling equipment, also contribute to the concentration of emissions in and around seaports and rail yards due to the movement of cargo. Staff proposes to expand the eligibility criteria to include other cargo handling equipment in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

In addition, based on visits to multiple seaport facilities and discussion with facility administrators and users, staff has determined that the area in which emissions from drayage trucks are concentrated is not limited to just the specific location where cargo is transferred to or from a ship or barge. Particularly in the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located on property and at facilities in proximity to, but not located at, the locations where cargo is loaded on or off a ship or barge. The proposed revision to the definition of a seaport would include publically or privately owned property within a ship channel security district established under TWC, Chapter 68. Under this additional language, the property within the HSCSD, including multiple chemical facilities, warehouses, plants, and other facilities, would be considered part of the seaport for purposes of eligibility under the DTIP.

No fiscal implications are anticipated for the agency or for any other units of state or local government that own or operate affected facilities. The expansion of the eligibility requirements is not expected to impact the current level of TERP grants awarded for these programs as grant appropriations for these programs is statutorily capped. These programs are voluntary and the proposed changes would impose no new requirements or responsibilities on regulated entities. The changes to the DTIP

rules will expand the eligibility for grants under the program to include other cargo handling equipment. The governmental entities operating seaports and that own and operate cargo handling equipment that would become eligible for a grant under the program could benefit if they apply for and receive a grant to replace that equipment. Port Authorities and local governments owning and operating seaports in the Houston-Galveston-Brazoria nonattainment area may benefit from additional grant funding and would include three governmental entities, the Port of Houston - Port of Houston Authority; the Port of Galveston - City of Galveston; and the Port of Freeport - City of Freeport.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the state's nonattainment areas, especially in and near rail yards and seaports.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. These are voluntary grant programs open to any individual, business, governmental entity and other legal entity owning and operating eligible vehicles and equipment in the eligible areas of the state. The proposed rulemaking would expand eligibility criteria, thereby making more entities eligible to apply for a grant under the programs.

The changes to the DTIP rules would expand the types of vehicles and equipment that may be eligible for replacement under the program. The number of businesses that may benefit from this change would depend upon which businesses apply for and receive grant funding. It is not known how many businesses, including individual drayage truck owners, operate drayage trucks and equipment at the eligible seaports and rail yards.

Also, the number of businesses and facilities located within the area considered a seaport would be expanded to include those located in the HSCSD. There are 280 facilities that are part of the HSCSD representing approximately 197 businesses. To the extent these businesses own drayage trucks and equipment eligible for replacement under the DTIP, these businesses could benefit from the proposed changes if they receive grant funding to replace some of those drayage trucks. In addition, the expansion of the eligible area considered a seaport will also benefit the additional businesses, including individual drayage truck owners, who operate at those facilities and receive grant funding.

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 impose no new requirements or regulations on small or micro-businesses and impose no new costs. It is not known how many small businesses will benefit from the proposed changes.

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 the proposed rules are in effect and are intended to enhance the public health, safety, environmental and economic welfare of the state.

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 proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule 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" means 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rules add or revise eligibility requirements for a voluntary grant program. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not 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. In addition, the amendments do not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only 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 exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the 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 Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The rules make revisions to voluntary programs and only affect motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the proposed rules are neither a statutory nor a constitutional taking because the proposed rules do not affect private real property. Therefore, the rules do

not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises voluntary incentive grant programs and does not govern air pollution emissions.

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 Hearings

The commission will hold public hearings on this proposal in Austin on April 12, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, and in Houston on April 14, 2016, at 6:00 p.m. in Conference Room B, at the Houston-Galveston Area Council located at 355 Timmons, Suite 120. The hearings will be 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 hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Subject to the commission releasing proposed revisions to the guidelines for the DERI Program and the DTIP concurrent with the public comment period for this proposed rulemaking, the commission will also receive oral or written comments on proposed revisions to the guidelines at the same public hearings.

Persons who have special communication or other accommodation needs who are planning to attend a 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 2016-004-114-AI. The comment period closes on April 18, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*.

Subject to concurrent release for comment by the commission, copies of proposed revisions to the guidelines will be available from the commission's TERP website at *http://www.terp-grants.org*. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. If the proposed guideline revisions are released for public comment concurrently with this proposed rulemaking, comments on the proposed guideline revisions may be included with comments on the proposed rulemaking or may be submitted separately. Separate electronic comments pertaining solely to the guideline revisions should reference Non-Rule Project Number 2016-011-OTH-NR and may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. Separate written comments pertaining solely to the guideline revisions may be submitted to Steve Dayton, MC 204, Implementation Grants Section, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-0077.

For further information, please contact Steve Dayton of the Implementation Grants Section at (512) 239-6824.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The proposed amendments help implement the Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

§114.680. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts [~~Day cab--A drayage truck cab that does not have a compartment behind the driver's seat intended to be used by the driver for sleeping~~].

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

§114.682. Eligible Vehicle Models.

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds [~~and having a day cab only~~]; [~~and~~]

(2) a non-road yard truck; and[~~.~~]

(3) other cargo handling equipment.

(b) Models of existing drayage trucks eligible for replacement under the program include:

(1) a heavy-duty on-road vehicle with a GVWR over 26,000 pounds; [~~and~~]

(2) a non-road yard truck; and[~~.~~]

(3) other cargo handling equipment.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may place additional limits on vehicle models and engine model years eligible for purchase and replacement under the program for a particular grant round in order to improve the effectiveness and further the goals of the program.

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

Filed with the Office of the Secretary of State on March 4, 2016.

TRD-201601107
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.49

The Comptroller of Public Accounts proposes new §5.49, concerning longevity pay. The new section clarifies longevity pay provisions for state agencies and their employees.

Subsection (a) provides applicable definitions.

Subsection (b) sets forth the legal authority that governs longevity pay.

Subsection (c) requires state agencies to verify the amount of lifetime service credit that their current employees have accrued in previous employments.

Subsection (d) sets forth the process for establishing a state employee's "effective service date," which is used to determine the amount of the employee's lifetime service credit.

Subsections (e) - (l) address certain longevity pay issues that arise when a state employee works part of a workday; terminates employment after the first workday of the calendar month; returns to work as a state employee after retiring from state employment; retires under a public retirement system; receives hazardous duty pay; works for a state agency under a contract for less than 12 calendar months each year; and leaves a position that accrues lifetime service credit to serve in the military and is later reemployed with the state.

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 memorializing the administrative procedures for longevity pay. The proposed rule would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at *rob.coleman@cpa.texas.gov* or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The section is proposed under Government Code, §659.047, which requires the comptroller to adopt rules to administer longevity pay.

This section implements Government Code, Chapter 659, Subchapter D, regarding longevity pay.

§5.49. Longevity Pay.

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

(1) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) Day--The 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.

(3) Full-time state employee--Has the meaning assigned by Government Code, §659.041.

(4) Institution of higher education--Has the meaning assigned by Education Code, §61.003, but does not include a public junior or community college.

(5) Military--The Armed Forces of the United States, the Texas National Guard, the Texas State Guard, or a reserve component of the Armed Forces of the United States.

(6) Retiree--A state employee who retires from state employment and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Government Code, §802.001, that was credited to the state employee.

(7) State agency--

(A) a board, commission, department, office, or other entity that is in the executive branch of state government, including an institution of higher education;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency.

(8) State employee--Has the meaning assigned by Government Code, §659.041.

(9) Workday--Any day that is not Saturday, Sunday, or a state or national holiday under Government Code, §662.003. The term includes a state or national holiday on which a state employee is not entitled to a paid day off from work under Government Code, §662.005.

(b) Authority. Longevity pay is governed by Government Code, Chapter 659, Subchapter D; the General Appropriations Act; and the rules adopted by the comptroller under Government Code, Chapter 659, Subchapter D.

(c) Verification of prior state employment periods. A state agency that currently employs a state employee who accrued lifetime service credit during one or more previous employments shall verify the amount of that credit.

(d) Effective service date.

(1) A state employee's "effective service date" is used to determine the amount of the employee's lifetime service credit.

(2) "Effective service date" is determined by completing the following steps:

(A) adding together all days the employee served in all previous periods of employment with the state;

(B) subtracting the number of days in which the employee was on leave without pay for any full calendar month from the total number of days calculated in subparagraph (A) of this paragraph; and

(C) counting backward from the first day of the employee's current continuous employment with the state using the total number of days calculated in subparagraph (B) of this paragraph.

(3) An individual's transfer from one state agency to another shall not interrupt continuity of employment if no workdays occur between the two employments.

(e) Workday. If an individual is a state employee for any part of a workday, the individual is considered to be a state employee for the entire workday for the purpose of longevity pay.

(f) Change in status. A full-time state employee in paid status on the first workday of the calendar month is entitled to the full amount of longevity pay for that calendar month even if the employee terminates state employment after the first workday of that calendar month.

(g) Employees of Institutions of Higher Education.

(1) The determinations required by Government Code, §659.0411(a) and (b) must be made publicly available to all employees under the institution's or board of regent's jurisdiction and must be made available to the comptroller, upon request by the comptroller.

(2) The determinations required by Government Code, §659.0411(a) and (b) shall not take effect until they have been made publicly available to all employees under the institution's or board of regent's jurisdiction.

(3) The determinations required by Government Code, §659.0411(b) must apply to every institution under the board of regent's jurisdiction.

(h) Return to work retirees who leave state employment.

(1) A retiree who retired from state employment on or after June 1, 2005, is not entitled to longevity pay upon returning to state employment.

(2) A retiree who retired from state employment prior to June 1, 2005, and did not return to state employment prior to September 1, 2005, is not entitled to longevity pay upon returning to state employment.

(3) A retiree who retired from state employment prior to June 1, 2005, returned to state employment prior to September 1, 2005, and subsequently leaves state employment, is not entitled to longevity pay upon returning to state employment.

(i) Public retirement system. "Public retirement system," as the term is used in Government Code, §659.042(7) and subsection (a)(6) of this section, includes the Employees Retirement System of Texas; Teacher Retirement System; and Optional Retirement Program as described in Government Code, Chapter 830.

(j) Hazardous duty pay.

(1) A state employee's lifetime service credit for the purpose of longevity pay shall include any period served in a hazardous duty position, except as provided in Government Code, §659.046(f)(2) or paragraph (2) of this subsection

(2) A state employee is not entitled to accrue lifetime service credit for the purpose of longevity pay during the period the employee serves in a hazardous duty position that entitles the employee to receive hazardous duty pay. When the employee is no longer serving in the hazardous duty position, the employee is entitled to accrue the lifetime service credit for the purpose of longevity pay for the period the employee previously served in the hazardous duty position.

(3) For the purpose of longevity pay, lifetime service credit is accrued during the one year that a state employee serves in a hazardous duty position before becoming eligible or entitled to receive hazardous duty pay. The amount of longevity pay the employee receives during that year is based on the credit accrued during that year. But, the lifetime service credit used to calculate the amount of longevity pay received by the employee while receiving hazardous duty pay shall not include the one year waiting period.

(4) If a state employee received hazardous duty pay based on total state service performed before May 29, 1987, and held a position that required the performance of hazardous duty on May 29, 1987, the employee's lifetime service credit for the purpose of longevity pay shall not include any state service credit the employee accrued for the purpose of hazardous duty pay before May 29, 1987.

(k) Contract for less than 12 calendar months. An individual eligible to accrue lifetime service credit who works for a state agency under a formal written contract for less than 12 calendar months each year accrues 12 calendar months of credit each year if the individual is constantly under contract during the calendar months the individual does not work. The individual is constantly under contract if the individual's contract for the next work period is entered into before the end of the existing work period, even though the individual will not work during the interim period.

(l) Military service. If an individual leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and the individual is reemployed with the state after completing that service in accordance with any applicable federal or state veterans' reemployment law, the individual accrued lifetime service credit during that service.

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

Filed with the Office of the Secretary of State on March 1, 2016.

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning definitions. The amendment will clarify existing definitions with regard to and add a definition for telehealth. Proposed amendments to §372.1, concerning provision of services, and §373.1, concerning supervision of non-licensed personnel, have also been submitted to the *Texas Register* for publication regarding the inclusion in the Board Rules of telehealth as a mode of occupational therapy service delivery. The definitions in §362.1 for "direct contact" and "first available examination" have also been removed. The definitions have been renumbered when necessary so that they appear in alphabetical order; general clarifications, cleanups, and grammatical revisions have been made to the section, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) [~~(1)~~] Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) [~~(2)~~] AOTA--American Occupational Therapy Association.

(4) [~~(3)~~] Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) [~~(4)~~] Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) [~~(5)~~] Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) [~~(6)~~] Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed $4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) [~~(7)~~] Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) [~~(8)~~] Complete Application--Application [~~Notarized application~~] form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) [~~(9)~~] Complete Renewal--Contains renewal fee, renewal form with [~~signed~~] continuing education submission form [~~affidavit~~], home/work address(es) and phone number(s), [~~and~~] jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) [~~(10)~~] Continuing Education Committee--Reviews and makes recommendations to the Board [~~board~~] concerning continuing education requirements and special consideration requests.

(12) [~~(11)~~] Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

~~[(12) Direct Contact--Refers to contact with the client which is face-to-face in person.]~~

(13) Endorsement--The process by which the Board [~~board~~] issues a license to a person currently licensed in another state[~~, the District of Columbia,~~] or territory of the United States that maintains professional standards considered by the Board [~~board~~] to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification examination [~~Examination~~] given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

~~[(18) First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.]~~

(18) [~~(19)~~] Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(19) [~~(20)~~] Investigation Committee--Reviews and makes recommendations to the Board [~~board~~] concerning complaints and disciplinary actions regarding licensees and facilities.

(20) [~~(21)~~] Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board. [~~board.~~]

(21) [~~(22)~~] Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. [~~rules.~~] This test is an open book examination with multiple choice and/or [~~or~~] true-false questions. The passing score is 70%.

(22) [~~(23)~~] License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) [~~(24)~~] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(24) [~~(25)~~] NBCOT--National Board for Certification in Occupational Therapy.

(25) [~~(26)~~] Non-Licensed [~~Non-licensed~~] Personnel--OT Aide or OT Orderly or other person not licensed by this Board [~~board~~] who provides support services to occupational therapy practitioners and whose activities require on-the-job training and [~~close personal~~] supervision.

(26) [~~(27)~~] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do [~~does~~] not require the routine intervention of a physician.

(27) [~~(28)~~] Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) [~~(29)~~] Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) [~~(30)~~] Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) [~~(31)~~] Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:[~~.~~]

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

[~~(32) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).~~]

[~~(33) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.~~]

(33) [~~(34)~~] Occupational Therapy Practitioners--Occupational Therapists[~~,~~] and Occupational Therapy Assistants licensed by this Board. [~~board.~~]

(34) [~~(35)~~] Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) [~~(36)~~] Place(s) of Business--Any facility in which a licensee practices.

(36) [~~(37)~~] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board [~~TBOTE~~] may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

[~~(38) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.~~]

(37) [~~(39)~~] Rules--Refers to the TBOTE Rules.

(38) [~~(40)~~] Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth--A mode of service delivery for the provision of occupational therapy services through the use of visual and auditory, synchronous, real time, interactive electronic information or communications technologies. As a mode of service delivery, telehealth is contact with the client and the occupational therapy practitioner(s). Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900

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CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §§367.1 - 367.3, concerning continuing educa-

tion, categories of education, and continuing education audit. The amendments would remove the Type 1 and Type 2 continuing education designations and the requirement that licensees earn a minimum of fifteen contact hours of continuing education in Type 2 activities. The proposed amendments instead would require that all of the required 30 hours of continuing education taken for license renewal fit the new definition for continuing education, defined in the amendment to §367.1 as professional development activities that are directly relevant to the profession of occupational therapy. Proposed amendments to §370.3, concerning restoration of a Texas license, and §371.2, concerning retired status, have also been submitted for publication in the *Texas Register* and include proposed changes to reflect the changes in the proposed amendment to §§367.1 - 367.3.

The amendment to §367.2 would also add the NBCOT Navigator™ activities of Case Simulations, Balloon Match Games, Mini Practice Quizzes, and the PICO Game as acceptable continuing education activities. In addition, the amendments would allow for grant writing, general cooking classes, and geriatric anthology to be taken for continuing education if meeting the requirements for continuing education in Chapter 367. The amendments would add first aid as an unacceptable activity that may not be completed for continuing education. The amendments include further clarifications and cleanups, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement [~~continuing education~~] must [~~be directly relevant to the profession of occupational therapy and~~] meet the definition of continuing education [~~Type 1 or Type 2~~] as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements and for selecting continuing education as per the requirements in this chapter.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license and must provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) Definition [~~Types~~] of Continuing Education. Continuing education in this chapter is defined as professional development activities that are directly relevant to the profession of occupational therapy.

[~~(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with clients hereafter referred to as Type 2.~~]

[~~(A) Type 2 courses teach occupational therapy evaluation, assessment, intervention or prevention and wellness with clients.~~]

[~~(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.~~]

[~~(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, pharmacology, quality improvement, administration, reimbursement and other occupational therapy related subjects.~~]

(e) Each continuing education activity may be counted only one time in two renewal cycles [~~or a total of four years~~].

(f) Educational [~~Effective January 1, 2003, Type 1 and Type 2 educational~~] activities that meet the criteria for continuing education as per this chapter that are approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board. The Board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing [~~Type 1 or Type 2~~] CE according to the provisions [~~definitions~~] in this chapter [~~section~~].

§367.2. Categories of Education.

(a) All continuing education activities undertaken by a licensee for renewal must comply with the definition of continuing education [~~Type 1 or Type 2~~] as outlined in §367.1 of this title (relating to Continuing Education) and[~~. Continuing education undertaken by a licensee for renewal~~] shall be acceptable if falling under [~~it falls in~~] one or more of the following categories.

(1) Formal academic courses related to occupational therapy.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: three CE hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a three-credit course counts for 9 contact hours of continuing education[~~. All college course work must comply with Type 1 and Type 2 as outlined in §367.1 of this title~~], no maximum. Documentation of this type of CE credit shall include a transcript from the accredited college or university.

(B) Creation of a new course at or through an accredited college or university may be counted for 10 hours maximum. Proof of this type of CE shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, and conferences in occupational therapy with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation of this type of CE credit shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials or research/grant activities per two year renewal period: Documentation of this type of CE credit shall include a copy of the actual publication or media material(s), or title page and receipt of grant proposal.

(A) Published scholarly work in a peer-review journal:

(i) Primary or second author, 15 hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 hours maximum.

(B) Grant or research proposals accepted for consideration:

(i) Principal investigator or co-principal investigator, 10 hours maximum.

(ii) Consultant or reviewer, 4 hours maximum.

(C) Published book:

(i) Primary author or book editor, 15 hours maximum.

(ii) Second or other author, 7 hours maximum.

(iii) Consultant or reviewer, 5 hours maximum.

(D) Published book chapter or monograph:

(i) Primary author, 7 hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 hours maximum.

(4) Home study courses, educational teleconferences, Internet-based courses, and video instruction, no maximum.

[~~(A) Courses must fit the criteria for continuing education for Type 1 or Type 2.~~]

(A) [~~(B)~~] These courses must have:

(i) Specified learning objectives;

(ii) A post-test; and

(iii) A certificate of completion.

(B) [~~(C)~~] Educational teleconferences or Internet courses must reflect a pre-determined number of contact [~~credit~~] hours.

(5) Presentations [~~Professional presentations~~] by licensee: Documentation of this type of CE credit shall include a letter of verification of presentation and number of hours for the presentation or copy of organization's brochure or conference guide noting the presentation, presenter(s), type of presentation (i.e.: 2 hour poster, 3 hour workshop).

(A) Professional presentation, e.g. in-services, workshops, institutes: Any presentation counted only one time. Hour for hour credit. 10 hours maximum.

(B) Community/Service organization presentation: Any presentation counted once. Hour for hour credit. 10 hours maximum.

(6) Fieldwork Supervision: 10 hours maximum[~~, Type 2~~].

(A) A licensee may earn 2 contact hours for each Level 1 student supervised:

(i) 40 hours of Level 1 equals 1 hour of CE; or

(ii) 80 hours of Level 1 equals 2 hours of CE.

(B) A licensee may earn 8 contact hours for each Level 2 student supervised:

(i) 8 weeks equals 6 hours of CE; or

(ii) 12 weeks equals 8 hours of CE.

(C) A licensee may earn a maximum of 10 contact hours for student supervision per renewal period.

(D) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators per student.

(E) Fieldwork education supervision must be completed before the licensee's renewal date.

(F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

[~~(G) Courses specific to fieldwork education are counted as Type 1.~~]

(7) Mentorship:

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S. Supervision hours as per §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant) are not eligible for continuing education hours.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one hour of CE for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 CE hours.

(D) Participation as Mentor: A licensee may earn one hour of CE for each 5 hours spent in activities as a mentor up to a maximum of 10 CE hours.

(8) Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, NBCOT, or TBOTE for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation of this type of CE credit shall include a copy of the actual publication or official document/report which reflects the licensee's name. [~~This type of CE is counted at Type 1.~~] Maximum of 10 contact hours.

(9) NBCOT Navigator™ Activities: Licensees may earn up to 2 contact hours of CE for the completion of the NBCOT Navigator

activities of Case Simulations, Balloon Match Games, Mini Practice Quizzes, and the PICO Game. For such activities, 1 NBCOT CAU is the equivalent of .25 CE hours. Documentation of this type of CE is a certificate of completion or letter of verification.

(10) [~~(9)~~] Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(b) Unacceptable Continuing Education Activities include but are not limited to:

(1) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(2) Business meetings.

(3) Exhibit hall attendance.

(4) Reading journals.

(5) Courses such as: [~~grant writing,~~] massage therapy, general management and business, social work, defensive driving, water safety, team building, leadership, GRE, GMAT, MCAT preparation, [~~general cooking classes,~~] reading techniques, [~~geriatric anthology,~~] general foreign languages, communicable diseases, patient abuse, disposal of hazardous waste, patient privacy, CPR, First Aid, HIPAA, FERPA, bloodborne pathogens, or similar courses, do not count toward continuing education.

(c) [~~(6)~~] Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification. [~~Audit documentation submitted must be identified by the licensee to specify whether it is Type 1 or Type 2.~~]

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes[~~, or a total of four years~~].

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, and certificates of completion.

(e) Documentation must identify the licensee by name, and must include the date and title of the course, the name and signature of the authorized signer, and the number of contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-6900

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.3, concerning restoration of a Texas license. The amendment would clarify requirements for restoration of an occupational therapist or occupational therapy assistant license expired one year or more. The amendment would also remove the requirement that an individual whose license has been expired two or more years must also complete forty-five hours of continuing education if choosing the method of restoration requiring that the individual take and pass the National Board for Certification in Occupational Therapy (NBCOT) exam for licensure purposes only. The amendment also removes from a provision related to expedited services for military service members, military veterans, and military spouses, necessitated by Senate Bill 1307 from the 84th Legislative session, the requirement that to be eligible for such services, the military service member, military veteran, or military spouse, as defined in Chapter 55, Occupations Code, §55.001, must have within the five years preceding the restoration application date held a license in Texas. The amendment, in addition, clarifies that restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration. Any reference to Type 2 Continuing Education has also been removed as part of the proposal in accordance with proposed amendments to §§367.1 - 367.3, concerning continuing education, which have also been submitted to the *Texas Register* for publication. The amendment includes further cleanups, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to *lea@ptot.texas.gov* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Exam-

iners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.3. Restoration of a Texas License.

(a) Restoration of a license expired one year or more [~~than one year~~] to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired [~~more than~~] one year or more if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration [~~make~~] application form as [~~for licensure to the Board on a form~~] prescribed by the Board, which includes a recent passport-type photo;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If not currently licensed in another state or territory of the U.S. and applying from the U.S. military or a non-licensing state or territory of the U.S., the person must submit a Verification of Employment form substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(C) pass the online [~~Board~~] jurisprudence exam; and

(D) pay the restoration fee. [~~as set by the Executive Council; and~~]

[~~(E) complete all requirements for licensure within one year from the date of application.~~]

(b) Restoration of a license expired at least one year but [~~more than one year and~~] less than two years to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired at least [~~more than~~] one year but [~~and~~] less than two years to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration [~~make~~] application form as [~~for licensure to the Board on a form~~] prescribed by the Board, which includes a recent passport-type photo;

(B) submit copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education) [~~with a minimum of 30 hours in Type 2~~];

(C) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(D) pass the online [~~Board~~] jurisprudence examination; and

(E) pay the restoration fee. [~~as set by the Executive Council; and~~]

[~~(F) complete all requirements for licensure within one year from the date of the application.~~]

(c) Restoration of a license expired [~~more than~~] two years or more to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired [~~more than~~] two years or more to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration [~~make~~] application form as [~~for licensure to the Board on a form~~] prescribed by the Board, which includes a recent passport-type photo;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(C) pass the online [~~Board~~] jurisprudence exam;

(D) pay the restoration fee [~~as set by the Executive Council~~]; and

[~~(E) complete all requirements for licensure within one year from the date of application; and~~]

(E) [~~(F)~~] satisfy one of the following:

(i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;

(ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or

(iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT. [~~In addition, copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education), with a minimum of 30 hours in Type 2, must be submitted.~~]

(d) The Board shall expedite the restoration of a license to a military service member, military veteran, or military spouse [~~who within the five years preceding the application date held a license in Texas~~]. To request expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation. In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) The licensee whose license has been restored may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.

(f) The restoration fee as set by the Executive Council is nonrefundable. [~~non-refundable.~~]

(g) Restoration requirements must be met within one year of the Board's receipt of the application. Restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration.

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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John P. Maline
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CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §371.1 and §371.2 concerning inactive status and retired status. The amendments to §371.1 would clarify requirements regarding inactive status and specifies that inactive status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments would specify that if the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3, concerning restoration of a Texas license, amendments which have also been submitted for publication in the *Texas Register.* The amendments would also add the provision that licensees on inactive status are subject to the audit of continuing education as described in §367.3, concerning continuing education audit. The amendments to §371.2 would clarify requirements regarding retired status and specifies that retired status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments would also add the provision that licensees on retired status may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. Any reference to Type 2 continuing education has also been removed as part of the proposal in accordance with proposed amendments to §§367.1 - 367.3, concerning continuing education, categories of education, and continuing education audit, which have also been submitted to the *Texas Register* for publication. The proposed amendments to §371.1 and §371.2 include cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§371.1. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the Board [~~board~~]. The Board [~~board~~] may allow an individual who is not actively engaged in the practice of occupational therapy to put an active [~~a~~] license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years[~~,~~] and may not represent himself [~~him~~] or herself as an occupational therapist or occupational therapy assistant [~~Occupational Therapist or Occupational Therapy Assistant~~].

(b) Required components to put a license on inactive status are:

(1) a completed [~~Signed~~] renewal application form as prescribed by the Board documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education); [~~and~~]

(2) the [~~The~~] inactive status fee and any late fees that [~~which~~] may be due; and[~~.~~]

(3) a [~~A~~] passing score on the online jurisprudence exam.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) a completed [~~Signed~~] renewal application form as prescribed by the Board[~~,~~] documenting completion of the required con-

tinuing education as described in Chapter 367 of this title (relating to Continuing Education); [~~and~~]

(2) the inactive status [~~The~~] renewal fee and any late fees that [~~which~~] may be due; and[~~.~~]

(3) a [~~A~~] passing score on the online jurisprudence exam.

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time [~~after the licensee has submitted a complete application for reinstatement~~]. The components required to return to active status are:

(1) a completed [~~Signed paper~~] renewal application form as prescribed by the Board;

(2) the [~~The~~] renewal fee and any late fees that [~~which~~] may be due;

(3) a [~~A~~] passing score on the online jurisprudence exam; and

(4) proof [~~Proof~~] of the required continuing education, if required.

(e) If the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

(f) The inactive status fees and any late fees as set by the Executive Council are nonrefundable.

(g) Licensees on inactive status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

[~~(e) If the licensee has not completed the required continuing education, he or she may follow the methods to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).~~]

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some Chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year.

(c) Requirements for initial retired status are:

(1) a completed retired status [~~and notarized~~] application form as prescribed by the Board;

(2) a passing score on the online jurisprudence exam;

(3) the completed continuing education for the current renewal period; and

(4) the retired status application fee and any late fees that [~~which~~] may be due.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) a completed [~~the~~] retired status renewal form as prescribed by the Board;

(2) a passing score on the online jurisprudence exam;

(3) the retired status renewal fee and any late fees that [~~fee which~~] may be due; and

(4) completion of 6 hours of [~~Type 2~~] continuing education each license renewal period, as described in Chapter 367 [~~§367.1~~] of this title (relating to Continuing Education).

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for [~~more than~~] one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License). [~~License.~~]

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described [~~asdescribed~~] in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

(i) Licensees on retired status may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.

(j) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning the provision of services. The amendment includes clarifications regarding the provision of services and would add telehealth as a mode of occupational therapy service delivery. The amendment would add language specifying that the occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person. The amendment would also add the provision that the initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth. The amendment would add language allowing for the evaluation for a non-medical condition and for the intervention for a medical or non-medical condition to be provided via telehealth. The amendment would, furthermore, add the provision that devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications and that the occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications. Proposed amendments to §362.1, concerning definitions, and §373.1, concerning supervision of non-licensed personnel, have also been submitted to the *Texas Register* for publication regarding the inclusion of telehealth in the Board Rules as a mode of occupational therapy service delivery. The proposed amendment to §372.1, in addition, clarifies that occupational therapists may provide consultation or monitored services, or screen or evaluate the client to determine the need for occupational therapy services without a referral and that a screening, consultation, or monitored services may be performed by an occupational therapy practitioner. The amendment, in addition, clarifies that an occupational therapist must exercise professional judgment to determine cessation or continuation of intervention without a receipt of the written referral. The amendment contains further cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to *lea@ptot.texas.gov* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§372.1. Provision of Services.

(a) The occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person.

(b) [~~(a)~~] Medical Conditions.

(1) Occupational therapists may provide consultation or monitored services, or screen or evaluate the client [~~patient/client~~] to determine the need for occupational therapy services without a referral.

(2) The initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth.

(3) [~~(2)~~] Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(4) [~~(3)~~] The referral may be an oral or signed written order. The occupational therapy practitioner must ensure that all oral orders are followed with a signed written order.

(5) [~~(4)~~] If a written referral signed by the referral source is not received by the third intervention [~~treatment~~] or within two weeks from the receipt of the oral referral, whichever is later, the occupational therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, [~~return receipt,~~] etc.). The occupational therapist must exercise professional judgment to determine cessation or continuation of intervention without [~~treatment with~~] a receipt of the written referral.

(c) [~~(b)~~] Non-Medical Conditions.

(1) Consultation, monitored services, screening, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or intervention [~~treatment~~] process when necessary to ensure [~~insure~~] the safety and welfare of the client [~~consumer~~].

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner.

[~~(c) Screening. A screening may be performed by an occupational therapy practitioner.~~]

(e) [~~(d)~~] Evaluation.

(1) Only an occupational therapist may perform an initial [~~the~~] evaluation or any re-evaluations.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist must have [~~face-to-face,~~] real time interaction with the [~~patient or~~] client during the evaluation process either in person or via telehealth.

(4) The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(f) [~~(e)~~] Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a vio-

lation of the OT Practice Act for anyone other than the evaluating or treating occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client [~~patient~~] should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have [~~face-to-face,~~] real time interaction with the [~~patient or~~] client during the intervention process either in person or via telehealth.

(8) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

(9) [~~(8)~~] Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(g) [~~(f)~~] Documentation.

(1) The client's [~~patient's/client's~~] records include the medical referral, if required,[~~;~~] and the plan of care. The plan of care includes the initial examination and evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and[~~,~~] any re-evaluations, if required; any written communication; and the discharge documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.

[~~(3) The occupational therapy assistant must include the name of his or her available supervising occupational therapist in each intervention note. If there is not a current supervising occupational therapist, the occupational therapy assistant cannot intervene.~~]

(h) [~~(g)~~] Discharge.

(1) Only an occupational therapist has the authority to discharge clients [~~patients~~] from occupational therapy services. The discharge is based on whether the [~~patient or~~] client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services,[~~;~~] or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge documentation, and/or make recommendations for any further needs of the client [~~patient~~] in another continuum of care.

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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40 TAC §372.2

The Texas Board of Occupational Therapy Examiners proposes a new rule, §372.2, concerning general purpose occupation-based instruction. The new section would specify that occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes and that these services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. The new rule would add that if a participant requires individualized occupational therapy services, a referral must be made to an occupational therapist for the provision of occupational therapy services in accordance with §372.1, concerning provision of services. The new section would note that supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3, concerning supervision of an occupational therapy assistant. Proposed amendments to §373.3 and to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, have also been submitted for publication in the *Texas Register* with regard to proposed new §372.2.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed rule may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to *lea@ptot.texas.gov* no later than 30 days from the date that this proposed rule is published in the *Texas Register.*

The new rule is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§372.2. General Purpose Occupation-Based Instruction.

(a) Occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes including but not limited to handwriting groups, parent-child education classes, wellness-focused activities for facility residents, aquatics exercise groups, and cooking for diabetics classes.

(b) These services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. However, if a participant requires individualized occupational therapy services, a referral must be made to an occupational therapist for the provision of occupational therapy services in accordance with §372.1 of this title (relating to Provision of Services).

(c) Supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant).

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 373. SUPERVISION

40 TAC §373.1, §373.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §373.1 and §373.3, concerning supervision of non-licensed personnel and supervision of an occupational therapy assistant. The amendment to §373.1 would clarify the supervision requirements for non-licensed personnel in general and with regard to the use of non-licensed personnel during the provision of occupational therapy services via telehealth. The amendment would remove language that close personal supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. The amendment would add language that supervision for occupational therapy aides as defined by the Practice Act, §454.002, concerning definitions, is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client. The amendment would also add the provision that supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight. Proposed amendments to §362.1, concerning definitions, and §372.1, concerning provision of services, have also been submitted to the *Texas Register* for publication regarding the inclusion of telehealth in the Board Rules as a mode of occupational therapy service delivery.

The proposed amendment to §373.3 includes language adding that up to half of the required interactive supervision hours for an occupational therapy assistant may be completed via visual and auditory, synchronous, real time, interactive electronic information or communications technologies. The amendment also includes revisions to the required supervision hours for occupational therapy assistants, adding a category pertaining to those working twenty or fewer hours during a given month. With regard to the requirement that the occupational therapy assistant must include the name of a supervising OT in each intervention note, language has been added in the proposal that this requirement is not applicable to instruction provided pursuant to proposed new §372.2, concerning general purpose occupation-based instruction. The amendment, in addition, includes the provision that when general purpose occupation-based instruction is being provided pursuant to proposed new §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction. The proposed new §372.2 and a proposed amendment to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, have also been submitted for publication in the *Texas Register* with regard to proposed new §372.2.

The proposed amendments include cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to *lea@ptot.texas.gov* no later than 30 days from the date that these proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§373.1. Supervision of Non-Licensed Personnel.

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-li-

censed personnel must be under the supervision of an occupational therapy practitioner.

(b) Supervision in this section for occupational therapy aides as defined by the Practice Act, §454.002 (relating to Definitions), is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client.

(c) Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight.

[~~(b) Close Personal Supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. This type of supervision is required for non-licensed personnel providing support services to the occupational therapy practitioners.~~]

(d) [~~(c)~~] When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(e) [~~(d)~~] The occupational [~~Occupational~~] therapy practitioners providing the intervention [~~treatment~~] must interact with the client [~~patient~~] regarding the client's [~~patient's~~] condition, progress, and/or achievement of goals during each intervention [~~treatment~~] session.

(f) [~~(e)~~] Delegation of tasks to non-licensed personnel includes but is [~~it~~] not limited to:

(1) routine department maintenance;

(2) transportation of clients [~~patients/clients~~];

(3) preparation or set up of intervention [~~treatment~~] equipment and work area;

(4) assisting clients [~~patients/clients~~] with their personal needs during the intervention [~~treatment~~];

(5) assisting in the construction of adaptive/assistive equipment and splints. The licensee must be on-site and attending for any initial applications to the client [~~patient~~];

(6) carrying out a predetermined segment or task in the client's [~~patient's~~] care for which the client [~~patient~~] has demonstrated some previous performance ability in executing the task.

(g) [~~(f)~~] The Non-Licensed Personnel may not:

(1) perform occupational therapy evaluative procedures;

(2) initiate, plan, adjust, or modify occupational therapy procedures;

(3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgments;

(4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

§373.3. Supervision of an Occupational Therapy Assistant.

(a) An occupational therapy assistant shall provide occupational therapy services only under the supervision of an occupational therapist(s).

(b) Supervision of an occupational therapy assistant in all settings includes:

(1) Supervision Form: For each employer, the occupational therapy assistant must submit the Occupational Therapy Assistant Supervision form with the employer information and name and license number of one of the occupational therapists working for the employer who will be providing supervision.

(2) Supervision Log and Supervision Hours:

(A) The occupational therapy assistant must complete supervision hours each month, which must be recorded on the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Log.

(B) All of the occupational therapists, whether working full time, part time, or PRN (i.e., working on an as-needed basis), who delegate to the occupational therapy assistant must participate in the supervision hours, whether on a shared or rotational basis.

(C) For each employer, the occupational therapy assistant must complete a separate Supervision Log and must complete the specified supervision hours, in addition to all other requirements. Supervision hours for different employers may not be combined.

(D) For those months when the licensee does not work as an occupational therapy assistant, he or she shall write N/A in the Supervision Log.

(E) Supervision Logs are subject to audit by the Board.

(F) Occupational therapy assistants must complete these types of supervision per month according to the following table:

(i) Frequent Communication Supervision: frequent communication between the supervising occupational therapist(s) and occupational therapy assistant including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) Interactive Supervision: interactive supervision during which the occupational therapist[~~, who is physically present with the occupational therapy assistant,~~] directly observes the occupational therapy assistant providing services to one or more clients. Up to half of the required interactive supervision hours may be completed via visual and auditory, synchronous, real time, interactive electronic information or communications technologies.

Figure: 40 TAC §373.3(b)(2)(F)(ii)

[~~Figure: 40 TAC §373.3(b)(2)(F)(ii)~~]

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services. This provision is not applicable to instruction provided pursuant to §372.2 of this title (relating to General Purpose Occupation-Based Instruction).

(4) When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-6900

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CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.5

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.5, concerning exemptions to registration. The amendment would add language specifying that if a facility only offers services pursuant to proposed new §372.2, concerning general purpose occupation-based instruction, then the facility is exempted from the requirement to register the facility with the Board. The proposed new §372.2 and a proposed amendment to §373.3, concerning supervision of an occupational therapy assistant, have also been submitted to the *Texas Register* for publication with regard to proposed new §372.2.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to *lea@ptot.texas.gov* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§376.5. Exemptions to Registration.

A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from this definition, i.e., hospitals, nursing homes, ambulatory surgical centers, birthing centers, abortion, continuing care, personal care, and special care facilities. Colleges, universities, schools, home health settings, and settings where Early Childhood Intervention (ECI) services take place are exempted from registration. If a facility only offers services pursuant to §372.2 of this title (relating to General Purpose Occupation-Based Instruction), then the facility is exempted from registration. These types of facilities are automatically exempt and are not required to obtain a formal exemption from 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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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The State Pension Review Board (the "Board" or "PRB") proposes amendments to Title 40, Part 6, Chapter 607, Subchapter B, §607.110, concerning Minimum Educational Training Requirements; Subchapter C, §607.120, concerning Program Standards for All Sponsors; and Subchapter D, §607.140, concerning Public Retirement System Reporting.

BACKGROUND AND PURPOSE

In accordance with Government Code, §801.211, the Board established an educational training program for trustees and system administrators of Texas public retirement systems under Chapter 607. Since the adoption of the rules, the Board has received comments and questions from public retirement systems and education providers (sponsors) regarding the applicability of certain requirements. The purpose of the proposed amendments is to address the comments received by the Board. The amendments to §§607.110, 607.120, and 607.140 are intended to make the following changes: allow flexibility for first year of service training completed under the Minimum Educational Training (MET) requirements, lend clarity to program standards for sponsors providing online or electronically-delivered training, and update and clarify compliance reporting requirements.

SECTION-BY-SECTION OVERVIEW

The proposed amendments to §607.110 are intended to allow flexibility for Minimum Educational Training (MET) completion by trustees and system administrators prior to beginning the first year of service. Currently, §607.110 does not allow a trustee or system administrator to receive credit for MET until the first day of service. The Board received comments from public retirement systems citing scenarios in which a trustee may want to attend an MET activity in core content areas prior to officially assuming position on the system's board. In response to these comments, the Board proposed to add a new subsection §607.110(c), which would allow the Board to accept a trustee or system administrator's successfully completed MET activity up to six months prior to beginning service on a system's board or the system administrator's hiring date.

The proposed amendments to §607.120 are intended to clarify online or electronically-delivered training standards for MET activities offered by sponsors. For MET activities to be more

accessible, MET rules allow for electronically-delivered training. However, the MET rules do not provide a standard for completion and attendance verification as is required for in-person MET activities. The Board received questions regarding standards for online training completion and attendance verification. To address the questions, and upon consideration of various options, the Board determined a completion code would offer the best minimum standard for tracking attendance and completion of an electronically-delivered MET activity without being onerous for program participants and educational sponsors. Sponsors could still choose to go beyond this minimum standard by using more rigorous methods such as knowledge testing or a learning management system to verify and track attendance and completion.

The proposed amendments to §607.140 are intended to clean up outdated language and clarify dates for the MET reporting periods. Currently, §607.140 requires public retirement systems to submit completed MET credit hours biannually to the Board. The PRB determined that the current MET reporting schedule would not allow sufficient time for public retirement systems to submit the required training reports. Accordingly, the proposed amendments to §607.140 is meant to update the submission deadline for reporting MET credit hours to the PRB. With this proposed amendment, the February 1 deadline will become March 1 and the September 1 deadline will become October 1.

FISCAL NOTE

Ms. Michelle D. Kranes, Deputy Director, has determined that for each year of the first five-year period the amended rules are in effect, there will be no fiscal implications to state or local governments.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Ms. Kranes has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amended rules.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Ms. Kranes further determined that there are no anticipated economic costs to individuals who are required to comply with the proposed amended rules. There is no anticipated negative impact on local employment; therefore, the Board has not prepared a local employment impact statement pursuant to Government Code, §2001.022.

PUBLIC BENEFIT

In addition, Ms. Kranes has determined that for each year of the first five-year period the rules are in effect, the public will benefit from the adoption of the proposed amendments. The public benefit anticipated as a result of enforcing the proposed amendments will be to allow flexibility and lend clarity to the implementation of the Minimum Educational Training program under 40 TAC Chapter 607.

REGULATORY ANALYSIS

Ms. Kranes has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. Therefore, the Board has not prepared an environmental impact statement pursuant to Government Code §2001.0225.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Michelle D. Kranes, Deputy Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or by electronic mail to *prb@prb.state.tx.us.* Comments will be accepted until 5:00 p.m. on April 18, 2016, which is 31 days after publication in the *Texas Register.*

LEGAL CERTIFICATION

Ms. Kranes certifies that legal counsel has reviewed the proposed rules and found them to be within the state agency's legal authority to adopt.

SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110

STATUTORY AUTHORITY

The proposed amendments are authorized by Government Code §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The proposed amendments affect Government Code, Chapter 801.

§607.110. Minimum Educational Training Requirements.

(a) First year of service. A new trustee and a new system administrator shall complete at least seven (7) credit hours of training in the core content areas within the first year of service. The seven credit hours shall include training in all of the core content areas. A trustee or system administrator must earn no less than half a credit hour in each content area. No more than two credit hours earned in any one core content area shall be applied toward meeting the 7-hour minimum requirement contained in this subsection. The core content areas are:

(1) fiduciary matters;

(2) governance

(3) ethics;

(4) investments;

(5) actuarial matters;

(6) benefits administration; and

(7) risk management.

(b) Subsequent years of service. A trustee and a system administrator shall complete at least four (4) credit hours of continuing education in either the core content areas in subsection (a) or non-core content areas, or any combination thereof, within each two-year period after the first year of service as a new trustee or new system administrator.

(1) The non-core content areas include:

(A) compliance;

(B) legal and regulatory matters;

(C) pension accounting;

(D) custodial issues;

(E) plan administration;

(F) Texas Open Meetings Act; and

(G) Texas Public Information Act.

(2) The Board may allow continuing education credit for courses not specifically covered under the non-core content areas on a case-by-case basis.

(c) MET completed up to six months before the trustee's date of assuming position on the governing body or system administrator's hiring date may be counted for the first-year-of-service requirement in subsection (a).

(d) [~~(c)~~] If a trustee's term will expire before the end of the trustee's two-year continuing education cycle, such trustee will be exempt from the continuing education requirement in subsection (b) of this section for that two-year period; provided, however, that the trustee shall be subject to the continuing education requirements of subsection (b) of this section and as prescribed by §607.113(b) of this chapter upon the trustee's re-election or reappointment.

(e) [~~(d)~~] A trustee serving concurrently on multiple PRS boards and a system administrator employed concurrently by multiple PRSs shall only be required to complete the MET requirements in this section for service with one PRS.

(f) [~~(e)~~] Credit hours for attending MET activities shall be based on net actual instruction time. Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings, and credit hours for attending in-person educational programs shall be based on actual instruction time.

(g) [~~(f)~~] The Board hereby adopts by reference the Curriculum Guide for Minimum Educational Training to provide further direction on core and non-core content areas as contained in subsections (a) and (b)(1) of this section. Trustees and system administrators are encouraged to review the Curriculum Guide for content area guidance.

(h) [~~(g)~~] The Board shall make the Curriculum Guide for Minimum Educational Training available to the PRSs. A PRS can obtain the most current version of the Curriculum Guide for Minimum Educational Training from the offices of the State Pension Review Board and from its web site at http://www.prb.state.tx.us.

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

Filed with the Office of the Secretary of State on March 4, 2016.

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Anumeha
Executive Director
State Pension Review Board
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 463-1736

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SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §607.120

STATUTORY AUTHORITY

The proposed amendments are authorized by Government Code §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The proposed amendments affect Government Code, Chapter 801.

§607.120. Program Standards for All Sponsors.

(a) MET activities offered by sponsors must comply with the following standards.

(1) An MET activity shall constitute an organized program of learning dealing with matters related to public pensions, including the MET's core or non-core content areas in §607.110 of this chapter (relating to Minimum Educational Training Requirements). Sponsors are encouraged to review the Curriculum Guide as referenced in §607.110 of this chapter for content area guidance.

(2) An MET activity shall be conducted in a suitable facility by an individual or group qualified by professional or academic experience.

(3) An MET activity shall be educational in nature and shall not include the promotion of particular products or services.

(4) An MET activity shall be conducted in person, online via the internet, or by teleconference.

(5) An MET activity shall meet all of the other requirements contained in this chapter.

(b) An MET activity sponsor shall determine, and inform participants, in advance of the course, of the course's learning or content objectives, any necessary prerequisites, the credit hours the course provides for each core and non-core content area, and the total credit hours the course provides.

(c) An MET activity sponsor is responsible for ensuring the participants register their attendance during the MET activity. Sponsors are responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early.

(d) An MET activity sponsor conducting online or other electronically-delivered courses including via pre-recorded audio or video shall, at a minimum, provide a completion code to the participant upon successful completion of the course. The participant shall provide the completion code to the sponsor to demonstrate attendance and completion. Without receiving such code, the sponsor shall not issue a certificate of completion to the participant.

(e) [~~(d)~~] Staff meetings and other settings cannot be claimed for fulfilling the MET requirements if they do not meet the provisions of this chapter.

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

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SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §607.140

STATUTORY AUTHORITY

The proposed amendments are authorized by Government Code §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The proposed amendments affect Government Code, Chapter 801.

§607.140. PRS Reporting.

(a) By March [~~February~~] 1 and October [~~September~~] 1 of each year, a PRS shall accurately report to the Board on behalf of its trustees and system administrator the MET credit hours completed, as required by subchapter B. A PRS shall submit the reports on a form provided by the Board.

(b) In the March [~~February~~] 1 report, a PRS shall submit the MET credit hours completed between September 1 of the previous year and January 31 of the current year and any previously unreported training hours. In the October [~~September~~] 1 report, a PRS shall submit the training hours completed between February 1 and August 31 of the current year and any previously unreported training hours. [~~The first report under this subsection shall be due on February 1, 2016 and shall include any training completed, as required by Subchapter B.~~] A PRS shall be responsible for providing the following information to the Board on an ongoing basis. A PRS shall notify the Board of any changes in such information within 30 days after the date of the changes. A PRS shall submit this information on a form provided by the Board.

(1) For each trustee: the name, occupation, date of assuming or re-assuming the trustee's position on the governing body, the term length, and the expected last date of service.

(2) For a system administrator: the name, business contact information, hiring date, and the last date of employment.

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

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 702. GENERAL ADMINISTRATION

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS or "Department"), amendment to §702.5, and new §§702.501, 702.503, 702.505, 702.507, 702.509, 702.511, 702.513 and 702.515, in Chapter 702, concerning General Administration. The purpose of the amendment and new rules is to establish five advisory committees to advise the Department and to establish general provisions applicable to all advisory committees. Current DFPS rules regarding advisory committees were originally adopted in 1988, revised in 1994, and do not contain complete or correct information regarding the Department's active advisory committees. The rules in Chapter 730, Legal Services, Subchapter E, relating to Advisory Committees and Other Committees are being repealed. The proposed repeals will be published in this same issue of the *Texas Register.*

In August of 2014, the Texas Sunset Advisory Commission issued its Staff Report for DFPS, which included recommendations that DFPS' advisory committees be removed from statute and that DFPS subsequently establish any advisory committee(s) the agency wanted to create or maintain in rule. The Sunset Report also made some specific recommendations regarding certain provisions that rules establishing advisory committees should contain.

Texas Senate Bill 206, 84th Legislature (2015), the DFPS Sunset bill, included a provision requiring the Executive Commissioner of HHSC to adopt rules, in compliance with Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by DFPS. The rules may include provisions governing: (1) an advisory committee's size and quorum requirements; (2) qualifications for membership of an advisory committee, including: (A) requirements relating to experience and geographic representation; and (B) requirements for the department to include as members of advisory committees youth who have aged out of foster care and parents who have successfully completed family service plans and whose children were returned to the parents, as applicable; (3) appointment procedures for an advisory committee; (4) terms for advisory committee members; and (5) compliance with Chapter 551, Government Code (Open Meetings).

In addition, Senate Bill 200, Sunset legislation for HHSC in the 84th Legislature (and other related bills) removed most Health and Human Services (HHS) advisory committees from statute, and provided the Executive Commissioner of HHSC the latitude to re-establish or modify needed advisory committees through rule. Senate Bill 200 stated that advisory committees shall consider issues and solicit public input across major areas of the HHS system, including relating to the following issue areas: (1) Medicaid and other social services programs; (2) managed care under Medicaid and the child health plan program; (3) health care quality initiatives; (4) aging; (5) persons with disabilities, including persons with autism; (6) rehabilitation, including for persons with brain injuries; (7) children; (8) public health; (9) behavioral health; (10) regulatory matters; (11) protective services; and (12) prevention efforts.

As noted, the legislation requires any advisory committees adopted in rule to comply with Chapter 2110, Texas Government Code. This statute, in effect since 1997, requires a state agency that creates an advisory committee to establish that committee in agency rule. The rule must state the purpose and tasks of the committee, and describe the manner in which the committee will report to the agency.

The Government Code further provides that:

(1) An agency advisory committee must be composed of a reasonable number of members, not to exceed 24.

(2) An advisory committee that advises a state agency regarding an industry or occupation regulated or directly affected by the agency must provide a balanced representation between the industry or occupation and consumers of services provided by the agency, industry or occupation.

(3) An advisory committee shall select from among its members a presiding officer, and the presiding officer shall preside over the advisory committee and report to the state agency it is advising.

(4) A state agency that wants to reimburse the expenses of advisory committee members may only do so by requesting authority through the appropriations or budget execution process.

(5) The agency must annually evaluate the committee's work, the committee's usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(6) The state agency shall report to the Legislative Budget Board the information developed in the evaluation described above. The agency shall file the report biennially in connection with the agency's request for appropriations.

(7) The agency may designate in rule the date on which the committee will automatically be abolished. If the agency does not establish an abolition date in rule, the committee will automatically be abolished on the fourth anniversary of the date of its creation (unless a specific duration for the advisory committee is prescribed in statute).

(8) These provisions apply to an advisory committee unless another law specifically states that this law does not apply, or a federal law or regulation imposes a condition or requirement that irreconcilably conflicts with this law.

In 2015, HHSC established a cross-agency work group to evaluate all existing HHS advisory committees and determine their continued ability to effectively inform agency leadership regarding key issue areas in the HHS system. Staff representing each of the HHS agencies conducted an assessment of existing committees, gathered stakeholder input, and made preliminary recommendations to the Executive Commissioner. On October 30, 2015, as required by law, HHSC published in the *Texas Register* (40 TexReg 7726) the list of advisory committees that should be established in rule, which advisory committees should be combined, and which had become inactive or should otherwise be eliminated. Of the published list, 11 committees are (or formerly were) operated primarily by DFPS and are the subject of this proposed rulemaking.

Committees to be established in rule: (1) The Committee on Advancing Residential Practices; (2) The Public Private Partnership; (3) The Advisory Committee on Promoting Adoption of Minority Children; (4) The Parent Collaboration Group; and (5) The Youth Leadership Council.

Inactive committees to be abolished in rule: (1) State Advisory Committee on Child Care Administrators and Facilities; (2) Strategic Directions Advisory Committee; (3) Advisory Committee for the Office of Protective Services for Families and Children; (4) Advisory Committee for the Office of Adult Protective Services; (5) Research Review Committee; and (6) Regional Advisory Councils.

A summary of the changes are:

Amendment to §702.5 will add new terms and definitions for the following: (1) Advisory committee--Any group, such as a committee, commission, task force, workgroup, or other entity with multiple members that has as its primary function advising the Department of Family and Protective Services; (2) Commissioner--The Commissioner of DFPS; (3) DFPS--The Texas Department of Family and Protective Services; (4) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission or his or her designee; (5) Quorum--A majority of an advisory committee's active membership; (6) Single Source Continuum Contractor -- Entity with which DFPS contracts for the full continuum of care in a Foster Care Redesign catchment area. Technical amendments were made to the following definitions: (1) APS--Adult Protective Services; (2) CCL--Child-Care Licensing; (3) CPS--Child Protective Services; and (4) PEI--Prevention and Early Intervention. The following definitions are being repealed; (1) Board of the Texas Department of Protective and Regulatory Services; and (2) Executive director.

New §702.501(a) cites the statutory authority for the Executive Commissioner to establish advisory committees in rule; subsection (b) applies Texas Government Code Chapter 2110 to advisory committees established in these rules; subsection (c) applies the Texas Government Code "Open Meetings Act" to a committee unless otherwise noted.

New §702.503 provides that unless otherwise noted, an advisory committee selects a presiding officer from among its members which is a requirement of Texas Government Code 2110.

New §702.505 outlines conflict of interest provisions for members of advisory committees.

New §702.507 establishes the Committee for the Advancement of Residential Practices, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment.

New §702.509 establishes the Public Private Partnership, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment.

New §702.511 establishes the Advisory Committee on Promoting Adoption of Minority Children, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment.

New §702.513 establishes the Parent Collaboration Group, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment. Exempts the Group from the "Open Meetings Act."

New §702.515 establishes the Youth Leadership Council, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment. Exempts the Council from the "Open Meetings Act."

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendment and new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the amendment and new sections will be that stakeholders and interested parties will know what advisory committees the Department has established, what their purpose is, and how they will advise the Department. There will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new sections.

Ms. Henderson has determined that the proposed amendments 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Denise Brady at (512) 438-3466 in DFPS's Legal Division. Electronic comments may be submitted to *Denise.Brady@dfps.state.tx.us.* Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-544, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. INTRODUCTION

40 TAC §702.5

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the Health and Human Services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.030, which allows the Commissioner and Executive Commissioner to appoint advisory committees for DFPS and requires the Executive Commissioner to adopt rules regarding the advisory committees, and Government Code §531.012, which directs the Executive Commissioner to adopt rules to establish and govern advisory committees across all major areas of the HHS system.

§702.5. How are the terms in this chapter defined?

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Advisory committee--Any group, such as a committee, commission, task force, workgroup, or other entity with multiple members that has as its primary function advising the Department of Family and Protective Services (DFPS).

(2) [~~(1)~~] APS--Adult Protective Services, a division of (DFPS) [~~the Texas Department of Protective and Regulatory Services (PRS)~~] responsible for providing protective services for elderly and disabled persons.

[~~(2) Board--The board of the Texas Department of Protective and Regulatory Services.~~]

(3) CCL--Child-Care Licensing, a division of DFPS [~~PRS~~] responsible for the regulation of child-care facilities, as provided in Chapter 42 of the Human Resources Code.

(4) Commissioner--The Commissioner of DFPS.

(5) [~~(4)~~] CPS--Child Protective Services, a division of DFPS [~~PRS~~] responsible for providing protective services to children and for providing family support and family preservation services.

(6) [~~(5)~~] DFPS or the Department--The Texas Department of Family and Protective [~~and Regulatory~~] Services.

[~~(6) Executive director--The director of PRS.~~]

(7) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission or his or her designee.

(8) [~~(7)~~] PEI--Prevention and Early Intervention, a division of (DFPS) [~~PRS~~] responsible for implementing and managing programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

[~~(8) PRS--Texas Department of Protective and Regulatory Services.~~]

(9) Quorum--A majority of an advisory committee's active membership.

(10) Single Source Continuum Contractor--Entity with which DFPS contracts for the full continuum of care in a Foster Care Redesign catchment area.

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

Filed with the Office of the Secretary of State on March 1, 2016.

TRD-201601031
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 438-3466

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SUBCHAPTER F. ADVISORY COMMITTEES

40 TAC §§702.501, 702.503, 702.505, 702.507, 702.509, 702.511, 702.513, 702.515

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the Department.

The new sections implement HRC §40.030, which allows the Commissioner and Executive Commissioner to appoint advisory committees for DFPS and requires the Executive Commissioner to adopt rules regarding the advisory committees and Texas Government Code §531.012, which directs the Executive Commissioner to adopt rules to establish and govern advisory committees across all major areas of the HHS system.

§702.501. Authority and General Provisions.

(a) Authority to establish advisory committees. The Executive Commissioner has the authority to appoint advisory committees and to adopt rules regarding the purpose, structure, and use of advisory committees under Texas Human Resources Code §40.030.

(b) Applicability of Texas Government Code, Chapter 2110. An advisory committee established under this subchapter is subject to Texas Government Code Chapter 2110.

(c) Applicability of Texas Government Code Chapter 551. Unless otherwise expressly provided, an advisory committee established under this subchapter is subject to the Open Meetings Act,

Texas Government Code Chapter 551, as if it were a governmental body.

§702.503. Presiding Officer Requirements.

Unless otherwise expressly provided, an advisory committee selects a presiding officer from among its members.

§702.505. Conflicts of Interest.

A committee member who has, or potentially has, any direct financial interest in the outcome of a proposed recommendation that is to be voted on by the committee must:

(1) disclose the interest prior to the vote on the proposed recommendation;

(2) recuse himself from any leadership role (presiding officer, chair, or co-chair) on the committee during the vote; and

(3) refrain from voting on the recommendation.

§702.507. Committee on Advancing Residential Practices.

(a) Establishment. The Committee on Advancing Residential Practices (CARP) is established.

(b) Purpose. The purpose of CARP is to advise DFPS regarding the impact of Department policy on contracted foster care providers.

(c) Tasks. CARP performs the following tasks:

(1) makes recommendations to the Department through regularly scheduled meetings and Department staff assigned to the committee; and

(2) performs other tasks consistent with CARP's purpose that are requested by the Commissioner.

(d) Reporting requirements and Department action.

(1) CARP reports the committee's recommendations to the Department at least annually.

(2) CARP's recommendations may inform Department policy or practice.

(3) CARP's recommendations are advisory and do not obligate the Department to take action.

(e) Membership.

(1) CARP consists of no more than 24 members.

(2) Members are appointed by the Commissioner.

(3) Membership requirements.

(A) Members must have demonstrated a commitment to the children, youth, and families of Texas and have knowledge of and experience with the Texas foster care system.

(B) Members must be current employees of contracted foster care providers or members of trade associations.

(C) Members must attend and participate in meetings.

(D) In choosing CARP members, the Commissioner considers how the diverse service provider types, service provider sizes, and geographic communities in Texas are represented on the committee.

(4) Except as may be necessary to stagger terms, a member serves for a two-year term and may be appointed for additional terms at the Commissioner's discretion.

(f) Presiding officer. The presiding officer serves a two-year term.

(g) Meetings. CARP will meet at least quarterly.

(h) Decision-making. The committee will make decisions by consensus.

(i) Bylaws. CARP will adopt bylaws to govern committee practices, including selection of the presiding officer, attendance requirements, workgroups and subcommittees, and conflicts of interest.

(j) Abolition. CARP is abolished, and this section expires, August 31, 2026.

§702.509. Public Private Partnership.

(a) Establishment. The Public Private Partnership (PPP) is established.

(b) Purpose. The purpose of the PPP is to explore, study, and recommend innovative and creative practices that affect the Texas Foster Care system. The PPP provides recommendations to the Department regarding Foster Care Redesign and its implementation.

(c) Tasks. The PPP performs the following tasks:

(1) makes recommendations to the Department through regularly scheduled meetings and Department staff assigned to the committee; and

(2) performs other tasks consistent with the committee's purpose that are requested by the Commissioner.

(d) Reporting requirements and Department action.

(1) The PPP reports recommendations to the Department at least annually.

(2) PPP recommendations may inform Department policy or practice.

(3) PPP recommendations are advisory and do not obligate the Department to take action.

(e) Membership.

(1) The PPP consists of no more than 24 members.

(A) Members are appointed by the Commissioner.

(B) Membership requirements.

(i) Members must have demonstrated a commitment to the children, youth, and families of Texas and have knowledge and experience with the Texas foster care system.

(ii) Members must be willing to devote the time necessary to attend and participate in meetings.

(iii) In choosing PPP members, the Commissioner considers how the diverse ethnic, gender, and geographic communities in Texas are represented on the committee, including diverse sizes and types of providers.

(C) Membership includes:

(i) providers and provider associations in good standing with the Department;

(ii) youth who were formerly in foster care;

(iii) members of the judiciary;

(iv) child welfare advocacy groups;

(v) parents; and

(vi) other child welfare stakeholders, as determined by the Commissioner.

(D) Except as may be necessary to stagger terms, a committee member serves for a two-year term and may be appointed for additional terms at the discretion of the Commissioner.

(E) Members who represent a particular group are automatically removed from the committee when they are no longer members of the group in subsection (e)(1)(C) of this section whom they were appointed to represent, and may be replaced by another member of that same group by Commissioner appointment.

(F) Members who fail to attend three consecutive meetings without an excused absence by the presiding officer as reflected in the minutes are removed from the committee without further action, and the Commissioner appoints a replacement.

(f) Presiding officers. The presiding officer may not currently be an employee of or be actively seeking a contract as a Single Source Continuum Contractor (SSCC).

(g) Meetings. The PPP meets at least quarterly or as called by the presiding officer.

(h) Decision-making. The committee makes recommendations by consensus, with dissenting opinions noted.

(i) Bylaws. The committee will adopt bylaws to further govern committee practices, such as attendance requirements, meeting notices, workgroups and subcommittees, and conflicts of interest.

(j) Abolition. The PPP is abolished, and this section expires, August 31, 2026.

§702.511. Advisory Committee on Promoting Adoption of Minority Children.

(a) Establishment. The Advisory Committee on Promoting Adoption of Minority Children (ACPAMC) is established.

(b) Purpose. The ACPAMC works locally and at the state level to raise awareness of the needs of minority children in all stages of service.

(c) Tasks. The ACPAMC performs the following tasks:

(1) makes recommendation to the Department through regularly scheduled meetings and Department staff assigned to the committee; and

(2) performs other tasks consistent with the committee's purpose that are requested by the Commissioner.

(d) Reporting requirements and department action.

(1) The ACPAMC reports to the Department at least annually the committee's recommendations for Department programs and projects that will promote the adoption of and provision of services to minority children.

(2) The committee's recommendations may inform Department policy or practice.

(e) Membership.

(1) The ACPAMC consists of no more than 24 members.

(A) Members are appointed by the Commissioner.

(B) Membership requirements:

(i) Members must have knowledge of and experience in community education, cultural relations, family support, counseling, and parenting skills and education.

(ii) At least six members must be ordained members of the clergy.

(2) Except as may be necessary to stagger terms, a committee member serves for a two-year term and may be appointed for additional terms at the discretion of the Commissioner.

(f) Meetings. The Committee will meet at least quarterly.

(g) Decision-making. The committee will make decisions by consensus.

(h) Bylaws. The ACPAMC will adopt bylaws to govern committee practices including selection of the presiding officer, voting procedures, attendance requirements, reimbursement procedures, workgroups and subcommittees, and conflicts of interest.

(i) Presiding officer. The presiding officer serves for a two-year term.

(j) Abolition. The ACPAMC is abolished, and this section expires, August 31, 2026.

§702.513. Parent Collaboration Group

(a) Establishment. The Parent Collaboration Group (PCG) is established.

(b) Purpose. The purpose of the PCG is to provide a forum for individuals who have had involvement with the child welfare system as parents to discuss their experiences and make recommendations to the Department for improving the system.

(c) Tasks. The PCG performs the following tasks:

(1) Makes recommendations to the Department through regularly scheduled meetings and Department staff assigned to the committee; and

(2) Performs other tasks consistent with its purpose and bylaws.

(d) Reporting requirements and Department action.

(1) The Department will gather information on the PCG activities to compile an annual report.

(2) The annual report may guide Department policy or practice.

(e) Membership.

(1) The PCG consists of no more than 22 members.

(2) Members are appointed by the Regional Directors.

(3) Membership requirements:

(A) All members must have previously been involved in the child welfare system as parents.

(B) In general, the member's Child Protective Services case must have been closed for one year; the Regional Director may make exceptions to this rule if the parent is otherwise qualified.

(C) Two members per Department region will serve on the PCG if possible.

(4) Except as may be necessary to stagger terms, a PCG member serves for a two-year term and may be appointed for additional terms, not to exceed three terms.

(f) Meetings. The PCG will meet a minimum of three times per year.

(g) Decision-making. The committee will make decisions by consensus.

(h) Abolition. The PCG is abolished, and this section expires, August 31, 2026.

(i) The PCG is not a "governmental body" for purposes of the Open Meetings Act, Texas Government Code Chapter 551.

§702.515. Youth Leadership Council.

(a) Establishment. The Youth Leadership Council is established.

(b) Purpose. The Youth Leadership Council provides a forum for youth who are currently or were formerly in foster care to discuss their experiences with the Texas foster care system and make recommendations to the Department for improving the system.

(c) Tasks. The Youth Leadership Council performs the following tasks:

(1) Makes recommendations to the Department through scheduled meetings based on the availability of the current or former foster youth; and

(2) Performs other tasks consistent with its purpose.

(d) Reporting requirements and Department action.

(1) The Department will gather information on the Youth Leadership Council's activities to compile an annual report.

(2) The annual report may guide Department policy and practice.

(e) Membership.

(1) The Youth Leadership Council consists of no more than 24 members.

(2) Members for the Youth Leadership Council are recommended by regional youth leadership councils, Regional Youth Specialists, Preparation for Adult Living staff, or other individuals familiar with the current or former foster youth.

(3) Membership requirements:

(A) Two members will be appointed per region if possible.

(B) Members must be youth who are currently or were formerly in foster care and who are under the age of 21 when appointed.

(f) Meetings. The Youth Leadership Council will meet a minimum of two times per year.

(g) Decision-making. The Youth Leadership Council will make decisions by consensus.

(h) Abolition. The Youth Leadership Council is abolished, and this section expires, on August 31, 2026.

(i) The Youth Leadership Council is not a "governmental body" for purposes of the Open Meetings Act, Texas Government Code Chapter 551.

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

Filed with the Office of the Secretary of State on March 1, 2016.

TRD-201601032
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 438-3466

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CHAPTER 730. LEGAL SERVICES
SUBCHAPTER E. ADVISORY COMMITTEES AND OTHER COMMITTEES

40 TAC §§730.401 - 730.403, 730.405, 730.406

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS or "Department"), repeal of §§730.401, 730.402, 730.403, 730.405, and 730.406, in Chapter 730, concerning Legal Services. The purpose of the repeals is to update current DFPS rules regarding advisory committees. The rules were originally adopted in 1988, revised in 1994, and do not contain complete or correct information regarding the Department's active advisory committees.

In August of 2014, the Texas Sunset Advisory Commission issued its Staff Report for DFPS, which included recommendations that DFPS' advisory committees be removed from statute and that DFPS subsequently establish any advisory committee(s) the agency wanted to create or maintain in rule. The Sunset Report also made some specific recommendations regarding certain provisions that rules establishing advisory committees should contain.

Texas Senate Bill (SB) 206, 84th Legislature (2015), the DFPS Sunset bill, included a provision requiring the Executive Commissioner of HHSC to adopt rules, in compliance with Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by DFPS. The provision in SB 206 stated that the rules may include provisions governing: (1) an advisory committee's size and quorum requirements; (2) qualifications for membership of an advisory committee, including: (A) requirements relating to experience and geographic representation; and (B) requirements for the department to include as members of advisory committees youth who have aged out of foster care and parents who have successfully completed family service plans and whose children were returned to the parents, as applicable; (3) appointment procedures for an advisory committee; (4) terms for advisory committee members; and (5) compliance with Chapter 551, Government Code (Open Meetings).

In addition, Senate Bill 200, Sunset legislation for HHSC in the 84th Legislature (and other related bills) removed most Health and Human Services (HHS) advisory committees from statute, and provided the Executive Commissioner of HHSC the latitude to re-establish or modify needed advisory committees through rule. Senate Bill 200 stated that advisory committees shall consider issues and solicit public input across major areas of the HHS system including relating to the following issue areas: (1) Medicaid and other social services programs; (2) managed care under Medicaid and the child health plan program; (3) health care quality initiatives; (4) aging; (5) persons with disabilities, including persons with autism; (6) rehabilitation, including for persons with brain injuries; (7) children; (8) public health; (9) behavioral health; (10) regulatory matters; (11) protective services; and (12) prevention efforts.

As noted, the legislation requires any advisory committees adopted in rule to comply with Chapter 2110, Texas Government Code. This statute, in effect since 1997, requires a state agency that creates an advisory committee to establish that committee in agency rule. The rule must state the purpose and tasks of the committee, and describe the manner in which the committee will report to the agency.

The Government Code further provides that:

(1) An agency advisory committee must be composed of a reasonable number of members, not to exceed 24.

(2) An advisory committee that advises a state agency regarding an industry or occupation regulated or directly affected by the agency must provide a balanced representation between the industry or occupation and consumers of services provided by the agency, industry or occupation.

(3) An advisory committee shall select from among its members a presiding officer, and the presiding officer shall preside over the advisory committee and report to the state agency it is advising.

(4) A state agency that wants to reimburse the expenses of advisory committee members may only do so by requesting authority through the appropriations or budget execution process.

(5) The agency must annually evaluate the committee's work, the committee's usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(6) The state agency shall report to the Legislative Budget Board the information developed in the evaluation described above. The agency shall file the report biennially in connection with the agency's request for appropriations.

(7) The agency may designate in rule the date on which the committee will automatically be abolished. If the agency does not establish an abolition date in rule, the committee will automatically be abolished on the fourth anniversary of the date of its creation (unless a specific duration for the advisory committee is prescribed in statute).

(8) These provisions apply to an advisory committee unless another law specifically states that this law does not apply, or a federal law or regulation imposes a condition or requirement that irreconcilably conflicts with this law.

In 2015, HHSC established a cross-agency work group to evaluate all existing HHS advisory committees and determine their continued ability to effectively inform agency leadership regarding key issue areas in the HHS system. Staff representing each of the HHS agencies conducted an assessment of existing committees, gathered stakeholder input, and made preliminary recommendations to the Executive Commissioner. On October 30, 2015, as required by law, HHSC published in the *Texas Register* (40 TexReg 7726) the list of advisory committees that should be established in rule, which advisory committees should be combined, and which had become inactive or should otherwise be eliminated. Of the published list, 11 committees are (or formerly were) operated primarily by DFPS and are the subject of this proposed rulemaking:

Committees to be established in rule: (1) The Committee on Advancing Residential Practices; (2) The Public Private Partnership; (3) The Advisory Committee on Promoting Adoption of Minority Children; (4) The Parent Collaboration Group; and (5) The Youth Leadership Council.

Inactive committees to be abolished in rule: (1) State Advisory Committee on Child Care Administrators and Facilities; (2) Strategic Directions Advisory Committee; (3) Advisory Committee for the Office of Protective Services for Families and Children; (4) Advisory Committee for the Office of Adult Protective Services; (5) Research Review Committee; and (6) Regional Advisory Councils.

A summary of the changes to Chapter 730 are that §§730.401, 730.402, 730.403, 730.405, and 730.406 are being repealed because they are outdated. New rules are proposed in Chapter 702, General Administration, Subchapter F, of this title (relating to Advisory Committees). The new proposed subchapter will establish the Department's current and active advisory committees in rule in accordance with recently enacted Sunset legislation, will be published in this same issue of the *Texas Register.*

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Henderson also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that inactive advisory committees will not appear to still be in place, which will prevent confusion to DFPS stakeholders and the public. New advisory committee rules are being proposed in Chapter 702, General Administration, Subchapter F of this title (relating to Advisory Committees). There will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new sections.

Ms. Henderson has determined that the proposed repeals 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Denise Brady at (512) 438-3466 in DFPS's Legal Division. Electronic comments may be submitted to Denise.Brady@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-544, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.030, which allows the Commissioner and Executive Commissioner to appoint advisory committees for DFPS and requires the Executive Commissioner to adopt rules regarding the advisory committees, and Government Code §531.012, which directs the Executive Commissioner to adopt rules to establish and govern advisory committees across all major areas of the HHS system.

§730.401. Definitions.
§730.402. General Structure of Department Advisory Committees.
§730.403. Advisory Committees.
§730.405. Research Review Committee.
§730.406. Regional Advisory Councils.

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

Filed with the Office of the Secretary of State on March 1, 2016. ♦ ♦ ♦

TRD-201601033
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 438-3466

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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission withdraws proposed amended §91.101, published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7540). The agency has determined that it will not adopt the proposal within six months of publication. [See Government Code, §2001.027 and 1 TAC §91.38(d)].

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601116
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 7, 2016
For further information, please call: (512) 837-9236

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SUBCHAPTER C. MEMBERS

7 TAC §91.301

The Credit Union Commission withdraws proposed amended §91.301, published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7544). The agency has determined that it will not adopt the proposal within six months of publication. [See Government Code, §2001.027 and 1 TAC §91.38(d)].

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601118
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 7, 2016
For further information, please call: (512) 837-9236

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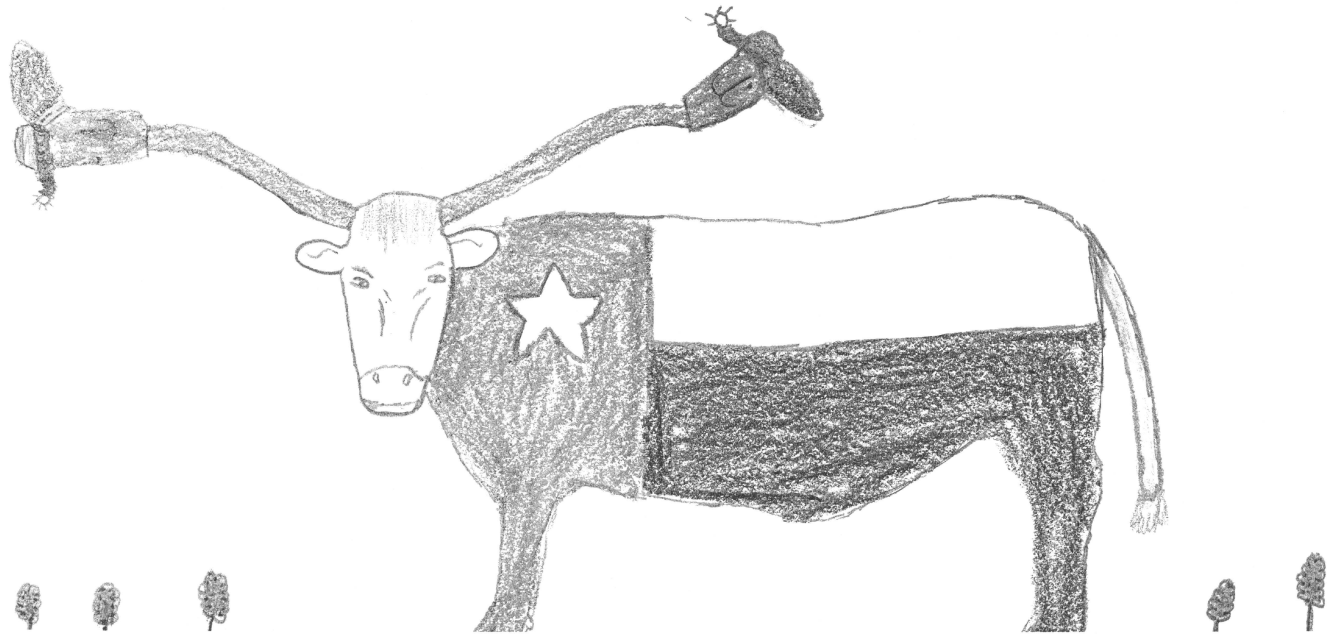
Lone Star

Luis Ponce
8th Grade



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.22, concerning Registration by Reciprocal Transfer, §1.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse, and §1.69, concerning Continuing Education Requirements, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9047).

Reasoned Justification. The amendments are adopted pursuant to the requirements contained in Senate Bill 1307 (84th Texas Legislature), amending Chapter 55 of the Texas Occupations Code, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Chapter 55 requirements have been implemented in the Board's rules, as follows. First, the heading for §1.29 has been changed to "Registration of a Military Service Member, Military Veteran, or Military Spouse." Additionally, the definitions of "active duty," "armed forces of the United States," "military service member," "military spouse" and "military veteran" have been amended to match the definitions enacted under SB 1307. Lastly, §1.29 addresses the eligibility for registration of military service members, military veterans, and military spouses, and provides for expedited consideration of applications filed by military service members, veterans, and spouses, as required under Chapter 55.

Additionally, §1.22 is amended to delete a provision granting expedited consideration of an application filed by a military spouse. A similar provision has been included in §1.29.

Finally, §1.69 is amended to allow a military service member an additional two years to complete continuing education requirements, as required under Chapter 55.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.22, §1.29

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1051.705, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and §55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.705 and §1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601064
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.69

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1051.705, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and §55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.705 and §1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601065

Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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22 TAC §1.65

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.65, concerning Annual Renewal Procedure. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9049).

Reasoned Justification. House Bill 7 of the 84th Texas Legislature eliminated the $200 professional fee that was previously charged to the Board's registrants. This fee was previously implemented under Texas Occupations Code §1051.652, which has been repealed. However, §1.65 contains reference to the repealed $200 fee. The adopted amendment to §1.65 eliminates reference to the $200 fee, ensuring compliance between the Board's rules and the legislature's enactment.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted pursuant to Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design, and the repeal of Texas Occupations Code §1051.652 under House Bill 7 (84th Texas Legislature), which eliminated the Board's statutory requirement to collect the $200 professional fee.

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.21, concerning Registration by Examination, and §3.191, concerning Description of Experience Required for Registration by Examination, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9050).

Reasoned Justification.

Generally §3.21 requires an applicant for landscape architect registration to have a professional degree from a landscape architectural educational program accredited by the Landscape Architectural Accreditation Board (LAAB). However, LAAB does not provide accreditation for foreign programs, so §3.21 allows foreign programs in landscape architecture to be considered under an alternative test. Under the previous version of §3.21(a)(1)(D), an applicant for landscape architect registration by examination who had graduated from a foreign educational program was required to have the foreign degree evaluated by Education Credential Evaluators (ECE) or another organization acceptable to the Board, and receive a conclusion from ECE that the program "is substantially equivalent to an LAAB accredited program." However, ECE has informed TBAE that it cannot give an evaluation concluding that a foreign degree is equivalent to a LAAB-accredited professional degree.

Therefore, under the adopted amendments to §3.21 eligibility is extended to applicants with a foreign degree that is evaluated by ECE and deemed to be equivalent to a doctorate, master's degree or baccalaureate degree in landscape architecture. The Board concludes that this is a reasonable alternative that allows consideration of foreign landscape architectural degrees that are not eligible for accreditation by LAAB.

Additionally, §3.191 is amended to require three years of experience under the Texas Table of Equivalents for Experience in Landscape Architecture from foreign graduates, as opposed to the two years that is required of a graduate of a LAAB-accredited program. This additional year of experience is intended offer additional assurance of qualifications for a foreign graduate of an approved program that is ineligible for LAAB certification.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.21

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1052.154.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1052.154 authorizes the Board to recognize and approve the landscape architecture educational programs that will support eligibility for registration as a landscape architect.

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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SUBCHAPTER J. TABLE OF EQUIVALENTS FOR EXPERIENCE IN LANDSCAPE ARCHITECTURE

22 TAC §3.191

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1052.154.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1052.154 authorizes the Board to recognize and approve the landscape architecture educational programs that will support eligibility for registration as a landscape architect.

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-201601078
Lance Brenton
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Texas Board of Architectural Examiners
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Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.22, concerning Registration by Reciprocal Transfer, §3.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse, and §3.69, concerning Continuing Education Requirements, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9052).

Reasoned Justification. The amendments are adopted pursuant to the requirements contained in Senate Bill 1307 (84th Texas Legislature), amending Chapter 55 of the Texas Occupations Code, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Chapter 55 requirements have been implemented in the Board's rules, as follows. First, the heading for §3.29 has been changed to "Registration of a Military Service Member, Military Veteran, or Military Spouse." Additionally, the definitions of "active duty," "armed forces of the United States," "military service member," "military spouse" and "military veteran" have been amended to match the definitions enacted under SB 1307. Lastly, §3.29 addresses the eligibility of registration for military service members, military veterans, and military spouses, and provides for expedited consideration of applications filed by military service members, veterans, and spouses, as required under Chapter 55.

Additionally, §3.22 is amended to delete a provision granting expedited consideration of an application filed by a military spouse. A similar provision has been included in §3.29.

Finally, §3.69 is amended to allow a military service member an additional two years to complete continuing education requirements, as required under Chapter 55.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.22, §3.29

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1052.154, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §§1052.154 and 1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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-201601066
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1052.154, and implement the requirements contained in Texas Occupations Code §§55.003, 55.004 and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §§1052.154 and 1051.305 authorize the Board to set the eligibility requirements for registration by examination and reciprocity, respectively.

Texas Occupations Code §1051.356 requires the Board to administer continuing education programs for registrants.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601067

Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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22 TAC §3.65

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.65, concerning Annual Renewal Procedure. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9053).

Reasoned Justification. House Bill 7 of the 84th Texas Legislature eliminated the $200 professional fee that was previously charged to the Board's registrants. This fee was previously implemented under Texas Occupations Code §1052.0541, which has been repealed. However, §3.65 contains reference to the repealed $200 fee. The adopted amendment to §3.65 eliminates reference to the $200 fee, ensuring compliance between the Board's rules and the legislature's enactment.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted pursuant to Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design, and the repeal of Texas Occupations Code §1052.0541 under House Bill 7 (84th Texas Legislature), which eliminated the Board's statutory requirement to collect the $200 professional fee.

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

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TRD-201601080
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.31, concerning Registration by Examination, and §5.202, concerning Description of Approved Experience for Registration by Examination, without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9054).

Reasoned Justification. Previously, under §5.31, an interior design candidate had two options for completing the experience requirement for eligibility for registration by exam. First, the candidate could complete two or more years of approved experience credit after graduation under the table of equivalents in §5.202(b). Alternatively, the candidate could complete the Intern Development Experience Program (IDEP) administered by the National Council for Interior Design Qualification (NCIDQ). However, NCIDQ has eliminated the IDEP program for interior design candidates. Therefore, reference to the IDEP program in the Board's rules has become obsolete. For this reason, §5.31 and §5.202 are hereby amended to delete reference to the IDEP program, and require applicants to complete two years of approved experience credit under the table of equivalents.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1053.152.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

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-201601071
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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SUBCHAPTER J. TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE IN INTERIOR DESIGN

22 TAC §5.202

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202 and §1053.152.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

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-201601072

Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.32, concerning Registration by Reciprocal Transfer, §5.39, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse, and §5.79, concerning Continuing Education Requirements. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9055).

Reasoned Justification. The amendments are adopted pursuant to the requirements contained in Senate Bill 1307 (84th Texas Legislature), amending Chapter 55 of the Texas Occupations Code, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Chapter 55 requirements have been implemented in the Board's rules, as follows. First, the heading for §5.39 has been changed to "Registration of a Military Service Member, Military Veteran, or Military Spouse." Additionally, the definitions of "active duty," "armed forces of the United States," "military service member," "military spouse" and "military veteran" have been amended to match the definitions enacted under SB 1307. Lastly, §5.39 addresses the eligibility of registration for military service members, military veterans, and military spouses, and provides for expedited consideration of applications filed by military service members, veterans, and spouses, as required under Chapter 55.

Additionally, §5.32 is amended to delete a provision granting expedited consideration of an application filed by a military spouse. A similar provision has been included in §5.39.

Finally, §5.79 is amended to allow a military service member an additional two years to complete continuing education requirements, as required under Chapter 55.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.32, §5.39

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1053.154, and implement the Requirements contained in Texas Occupations Code §§55.003, 55.004, and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

Texas Occupations §1051.356 requires the Board to administer continuing education programs for registrants.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601068
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.79

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.305, and 1053.154, and implement the Requirements contained in Texas Occupations Code §§55.003, 55.004, and 55.005.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1053.152 authorizes the Board to establish the qualifications for the issuance or renewal of a certificate of registration as an interior designer.

Texas Occupations §1051.356 requires the Board to administer continuing education programs for registrants.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601069
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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22 TAC §5.75

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.75, concerning Annual Renewal Procedure. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9057).

Reasoned Justification. House Bill 7 of the 84th Texas Legislature eliminated the $200 professional fee that was previously charged to the Board's registrants. This fee was previously implemented under Texas Occupations Code §1053.0521, which has been repealed. The Board ceased collection of the $200 at the time the law change went into effect. However, §5.65 contains reference to the repealed $200 fee. The adopted amendment to §5.65 eliminates reference to the $200 fee, ensuring

compliance between the Board's rules and the legislature's enactment.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted pursuant to Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design, and the repeal of Texas Occupations Code §1053.0521 under House Bill 7 (84th Texas Legislature), which eliminated the Board's statutory requirement to collect the $200 professional fee.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601081
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

CHAPTER 7. ADMINISTRATION

22 TAC §7.7

The Texas Board of Architectural Examiners (Board) adopts amendments to §7.7, concerning Petitions for Rulemaking and Negotiated Rulemaking. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9058).

Reasoned Justification. The amendments are adopted in order to implement requirements contained in Texas Government Code §2001.021, as amended by House Bill 763 (84th Texas Legislature), relating to Petition for Adoption of Rules. Under §2001.021, an "interested person" may petition a state agency to adopt a rule. The state agency is required to adopt rules to prescribe the form for a petition for rulemaking and the procedure for its submission, consideration, and disposition. House Bill 763 amended the statute to define an "interested person" as a resident of this state; a business entity located in this state; a governmental subdivision located in this state; or a public or private organization located in this state that is not a state agency.

Previously, the Board adopted §7.7, setting out the processes for petitioning the Board to engage in rulemaking. The adopted revisions to §7.7 limit eligibility to petition for rulemaking to the persons and entities identified in House Bill 763. This rule amendment is necessary to bring the Board's rule into alignment with statutory requirements relating to petitions for adoption of rules.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted under Texas Occupations Code §1051.202, and implement the requirements contained in Texas Government Code §2001.021.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Government Code 2001.021 requires the Board to adopt rules to prescribe the form for a petition for rulemaking and the procedure for its submission, consideration, and disposition, and limits eligibility to petition for rulemaking to the persons and entities identified in the Board's adopted rule.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601075
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

22 TAC §7.10

The Texas Board of Architectural Examiners (Board) adopts amendments to §7.10, concerning General Fees. The amendments are adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9059).

Reasoned Justification. The amendments are adopted in order to implement requirements contained in Senate Bill 807 (84th Texas Legislature), amending Texas Occupations Code §55.09, relating to licensing and application fees for military service members, military veterans, and military spouses. Under §55.09, a state agency is required to waive license application and examination fees paid to the state for an applicant who is a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for registration. A state agency is also required to waive the license application and examination fees paid to the state for an applicant who is a military service member, military veteran or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for registration in Texas.

The adopted amendments to §7.10 incorporate the required fee waivers and ensure consistency between the Board's rules and legislative enactments.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The amendments are adopted under Texas Occupations Code §§1051.202, 1051.651, 1051.705, 1052.054, 1052.154, and 1053.052 and implement the Requirements contained in Texas Occupations Code §55.009.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.651 and §1051.705, relating to architecture registration, authorize the Board to set a fee for a

board action involving an administrative expense and to set an examination fee, respectively.

Texas Occupations Code §1052.054 and §1052.154 relating to landscape architecture registration, authorize the Board to set a fee for a board action involving an administrative expense and to set an examination fee, respectively.

Texas Occupations §1053.052, relating to registered interior design registration, authorizes the Board to set a registration application fee and an examination fee.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601070
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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22 TAC §7.15

The Texas Board of Architectural Examiners (Board) adopts new §7.15, concerning Employee Training. The rule is adopted without changes to the proposed text published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9060).

Reasoned Justification. The adopted rule implements House Bill 3337 (84th Texas Legislature), which amended previous law contained in Texas Government Code Chapter 656, relating to training and education for state agency administrators and employees. Under HB 3337, a state agency may only pay an administrator's or employee's tuition expense for a course that is successfully completed at an accredited institution of higher education. Furthermore, an agency is required to adopt rules requiring that, before an administrator or employee is reimbursed for a training or education program, the executive head of the agency must authorize the tuition reimbursement payment.

As adopted, new §7.15 requires the agency to adopt policies and procedures relating to training and education of administrators and employees under Chapter 656. The rule requires the adoption of policies and procedures to address the eligibility of administrators and employees for training and education supported by the agency and the obligations assumed by administrators and employees on receiving training and education. Furthermore, the reimbursement of tuition for an administrator or employee under the adopted rule is dependent on satisfaction of eligibility requirements in the agency's policies and procedures, successful completion of a program course at an accredited institution of higher education, and authorization by the executive director.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority. The new section is adopted under Texas Occupations Code §1051.202 and §1051.152, and Texas Government Code §§656.044, 656.047, and 656.048.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to administer its enabling act. Occupations Code §1051.152 authorizes the board to employ clerical and other assistants as necessary to properly perform the board's work.

Texas Government Code §656.044 authorizes a state agency to use public funds to provide training and education for its administrators and employees.

Texas Government Code §656.047 states that, for an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education, the agency may only pay the tuition expenses for a program course successfully completed by the administrator or employee at an accredited institution of higher education. This provision is implemented under adopted §7.15(b)(2).

Texas Government Code §656.048(b) requires the Board to adopt rules requiring that the Executive Director authorize tuition reimbursement as described in §656.047. The adopted rule is necessary to implement this legislative directive.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601076
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: March 22, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8519

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.26

The Texas State Board of Dental Examiners adopts amendments to §107.26, relating to the failure of a Respondent to attend a hearing and the issuance of a default order. This rule is adopted without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8862). The rule will not be republished.

Amendments to §107.26 clarify the procedures if a party fails to attend a SOAH hearing.

The Board received no written comments regarding this amendment.

Amendments to §107.26 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the prac-

tice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the rule.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601020
Nycia Deal
General Counsel
State Board of Dental Examiners
Effective date: March 20, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 475-0977

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.7

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.7, regarding Veterinary Licensing Eligibility. The amendment is adopted without changes to the proposed text as published in the November 27, 2015 issue of the *Texas Register* (40 TexReg 8436) and will not be republished.

The amendment will allow an applicant to apply for the North American Veterinary Licensing Examination through the National Board of Veterinary Medical Examiners if the applicant is within ten months of the expected graduation date, as opposed to eight months of the expected graduation date under the current rule. The amendment will also conform the Board's procedures to that of most other states.

No comments were received regarding the adoption of the amendment to the rule.

The amendment to §571.7 is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601085
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: March 22, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 305-7555

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.64, regarding continuing education requirements. The amendment is adopted with changes to the proposed text as published in the November 27, 2015 issue of the *Texas Register* (40 TexReg 8437).

The rule clarifies that except as provided in subsection (a)(1) of the rule, continuing education hours obtained prior to licensure in Texas may not be applied toward the required number of continuing education hours. Subsection (a)(1) provides that veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for seventeen continuing education hours for the calendar year in which they were examined and licensed.

The agency received one comment regarding this rule. Paulette Andrew, DVM, commented in opposition to the proposed amendment, stating that the continuing education hours earned in the twelve months prior to the date of Texas licensure should be accepted, provided that the continuing education otherwise meets the applicable requirements.

As noted in the rule proposal's preamble, the amendment reflects the agency's current practice with regard to continuing education. The comment did not provide a rationale for deviating from the agency's existing practice of excluding continuing education obtained before Texas licensure. The Board also noted that, as stated above, a veterinary licensee who has successfully completed the Texas State Board Licensing Examination receives seventeen continuing education hours for the year in which they were examined and licensed.

The amendment to §573.64 is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, as well as §801.307, which authorizes the Board to adopt rules to require license holders to complete continuing education courses.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.64. Continuing Education Requirements.

(a) Required Continuing Education Hours.

(1) Licensed Veterinarians. Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas veterinary licenses, except as provided in subsection (b) of this section. Veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for 17 continuing education hours for the calendar year in which they were examined and licensed.

(2) Licensed Equine Dental Providers. Six (6) hours of acceptable continuing education shall be required annually for renewal of Texas equine dental provider licenses.

(3) Licensed Veterinary Technicians. Ten (10) hours of acceptable continuing education shall be required annually for renewal of Texas veterinary technician licenses.

(4) A licensee shall earn the required hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee earn acceptable continuing education hours during the year in excess of the required hours, the licensee may carry over and apply the excess hours to the requirement for the next year. Licensees may carry over excess hours to the following year only, and may not carry over more hours than the licensee is required to earn in a calendar year.

(5) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in writing and in the Board offices by no later than December 15. Should such extension be granted, twice the number of hours of continuing education required for a standard annual license renewal shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her renewal application electronically (on-line).

(6) A military service member, as defined in Chapter 55, §55.001, of the Texas Occupations Code, has up to two years to complete the required continuing education requirements for each renewal year.

(7) Except as provided in subsection (a)(1) of this section, continuing education hours obtained prior to licensure in Texas may not be applied toward the required number of continuing education hours.

(b) Exemption from Continuing Education Requirements for Veterinary Licensees. A veterinary licensee is not required to obtain or report continuing education hours, provided that the veterinary licensee submits to the Board sufficient proof that during the preceding year the veterinary licensee was:

(1) in retired status;

(2) a veterinary intern or resident; or

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or

(4) on inactive status. Veterinary licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(c) Make up Hours. The Board may require a licensee who does not complete the required hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the continuing education hours required to be completed in that year.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601086

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: March 22, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 305-7555

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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.1 - 821.31

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.1 - 821.31, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities. Sections 821.1 and 821.16 have been adopted with changes to the proposed text as published in the October 9, 2015 issue of the *Texas Register* (40 TexReg 7007). Sections 821.2 - 821.15 and 821.17 - 821.31 are adopted without changes and will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 821.1 - 821.31 have been reviewed and the board has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

The amendments clarify and update the rules, remove obsolete language, and ensure that the rules are consistent and continue to ensure public health and safety through the effective regulation of the profession.

The adopted rules are authorized by Occupations Code, Chapter 605, relating to the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

SECTION-BY-SECTION SUMMARY

Amendments to §821.1 update and align the description of the rules with the current rule headings.

Amendments to §821.2 renumber the section as necessary; update and clarify definitions; add definitions for education and off-the-shelf; distinguish indirect supervision provided to licensed students in residency from supervision provided to licensed assistants; and remove the requirement that the safety manager of an accredited facility be a licensee of the board.

Amendments to §821.3 revise the section title and remove an obsolete requirement for interim written reports by committees.

Amendments to §821.4 correct a reference for facility from the plural to the singular, and remove an obsolete reference to upgrading temporary licenses.

Amendments to §821.5 specify the World Education Service (WES) as the acceptable source for foreign transcript evaluations; correct an internal reference; and remove obsolete language related to the contents of the initial application form.

The amendment to §821.6 removes obsolete language related to the issuance of student registrations.

Amendments to §821.7 remove obsolete and contradictory language regarding examination approval and align the rules with current utilization of national examinations.

Amendments to §821.8 clarify the title; update and modify the requirements for licensure to provide two clear paths for uniquely qualified applicants; and correct internal references and a typographical error.

Amendments to §821.9 update the rules to reflect the current documentation applicants may submit as proof of completion of clinical residency.

Amendments to §821.10 update the title of the rule section; modify the educational requirements for initial licensure to be congruent with national standards; add a new requirement that prospective assistants apply and receive approval from the board prior to beginning the clinical residency, in order to ensure that the applicant is eligible for licensure and the required 1,000 hours are completed under the supervision of a current licensee as required by board rules; and increase the amount of time allowed for the completion of the residency for assistants from six months to one year.

The amendment to §821.11 clarifies that registration as a technician is voluntary and not required by state law, and does not authorize a registered individual to provide hands-on care to patients.

Amendments to §821.12 remove obsolete language related to examination approval while holding a temporary license.

Amendments to §821.13 reorganize existing language for clarity, remove obsolete references to clinical experience and residency hours, delete a duplicative provision related to the term of the license, which exists in another section, and remove a prohibition on the board issuing more than one student registration in the same specialty.

The amendments to §821.14 remove obsolete wording to align the rules with current utilization of national examinations and reflect the current process for issuing temporary licenses.

The amendments to §821.15 clarify that a facility must apply for accreditation prior to providing orthotic or prosthetic services, correct a grammatical error, and impose a new requirement that accredited facilities post their operating hours, including any temporary periods of closure, along with emergency contact information for patients to reach the facility.

The amendments to §821.16 remove obsolete wording and clarify that a student registration is required in order to complete a clinical residency in orthotics or prosthetics in Texas.

Amendments to §821.17 remove an obsolete requirement for signatures, since licensees may now apply for renewal online, and delete unnecessary wording related to the operation of an accredited facility with an expired accreditation.

Amendments to §821.18 clarify that the board shall provide notice only if the board proposes disciplinary action for failure to complete the required continuing education.

The amendment to §821.19 revises the wording related to the timeline for address changes for clarity.

The amendment to §821.20 deletes an obsolete reference.

Amendments to §821.21 update a statutory reference and correct a grammatical error.

The amendment to §821.22 modifies the wording of the rule for clarity.

The amendment to §821.23 corrects the punctuation of the rule.

Amendments to §821.24 align the rules with §821.2(17) and clarify that a facility accreditation may be surrendered.

The amendment to §821.25 corrects a reference from the singular to the plural.

The amendment to §821.26 corrects a grammatical error.

The amendment to §821.27 removes an obsolete reference to align the rules with current utilization of national examinations.

The amendment to §821.28 clarifies the intent and wording required on the consumer notification sign.

The amendment to §821.29 corrects a typographical error in a statutory reference.

The amendment to §821.30 corrects a typographical error to ensure that internal references are consistent.

The amendment to §821.31 corrects a typographical error where a word should have been capitalized.

COMMENTS

The board has reviewed and accepted the comments received regarding the proposed rules during the comment period. The commenters were associations, including the following: the Texas Medical Association and the Texas Orthopaedic Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: The Texas Medical Association and the Texas Orthopaedic Association recommended that the phrase "or a licensed physician" be retained at §821.2(3).

Response: The board disagrees, because the board does not have legal authority to allow licensed assistants to be supervised by any professional other than a licensed orthotist or prosthetist, as provided by Occupations Code, §605.255(b). No change was made to the rule as a result of this comment.

Comment: The Texas Medical Association and the Texas Orthopaedic Association requested that language be added to clarify that other persons who perform minimal self-adjustment on off-the-shelf orthotic devices are not engaged in "assistant patient care services" in §821.2(3).

Response: The board disagrees. The definition of assistant patient care services, both currently and once the proposed language is adopted, clearly specifies what an assistant licensed by the board can do, and does not in any way restrict a patient or a patient's personal caregiver from touching or adjusting a patient's orthosis. The board does not regulate any other persons or entities who legally supply or adjust devices in accordance with other Texas laws or rules, and therefore cannot include "supplier of the device" in this regulatory definition that applies to licensed assistants. No change was made to the rule as a result of this comment.

Comment: The Texas Medical Association and the Texas Orthopaedic Association requested that a definition for minimal self-adjustment be added to the rules and suggested specific

language that referenced certified orthotists or individuals with specialized training.

Response: The board disagrees, because the board's authority extends to the licensing and regulation of only those license types established in Occupations Code, Chapter 605. The board lacks authority to grant any additional rights to persons who possess certifications, or persons with specialized training other than that required to obtain or renew a license issued by the board. No change was made to the rule as a result of this comment.

Comment: The Texas Medical Association and the Texas Orthopaedic Association requested that the definition for "Off-The-Shelf" orthotic devices in §821.2(27) be revised to include language stating that these devices are not included within the categories of "custom-fabricated" and "custom-fitted" devices.

Response: The board disagrees because the proposed language could be misleading if read out of context. No change was made to the rule as a result of this comment.

Concerning §821.1(b) and §821.16(g)(5)(C), the board made revisions to these sections to provide correct punctuation and grammar, which improve the flow, accuracy and readability of the rules.

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties. Review of the sections implements Government Code, §2001.039.

§821.1. Introduction.

(a) Purpose. This chapter implements the Texas Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605, concerning prosthetic and orthotic regulation.

(b) Content. This chapter covers definitions; operation of the board; fees; general application procedures; general licensing procedures; examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; acquiring professional licensure as a uniquely qualified person; licensing by examination; assistant license; technician registration; student registration; temporary license; upgrading a student registration; accreditation of prosthetic and orthotic facilities; standards, guidelines, and procedures for a professional clinical residency; license renewal; continuing education; change of name and address; complaints; professional standard and disciplinary provisions; licensing persons with criminal backgrounds; default orders; surrender of license; suspension of license under the Family Code; civil penalty; program accessibility; consumer notification; petition for the adoption of a rule, criminal history evaluation letter, and licensing of military service members, military veterans, and military spouses.

§821.16. Standards, Guidelines, and Procedures for a Professional Clinical Residency.

(a) General. The board will accept a professional clinical residency having standards that are equivalent to or exceed NCOPE standards and those set forth in this chapter.

(b) Clinical residency programs must be equivalent to current NCOPE standards.

(c) Residency Conditions. The resident's involvement in patient care must meet current NCOPE standards.

(d) Supervision of clinical resident. A clinical resident must be directly involved in providing patient care, under the supervision of a Texas licensed practitioner whose license is in the same discipline in which residency is being completed.

(e) Written description of program. A professional clinical residency must provide the residents with a written description of the educational program, including the scope and duration of assignments to other facilities, if part of the clinical residency. The written description of the program must be equivalent to NCOPE requirements and must be addressed in the written description:

(1) the term of residency;

(2) written job description;

(3) pertinent policies and procedures;

(4) safety requirements;

(5) patient confidentiality;

(6) liability and malpractice insurance;

(7) expectations;

(8) limitations and restrictions of residency; and

(9) the name of the Texas licensed practitioner who is designated as the program director.

(f) Facility requirements. A facility must:

(1) be accredited by the board or be exempt as described in §821.15 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities);

(2) have the resources and adequate facilities for residents to fulfill their education and patient care responsibilities; and

(3) have resources and adequate facilities for residents to develop proficiency in laboratory skills in prosthetic and orthotic fabrication; and

(4) meet current NCOPE requirements.

(g) Responsibilities of the program director.

(1) Each program director must meet the current NCOPE requirements.

(2) Prosthetic and orthotic supervising licensee-to-resident ratio shall not exceed one Texas licensed practitioner to two residents.

(3) The program director shall maintain documentation of residents' agreements.

(4) The program director shall supervise residents during patient care. Direct supervision of critical care events is required. Indirect supervision of clinical procedures, except critical care events, is allowed throughout the residency. The supervision must be provided by a practitioner licensed in Texas in the discipline being taught. Overall assurance of quality patient care is the ultimate responsibility of the supervising practitioner.

(5) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be completed quarterly. This determination is the program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the director and staff, each program:

(A) evaluates the knowledge, skills and professional growth of its residents, at least quarterly;

(B) provides to residents a written assessment of their performance quarterly; and

(C) maintains written evaluations on forms prescribed by the board, as a part of the performance record for each resident. The performance record of each resident shall be available to that resident.

(h) Resident responsibilities and qualifications.

(1) The resident shall be responsible for participating in safe, effective and compassionate patient care under supervision commensurate with his or her level of advancement and responsibility.

(2) The resident must hold a student registration.

(i) Residency objectives.

(1) Clinical assessment. Upon completion of a residency, a person must be proficient in current NCOPE requirements, including clinical assessment skills for an individual requiring prosthetic and/or orthotic services as displayed by the ability to:

(A) obtain a history of the patient to determine the need for a specific device by:

(i) interviewing the patient;

(ii) interviewing others, if necessary; and/or

(iii) reviewing available records;

(B) observe gait, coordination, present device if available and other physical characteristics to supplement patient history and physical examination;

(C) examine the patient to determine skin condition, joint range of motion and muscle strength;

(D) assess the specific needs of individual patients by integrating the information obtained from history, examination and observation;

(E) discuss with the patient his or her needs and expectations;

(F) provide information to the patient, family and involved health professionals regarding a device's potential advantages and disadvantages to assure understanding of the treatment plan and cooperation of the individuals involved;

(G) develop a treatment protocol for the specific patient by review of data obtained to determine a specific device recommendation and plan for its use; and

(H) obtain and accurately record appropriate measurements and other data from the patient to design the recommended device.

(2) Patient management. Upon completion of a residency, a person must be proficient in patient management skills under current NCOPE requirements for prosthetic and/or orthotic patients as displayed by the ability to:

(A) measure a patient by using proper instruments and tests. Compile data to be used in device design and fabrication;

(B) manipulate the patient's limbs to provide correction, position or deformation to obtain the most appropriate information;

(C) replicate the patient's body or limbs to obtain an accurate anatomical impression to be used in fabricating a prosthesis and orthosis;

(D) achieve optimum comfort, function and cosmesis by using proper fitting techniques;

(E) visually evaluate if a patient's gait has achieved optimum prosthetic and/or orthotic function;

(F) achieve optimum alignment and function of a patient's prosthesis and/or orthosis by evaluating the sagittal, transverse and coronal planes;

(G) maintain proper documentation of the patient's treatment history through established records keeping techniques; and

(H) provide ongoing patient care to assure continued proper fit and function of the prosthesis and orthosis.

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

Filed with the Office of the Secretary of State on March 2, 2016.

TRD-201601082
Rebecca Brou
Chair
Texas Board of Orthotics and Prosthetics
Effective date: March 22, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 776-6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER A. KIDNEY HEALTH CARE

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§61.1 - 61.5 and 61.7 - 61.10, new §61.11, and repeal of §61.11, concerning the Kidney Health Care (KHC) Program (program). The amendments to §§61.1 - 61.5 and 61.7 - 61.10; new §61.11 and the repeal of §61.11 are adopted without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7561) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The KHC Program serves Texas residents with an end-stage renal disease (ESRD) diagnosis, who are not Medicaid eligible, and have a gross income of less than $60,000 annually. The program provides Medicare Part D premium payment, deductible and coinsurance benefits; limited drug benefits; travel reimbursement for ESRD related travel up to 13 round trips monthly; and allowable dialysis and access surgery benefits.

The KHC rules implement Texas Health and Safety Code, Chapter 42, Kidney Health Care, and set guidelines necessary for the administration of the program. The amendments to §§61.1 - 61.5 and 61.7 - 61.10, repeal of §61.11, and new §61.11 are necessary to strengthen and clarify understanding of the program, and improve flow, accuracy, and clarity of the rules.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.1 - 61.5 and 61.7 - 61.11 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because

rules on this subject are required to comply with statutory requirements and to effectively operate the program.

SECTION-BY-SECTION SUMMARY

Amendments to §61.1 update existing language for accuracy and clarity by adding the term "authorized entities" and replacing the acronym "KHC" with the word "program."

Amendments to §61.2 revise existing definitions, remove unnecessary definitions, and add new definitions. New terms used in this subchapter include authorized entity; enrolled provider; incomplete claim; resubmitted claim; and veteran's programs.

Amendments to §61.3 update the program requirement to align with eligibility requirements of the Social Security Administration and replace the acronym "KHC" with the word "program."

Amendments to §61.4 add language which stipulates that applications must be submitted by an authorized entity. The notary requirement was removed to streamline the application process.

Amendments to §61.5 replace the term "drug products" with "supplies" to accurately reflect program benefits; add language that better describes benefit limitations; and replace the acronym "KHC" with the word "program."

Section 61.6 was moved into new 1 TAC §392.605, concerning Kidney Health Care Provider Requirements and Effective Dates, to comply with the consolidation of contract and procurement rules under the Health and Human Services Commission. Section 392.605 defines some words and terms used in Subchapter G (relating to Contracting with Providers for Certain DSHS Programs), and establishes certain requirements for providers to qualify as providers for the program. This section also establishes effective dates for all enrolled provider agreements and pharmacy agreements.

Amendments to §61.7 add language that specifies who may file claims; remove reference to the Automated System for Kidney Information Tracking to allow for an updated software application; and replace the acronym "KHC" with the word "program." Amendments in this section also add new language that the program will not pay claims for medical benefits until the provider has entered into a fully executed provider agreement.

Amendments to §61.8 clarify existing language by explaining that claims that do not meet the filing deadlines will be denied; and replacing the term "approved" provider with "enrolled" provider for consistency throughout the subchapter.

Amendments to §61.9 clarify existing language related to client and provider rights and responsibilities; add new language to outline responsibilities for authorized entities; and replace the acronym "KHC" with the word "program."

Amendments to §61.10 clarify existing language by specifying that clients must reapply for benefits when program eligibility is terminated, and by replacing the acronym "KHC" with the word "program."

New §61.11 clarifies the rights of appeal for applicants, clients, and providers by outlining the circumstances for which an administrative review may be requested.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§61.1 - 61.5, 61.7 - 61.11

STATUTORY AUTHORITY

The amendments and new section are authorized by Health and Safety Code, §42.003(c), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to carry out Chapter 42 and to provide adequate kidney care and treatment for citizens of this state; and by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601152
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: March 27, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 776-6972

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25 TAC §61.11

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §42.003(c), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to carry out Chapter 42 and to provide adequate kidney care and treatment for citizens of this state; and by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on March 7, 2016.

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Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: March 27, 2016
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For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER L. REPORTING REQUIREMENTS FOR LIABILITY INSURANCE UNDER THE INSURANCE CODE, ARTICLE 1.24A AND ARTICLE 1.24B

28 TAC §§5.9201, 5.9202, 5.9204

The Texas Department of Insurance adopts the repeal of 28 TAC Chapter 5, Subchapter L, concerning Reporting Requirements for Liability Insurance Under the Insurance Code, Article 1.24A and Article 1.24B, without changes from the proposal that was published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9071). The repeal conforms the rules to changes made by SB 784, 84th Legislature, Regular Session (2015).

EXPLANATION. SB 784 repeals Insurance Code Chapter 38, Subchapter D, eliminating the data collection on closed claims and the requirement for TDI to compile an annual closed claim report. SB 784 also deletes the references to Subchapter D in Insurance Code §§2206.002(b), 2207.002(b), 2208.002(b), and 2212.053(a).

The repeal of Chapter 5, Subchapter L, deletes TDI's annual and reconciliation closed claim liability insurance data calls, including associated quarterly report forms and instructions.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. There were no comments.

STATUTORY AUTHORITY. TDI adopts the repeal of Chapter 5, Subchapter L, under Insurance Code Chapter 38, Subchapter D, which eliminates the requirement for data calls and the legislative report on liability insurance for closed claims reports. SB 784 also deletes the references to Subchapter D in Insurance Code §§2206.002(b), 2207.002(b), 2208.002(b), and 2212.053(a). Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS-REFERENCE TO STATUTE. The repeal implements the repeal of Insurance Code Chapter 38, Subchapter D.

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601022
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 20, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 676-6584

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CHAPTER 19. AGENTS' LICENSING

The Texas Department of Insurance adopts amendments to 28 TAC Chapter 19, Subchapter R, Utilization Reviews For Health Care Provided under a Health Benefit Plan or Health Insurance Policy, §19.1714, Regulatory Requirements Subsequent to Certification or Registration; and Subchapter U, Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage, §19.2014, Regulatory Requirements Subsequent to Certification or Registration, without changes from the proposal that was published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9073). The amendments conform the rules to changes made by SB 784, 84th Legislature, Regular Session (2015).

EXPLANATION. SB 784 repealed Insurance Code §4201.204(c) requiring utilization review agents to submit to the commissioner summary reports of all complaints. Title 28 TAC §19.1714 and §19.2014 expanded the reporting requirement to include adverse determinations and appeals of adverse determinations. The amendments to §19.1714(a) - (c) and §19.2014(a) - (c) remove the requirement for the summary reports.

Section 19.1714 and §19.2014 are also amended to increase the number of days that a utilization review agent has to respond to a TDI inquiry from 10 to 15 days, to comply with SB 183, 83rd Legislature, Regular Session (2013), which amended Insurance Code §38.001.

The amendments also include nonsubstantive changes to conform the text to current agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. There were no comments.

SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY

28 TAC §19.1714

STATUTORY AUTHORITY. TDI adopts the amendments to §19.1714 under Insurance Code §4201.204(c), which was repealed, eliminating the requirement for utilization review agents to submit to the commissioner summary reports. Insurance Code §38.001 allows 15 days for a utilization review agent to respond to TDI. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS-REFERENCE TO STATUTE. The amendments implement the repeal of Insurance Code §4201.204(c).

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601025

Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 20, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 676-6584

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SUBCHAPTER U. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER WORKERS' COMPENSATION INSURANCE COVERAGE

28 TAC §19.2014

STATUTORY AUTHORITY. TDI adopts the amendments to §19.2014 under Insurance Code §4201.204(c), which was repealed, eliminating the requirement for utilization review agents to submit to the commissioner summary reports. Insurance Code §38.001 allows 15 days for a utilization review agent to respond to TDI. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS-REFERENCE TO STATUTE. The amendments implement the repeal of Insurance Code §4201.204(c).

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

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601026
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 20, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

SUBCHAPTER C. GENERAL PROVISIONS

30 TAC §35.29

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §35.29.

The amendment is adopted *without change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9484) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register,* the commission also adopts the amendment to §55.255 and the repeal of §80.271, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

The commission adopts an updated a cross-reference in §35.29 from §80.271, which is concurrently adopted for repeal, to §80.272. Section 80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In addition to the adopted amendment, various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

Final 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 adopted amendment to §35.29 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a cross-reference in a commission rule regarding a CCH for emergency and temporary order applications.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productiv-

ity, 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 adopted amendment to §35.29 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This adopted 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 rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the adopted rulemaking is to update a cross-reference to a rule that implemented changes made to the APA in SB 1267. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted 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 the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

Statutory Authority

The amendment is adopted 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, Chapter 5, Subchapter L, concerning Emergency and Temporary Orders, which authorizes the commission to issue and hold hearings regarding emergency and temporary orders. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted amendment implements TWC, §5.504; Texas Government Code, §2001.004; and Senate Bill 1267 (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 March 4, 2016.

TRD-201601101
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 24, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2141

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §55.255

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §55.255.

The amendment is adopted *without change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9491) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS).

In corresponding rulemaking published in this issue of the *Texas Register,* the commission adopts the amendment to §35.29 and to repeal §80.271, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

§55.255, Commission Action on Hearing Request

The adopted amendment to §55.255(e) is to implement SB 1267, Section 9. SB 1267, Section 9, which amends Texas Government Code, §2001.146, changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. On December 9, 2015, the commission adopted similar changes to §55.211(f) and §80.272.

In addition to the adopted amendment, the adoption also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms and rule structure. These changes are non-substantive and generally not specifically discussed in this preamble.

Final 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 adopted amendment to §55.255 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a rule regarding commission action on requests for CCH.

The 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 adopted amendment to §55.255 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This adopted 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 rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the adopted rulemaking is to implement changes made to the APA in SB 1267. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted 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 the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

Statutory Authority

The amendment is adopted 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; TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications; TWC, §11.132, concerning Notice, which provides opportunity for contested case hearing on water rights applications; TWC, §11.134, concerning Action on Application, which authorizes the commission to grant or deny an application for water rights; TWC, §49.011, concerning Notice Applicable to Creation of a District by the Commission, which authorizes the commission to act on districts applications under TWC, Chapters 36, 50, 51, 54, 55, 58, 65, and 66; and Texas Health and Safety Code, §401.114, concerning Notice and Hearing, which authorizes the commission to grant or renew a radioactive waste disposal license. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted amendment implements Texas Government Code, §2001.146, and Senate Bill 1267 (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 March 4, 2016.

TRD-201601102
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 24, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2141

CHAPTER 80. CONTESTED CASE HEARINGS
SUBCHAPTER F. POST HEARING PROCEDURES

30 TAC §80.271

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §80.271.

The proposed repeal was published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9494).

Background and Summary of the Factual Basis for the Adopted Rule.

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS). The applicable rule, §80.272, was amended by the commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In corresponding rulemaking published in this issue of the *Texas Register,* the commission adopts the amendments to §35.29 and §55.255, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

Section 80.271 is adopted for repeal because the changes adopted by the commission on December 9, 2015, to §80.272 make §80.271 obsolete.

Final 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 adopted repeal of §80.271 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, §80.271 is obsolete.

The 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 adopted repeal of §80.271 is necessary to complete the implementation of SB 1267 by removing an ob-

solete rule. The repealed rule, §80.271, is procedural in nature and does not directly impact the cost of CCHs. This adopted 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 rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The primary purpose of the adopted rulemaking is to repeal an obsolete rule, §80.271. This is necessary to complete the implementation of SB 1267. Section 80.271 is procedural in nature and does not directly impact the cost of CCHs. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted repeal of §80.271 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 the adopted repeal of §80.271 and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule repeal is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

Statutory Authority

The repeal is adopted 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; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted repeal implements Texas Government Code, §2001.004, and Senate Bill 1267 (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 March 4, 2016.

TRD-201601103
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 24, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2141

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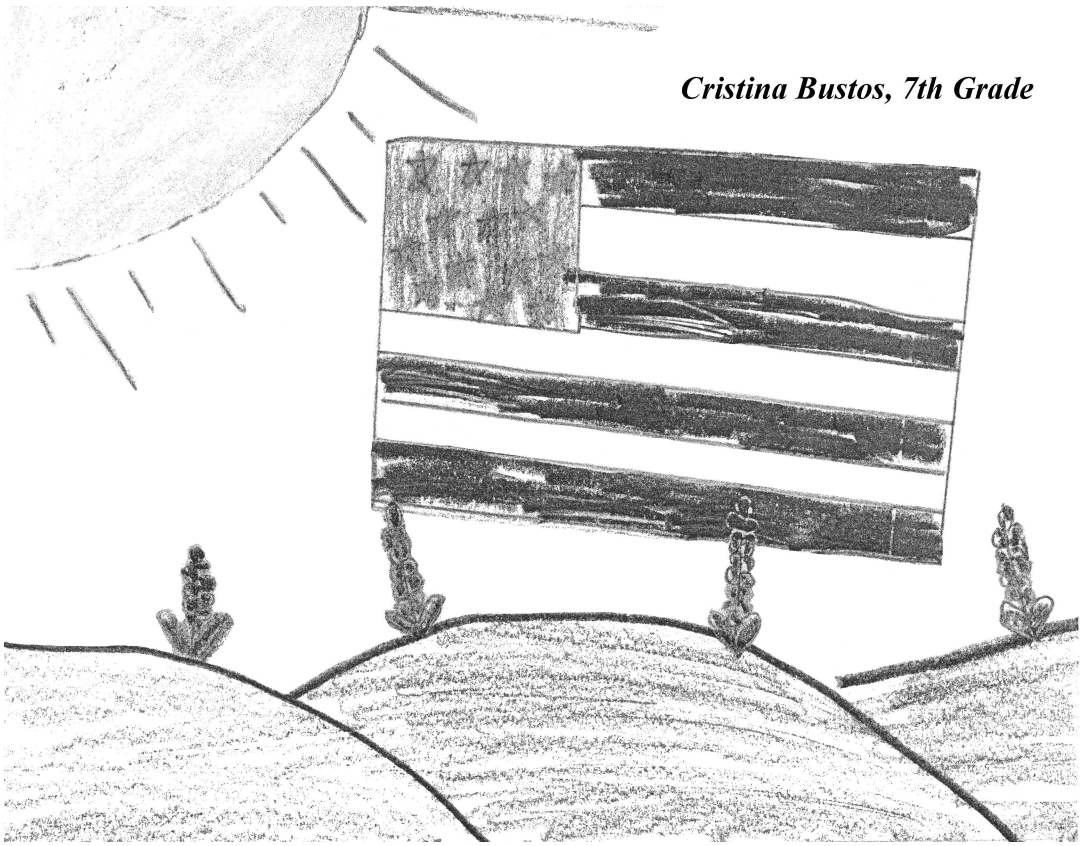

Cristina Bustos, 7th Grade

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

Executive Council of Physical Therapy and Occupational Therapy Examiners

Title 22, Part 28

The Executive Council of Physical Therapy and Occupational Therapy Examiners files this notice of its intent to review Chapter 651, concerning fees, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Executive Council of Physical Therapy and Occupational Therapy Examiners as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Executive Council of Physical Therapy and Occupational Therapy Examiners.

Comments on the review may be submitted to Jennifer Jones, Business Manager, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to *jennifer@ptot.texas.gov* no later than 30 days from the date that this notice is published in the *Texas Register.*

TRD-201601150
John P. Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Filed: March 7, 2016

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Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (Board) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 22, Part 24, Chapter 571 relating to Licensing.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The Board will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The assessment made by the Board indicates that the reasons for initially adopting the chapter do continue to exist.

Comments pertaining to this notice of intention to review may be submitted by email to *vet.board@veterinary.texas.gov* or by mail or hand-delivery to Loris Jones, Executive Assistant, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701. Comments should clearly specify the particular section of the rule to which they apply and include proposed alternative language as appropriate. General comments should be designated as such.

Any proposed changes to the rules 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 by the Board.

TRD-201601088
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: March 2, 2016

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Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code, Title 7, §§91.302 (Election or Other Membership Vote By Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting), 91.310 (Annual Report to Membership), and 91.315 (Members' Access to Credit Union Documents) as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9319).

The rules were reviewed as a result of the Credit Union Department's (Department) general rule review, which was conducted in accordance with Texas Government Code §2001.039.

The Department hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Department's legal authority to readopt.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.302, 91.310, and 91.315 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201601120
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 7, 2016

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Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (Board) has completed the review of Texas Administrative Code, Title 22, Part 24, Chapter 573 (Rules of Professional Conduct) in its entirety.

Notice of the review of Chapter 573 was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8705). No comments were received in response to the notice.

The Board believes the reasons for initially adopting Chapter 573 continue to exist. However, the Board has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 573, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the Board finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 573 in accordance with the requirements of Texas Government Code §2001.039.

TRD-201601087
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: March 2, 2016

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 22 TAC §102.1

SCHEDULE OF FEES

DENTIST	Board Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	84th Leg - SB 195	Total Fee
Application by Exam	$215.00	$5.00	$7.00	$5.00	$55.00	$8.00	$295.00 [$287.00]
Annual Renewal	$150.00	$4.00	$7.00	$1.00	$55.00	$8.00	$225.00 [$217.00]
Annual Renewal - Late 1 to 90 days	$225.00	$4.00	$7.00	$1.00	$55.00	$8.00	$300.00 [$292.00]
Annual Renewal - Late 90 to 365 days	$300.00	$4.00	$7.00	$1.00	$55.00	$8.00	$375.00 [$367.00]
Licensure by Credentials	$2,800.00	$5.00	$7.00	$5.00	$55.00	$8.00	$2,880.00 [$2,872.00]
Temporary Licensure by Credentials	$750.00	$5.00	$7.00	$5.00	$55.00	$8.00	$830.00 [$822.00]
Provisional License	$100.00						$100.00
Faculty Initial Application	$115.00	$4.00	$7.00	$5.00	$55.00	$8.00	$194.00 [$186.00]
Faculty Annual Renewal	$95.00	$3.00	$7.00	$1.00	$55.00	$8.00	$169.00 [$161.00]
Faculty Annual Renewal - Late 1 to 90 days	$142.50	$3.00	$7.00	$1.00	$55.00	$8.00	$216.50 [$162.50]
Faculty Annual Renewal - Late 90 to 365 days	$190.00	$3.00	$7.00	$1.00	$55.00	$8.00	$264.00 [$256.00]
Conversion Fee - Faculty to Full Privilege	$50.00						$50.00
Nitrous Oxide and Level 1 Anesthesia Application	$32.00						$32.00
Nitrous Oxide and Level 1 Anesthesia Annual Renewal	$10.00						$10.00
Level 2 thru Level 4 Anesthesia Application	$60.00						$60.00
Level 2 thru Level 4 Anesthesia Annual Renewal	$10.00						$10.00
Portability of Anesthesia Level 3 thru Level 4 Application	$120.00						$120.00
Application to Reactivate a Retired License	$75.00						$75.00
Reinstatement of a Canceled Dental Licesne	$450.00 [$434.00]						$450.00 [$434.00]
Duplicate License / Renewal	$25.00						$25.00

SCHEDULE OF FEES

	Board Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	84th Leg - SB 195	Total Fee
Conversion Fee - Full Privilege to Faculty	$50.00						$50.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$2,050.00	$5.00	$7.00	$5.00	$55.00		$2,122.00
DENTAL HYGIENIST							
Application by Exam	$115.00	$4.00	$2.00	$5.00			$126.00
Annual Renewal	$100.00	$3.00	$2.00	$1.00			$106.00
Annual Renewal - Late 1 to 90 days	$150.00	$3.00	$2.00	$1.00			$156.00
Annual Renewal - Late 90 to 365 days	$200.00	$3.00	$2.00	$1.00			$206.00
Licensure by Credentials	$630.00	$4.00	$2.00	$5.00			$641.00
Temporary Licensure by Credentials	$220.00	$4.00	$2.00	$5.00			$231.00
Faculty Initial Application	$115.00	$4.00	$2.00	$5.00			$126.00
Faculty Annual Renewal	$83.00	$3.00	$2.00	$1.00			$89.00
Faculty Annual Renewal - Late 1 to 90 days	$124.50	$3.00	$2.00	$1.00			$130.50
Faculty Annual Renewal - Late 90 to 365 days	$166.00	$3.00	$2.00	$1.00			$172.00
Conversion Fee - Faculty to Full Privilege	$50.00						$50.00
Application to Reactivate a Retired License	$75.00						$75.00
Reinstatement of a Canceled Dental Hygiene License	$212.00						$212.00
Duplicate License / Renewal	$25.00						$25.00
Nitrous Oxide Cons Sed Monitoring Application	$12.00						$12.00
Nitrous Oxide Monitoring Duplicate Certificate	$10.00						$10.00
Conversion Fee - Full Privilege to Faculty	$50.00						$50.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$410.00	$4.00	$2.00	$5.00			$421.00

SCHEDULE OF FEES

	Board Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	84th Leg - SB 195	Total Fee
DENTAL ASSISTANT							
Initial Application	$31.00			$5.00			$36.00
Annual Renewal	$29.00	$2.00		$1.00			$32.00
Annual Renewal - Late 1 to 90 days	$43.50	$2.00		$1.00			$46.50
Annual Renewal - Late 90 to 365 days	$58.00	$2.00		$1.00			$61.00
Duplicate License / Renewal	$25.00						$25.00
Pit and Fissure Sealant Application	$30.00						$30.00
Pit and Fissure Sealant Renewal	$18.00						$18.00
Duplicate Pit Fissure Certificate	$15.00						$15.00
Nitrous Oxide Cons Sed Monitoring Application	$12.00						$12.00
Nitrous Oxide Monitoring Duplicate Certificate	$10.00						$10.00
Coronal Polishing Application	$12.00						$12.00
Duplicate Coronal Polishing Certificate	$10.00						$10.00
DENTAL LABORATORIES							
Application	$120.00			$5.00			$125.00
Annual Renewal	$131.00	$4.00		$1.00			$136.00
Annual Renewal - Late 1 to 90 days	$196.50	$4.00		$1.00			$201.50
Annual Renewal - Late 90 to 365 days	$262.00	$4.00		$1.00			$267.00
Duplicate Certificate	$25.00						$25.00
OTHER							
Mobile Application	$120.00						$120.00

SCHEDULE OF FEES

	Board Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	84th Leg - SB 195	Total Fee
Annual Mobile Renewal	$60.00						$60.00
Duplicate Certificate Mobile Certificate	$15.00						$15.00
Dentist Intern / Resident Prescription Privileges	$50.00					$8.00	$58.00 [$50.00]
Dental Assistant Course Provider	$100.00						$100.00
Jurisprudence	$54.00						$54.00
Licensure Verification without Seal	$4.00						$4.00
Licensure Verification with Seal	$9.00						$9.00
Criminal History Letter	$25.00						$25.00
Printed Copy - Rules and Regulations	$20.00						$20.00
Printed Copy - TX Occupations Code - Dental Practice Act	$15.00						$15.00
Printed Consumer Signage	$5.00						$5.00
Board Scores	$10.00						$10.00

Figure: 28 TAC §34.521(e)

DO NOT REMOVE
EQUIPMENT IMPAIRED

Name,
Address, &
Telephone Number
of Fire Protection Firm

_____
Certificate of Registration Number

_____
Name of Licensee

_____
Signature

_____
License Number

_____
Date

OWNER'S NAME and ADDRESS:

_____
_____
_____
_____

LIST of IMPAIRMENTS:

_____
_____
_____
_____
_____
_____

Figure: 28 TAC §34.622(k)

DO NOT REMOVE BY ORDER OF
TEXAS STATE FIRE MARSHAL
(for at least five years)
INSPECTION/TEST RECORD
Registered Firm's Name
Street Address, City, State, Zip
Phone Number **ACR**-(*number*)

Name and Address of the Business

Date - Licensee Signature - License #

Type of Inspection/Test Performed - NFPA 72

☐ New Installation ☐ Quarterly
☐ Semi Annual ☐Annual

Last Date of Sensitivity Test, if known

_____

Status After Inspection/Test

☐ Acceptable ☐ Yellow Label *(attached)* ☐ Red Label *(attached)*

Figure: 28 TAC §34.722(h)

DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL

RED TAG

Name & Address
of Sprinkler Firm
Phone Number
SCR-Number

RME's License Number

Printed name of service person

Signature of authorized serviceperson / inspector

IMMEDIATELY REPORT STATUS TO OWNER AND AHJ IN WRITING (within 5 business days)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2015		2016		2017		2018		2019		2020	

If the system impairments constitute an "emergency" impairment as defined in NFPA 25, attached this red tag to the applicable system riser. An authorized individual may remove this tag after a service tag has been attached indicating the condition has been corrected.

Name of Owner or Occupant

Address

Building No. or Location or System No.

List Emergency Impairments

Figure: 28 TAC §34.1302(a)

Citation	Violation	Fine		Citation	Violation	Fine
	License and Registration			34.517(e)	Fixed system not installed or serviced by Type A or EPL	$2,000.00
6001.152(a)	Branch office registration certificate required	$1,000.00			**Installation and Service**	
6001.161(a)	Apprentice permit required	$500.00		34.517(a)(1)	Portable extinguisher not installed/serviced/maintained IAW manufacturer's instructions	$50.00-$500.00
6001.251(a)(1)	No registration certificate (portable)	$3,000.00		34.517(a)(2)	Service tag not attached upon completion	$250.00
6001.251(a)(2)	No registration certificate (fixed)	$3,000.00		34.517(b)(1)	Fixed system not planned/installed/serviced IAW 'manufacturer's Instructions	$50.00-$500.00
6001.251(a)(3)	No license	$3,000.00		34.517(b)(2)	Installation label not affixed to system upon completion	$250.00
34.510(e)(10)(A)	No C registration for U.S. DOT extinguishers	$2,000.00		34.517(b)(3)	Installation label not signed and affixed to system by Type A or PL licensee (non pre-engineered)	$500.00
34.510(e)(10)(B)	No verification of U.S. DOT registration	$2,000.00		34.517(b)(3)	Licensee who signed label was not at final test (non pre-engineered)	$500.00
34.510(f)	Registration information not displayed on vehicle	$250.00		34.517(b)(4)	Service tag not attached after service completion	$500.00
34.511(f)(1)	Licensee not employed by registered firm	$2,000.00		34.517(f)	Pre-engineered kitchen system not UL300	$2,000.00
34.511(f)(3)	Failure to notify SFMO of termination of employee within 14 days	$250.00		34.517(h)	Fusible link manufacturer date not within 1 year	$500.00
34.513	Alteration of certificates, licenses, or permits	$3,000.00		34.517(i)	Actuation cartridge not dated	$500.00
34.514(a)(5)(b)	Failure to maintain proof of insurance on file at SFMO	$750.00		34.517(j)	Tamper indicator not dated	$500.00
	Adopted Standards			34.518(a)	Shop drawings not on file or not given to owner	$500.00
34.517(a)(1)	Failure to abide by adopted standards or manufacturers requirements for portable extinguishers	$50.00 - $500.00		34.518(c)	Shop drawings not signed by EPL	$500.00
34.517(b)(1)	Failure to abide by adopted standards or manufacturers requirements for fixed extinguishers			34.519(a)	Service tag not completed in detail	$250.00
	Location and Business Practices			34.520(b)	Service tag not completed each time service is performed	$500.00
34.510(d)	Failure to maintain business location	$500.00		34.521(a)	Owner not notified immediately of impaired portable or fixed extinguisher	$500.00
34.510(e)	Failure to maintain shop	$50.00-$500.00		34.521(a)	AHJ not notified within 24 hrs of impaired portable or fixed extinguisher	$500.00
6001.252(a)(3)	Misrepresentation of goods or services	$250.00-$1,000.00		34.521(a)	Written notice to owner; copy of written notice to AHJ within 3 days	$500.00
34.517(c)	Pre-engineered system not installed or serviced by authorized licensee	$2,000.00		34.521(a)	Failed to attach red tag to impaired extinguisher	$500.00
34.517(e)	Fixed system not planned by EPL or professional engineer	$2,000.00		34.521(a)	Service tag attached to impaired extinguisher	$1,000.00

34.514(a)(5)(B)	**Lapse of Insurance**				
Months	Punitive	+	Amount saved		Total
0 - 1	$200	+	$125	=	Warning Letter
1 - 2	$500	+	$250	=	$750
2 - 3	$500	+	$375	=	$875
3 - 4	$500	+	$500	=	$1,000
4 - 5	$500	+	$625	=	$1,125
5 - 6	$500	+	$750	=	$1,250
6 - 7	$750	+	$875	=	$1,625
7 - 8	$750	+	$1,000	=	$1,750
8 - 9	$750	+	$1,125	=	$1,875
9 - 10	$750	+	$1,250	=	$2,000

10 - 11	$750	+	$1,375	=	$2,125
11 - 12	$750	+	$1,500	=	$2,250

Figure: 28 TAC §34.1302(b)

6002.152(a)	Branch office registration certificate required	$1,000.00		34.617	Failure to distribute/retain certificate	$500.00
6002.154(a)	No licensed employee	$1000.00		34.618	Installation inspection improperly performed/documented	$50.00-$500.00
6002.154(b)	No license	$3,000.00		34.618	Installation inspection improperly documented	$500.00
6002.154(c)	Licensee not an employee of registered firm	$750.00		34.618	Installation inspection docs not on file for 5 yrs	$500.00
6002.301	Engage in business w/o license or registration certificate	$3,000.00				
	Adopted Standards			34.619(a)	System/modification not planned by authorized person	$3,000.00
34.616(b)(4)	Violation of standards established by 34.607	$50.00-$500.00		34.619(b)	Plans not submitted to AHJ	$500.00
34.6616(b)(4)	Violation of standards established by manufacturers requirements (NFPA 72, §10.3.2)	$50.00-$500.00		34.619(b)	Plans incorrectly submitted to AHJ	$250.00
					Labels	
	Location Business Practices			34.620(a)	Installation label not affixed to inside of control panel cover	$500.00
34.610(a)	Failure to maintain business location	$500.00		34.620(d)	Installation label improperly formatted or incomplete	$500.00
34.610(b)	Designated employee	$500.00		34.620(f)	Installation label incorrectly formatted or incomplete (1 or 2 family)	$500.00
34.610(c)	Registration information not displayed on vehicle	$250.00		34.621(a)	Service label not affixed to control panel cover	$500.00
34.611(f)(2)	Failure to notify SFMO of termination of employee within 14 days	$250.00		34.621(b)	Information about yellow or red label not on service label that corrected the impairments	$500.00
34.616(b)(1)	Installation not performed by or under direct supervision of authorized licensee	$3,000.00		34.623(c) (yellow) 34.624(c) (red)	Owner or AHJ not notified of impairment	$500.00
34.616(b)(1)	Certifying licensee not licensed under ACR of primary registered firm or certifying licensee not present for final acceptance test	$1,000.00		34.621(h)	Service label improperly formatted or incomplete	$500.00
34.616(b)(2)	Licensee attaching label not licensed under ACR of primary registered firm	$1,000.00		34.622(a)	Inspection/test label not filled out in detail or not affixed to inside of control panel cover	$500.00
34.616(b)(2)	Service and maintenance not performed by or under direct supervision of authorized licensee	$3,000.00		34.622(d)	Owner or AHJ not notified of impairment	$500.00
6002.302(a)(3)	Misrepresentation of goods or services	$250.00-$1,000.00		34.622(j)	Inspection/test label incorrectly formatted/incomplete	$500.00
	Monitoring			34.623(a)	Completed yellow label not attached to outside of control panel of impaired system	$500.00
34.616(c)(1)	Monitoring an alarm for an unregistered firm	$3,000.00		34.623(g)	Yellow label incorrectly formatted/incomplete	$500.00
34.616(c)(2)(A)	Connecting an alarm to an unregistered monitoring firm	$2,000.00		34.624(a)	Completed red label not attached to outside of impaired system	$1,000.00
34.616(3)	No licensed technician at central station	$1,000.00		34.624(g)	Red label improperly formatted/incomplete	$500.00

34.613(a)(5)(B)	**Lapse of Insurance**				
Months	Punitive	+	Amount saved		Total
0 - 1	$200	+	$125	=	Warning Letter
1 - 2	$500	+	$250	=	$750
2 - 3	$500	+	$375	=	$875
3 - 4	$500	+	$500	=	$1,000
4 - 5	$500	+	$625	=	$1,125
5 - 6	$500	+	$750	=	$1,250
6 - 7	$750	+	$875	=	$1,625
7 - 8	$750	+	$1,000	=	$1,750
8 - 9	$750	+	$1,125	=	$1,875
9 - 10	$750	+	$1,250	=	$2,000

10 - 11	$750	+	$1,375	=	$2,125
11 - 12	$750	+	$1,500	=	$2,250

Figure: 28 TAC §34.1302(c)

Citation	Violation	Fine		Citation	Violation	Fine
	Certificates of Registration and Licenses				**Planning and Installation**	
6003.151(a)	Engage in business w/o registration certificate	$3,000.00		34.717(b)	Failed to maintain copy of updated plans	$500.00
6003.153(b)	Act as responsible managing employee (RME) w/o holding license	$3,000.00		34.717(c)	Plans do not contain required signatures/ information about firm or licensee	$500.00
34.710(a)	Subcontracting to unregistered firm to perform work of fire protection sprinkler contractor	$3,000.00		34.717(c)(2)	Plans not submitted to AHJ for review/permit/rating/record	$500.00
34.711(a)	Firm's RME not licensed or license expired	$1,000.00		34.717(c)(2)	Plans incorrectly submitted to AHJ	$250.00
34.711(e)(1)	Licensee working not employed by registered firm	$750.00			**Tags**	
34.711(e)(2)	Firm failed to notify SFMO of termination of employee w/in 14 days	$250.00		34.718(a)	Installation tag not completed, not completed in detail, not attached to riser	$500.00
	Adopted Standards			34.718(b)	ITM tag not attached to riser after installation/required tests and inspections	$500.00
34.716(i)	Planning/installation/service not in accordance with adopted standards	$50.00-$500.00		34.719(a)	Service tag not completed and/or not attached to riser	$500.00
	Location/Business Practices			34.719(c)	New service tag not attached after service	$500.00
34.710(b)	Failure to maintain business location on certificate of registration	$500.00		34.719(g)	Service tags improperly formatted	$250.00
34.711(f)	Individual not licensed for work performed	$3,000.00		34.720(a)	ITM tag not completed and/or attached to riser after scheduled inspection, testing or maintenance service	$500.00
34.716(a)	System not installed under supervision of appropriately licensed individual	$3,000.00		34.720(c)	New ITM tag not completed and attached after each service	$500.00
34.716(b)	Individual did not affix material and test certificate on or near riser	$500.00		34.720(g)	ITM tag improperly formatted	$250.00
34.716(c)	Inspection/test/maintenance service not conducted by appropriately licensed individual	$3,000.00		34.721(a)	Yellow tag not completed and/or attached to noncompliant system	$500.00
34.716(d)	Records not available for examination	$500.00		34.721(c)	Building owner/representative/AHJ not notified of noncompliant system	$500.00
34.716(e)	Vehicles do not display co. name, tel. number and certificate of registration	$250.00		34.721(f)	Yellow tag improperly formatted	$250.00
34.716(g)	The planning not performed under the direct supervision of the appropriately licensed RME.	$500.00		34.722(a)	Red tag not completed and attached to system with an emergency impairment	$500.00
34.716(h)	Planning, installation, or service of a fire protection sprinkler system not in accord with the minimum requirements of the applicable adopted standards	$3,000.00		34.722(b)	Owner/representative/AHJ not orally notified immediately of impairment	$500.00
6003.252(3)	Misrepresentation	$250.00-$1,000.00		34.722(b)	Owner/representative/AHJ not notified in writing of impairment within 24 hours	$500.00
	Planning and Installation			34.722(g)	Red tag improperly formatted	$250.00
34.717(a)	Failed to provide as built plans to the owner	$500.00				
34.717(a)	Failed to maintain a copy of plans	$500.00				
34.717(b)	Failed to provide updated plans to owner	$500.00				

34.713(a)(7)(B)	**Lapse of Insurance**				
Months	Punitive	+	Amount saved		Total
0 - 1	$200	+	$125	=	Warning Letter
1 - 2	$500	+	$250	=	$750
2 - 3	$500	+	$375	=	$875
3 - 4	$500	+	$500	=	$1,000
4 - 5	$500	+	$625	=	$1,125
5 - 6	$500	+	$750	=	$1,250
6 - 7	$750	+	$875	=	$1,625
7 - 8	$750	+	$1,000	=	$1,750
8 - 9	$750	+	$1,125	=	$1,875
9 - 10	$750	+	$1,250	=	$2,000
10 - 11	$750	+	$1,375	=	$2,125

11 - 12	$750	+	$1,500	=	$2,250

Figure: 28 TAC §34.1302(d)

Code	GENERAL	FINE		Code	PATHWAYS/CORRIDORS OF EGRESS cont	Fine
34.817(m)	**TRASH**, cardboard or high grass within 10 ft of site	$50.00		36.2.5.8	No clear exit path **AROUND CHECKOUT** aisle	$250.00
34.832(12)	Supervisor less than **18 YEARS OLD** (site closed until corrected)	$500.00		7.11.5	Building has **DEAD END CORRIDORS**	$150.00
34.832(12)	Individuals less than **16 YEARS OLD SELLING** Fireworks	$50.00		7.2.1.11.1	Turnstile, ropes or other **DEVICES OBSTRUCT EGRESS**	$150.00
34.817(h)	Operator consuming or under influence of **ALCOHOL**	$500.00			**EXIT DOORS**	
2154.252(c)	Fireworks sold or offered to **CHILDREN** under 16 years old or to an intoxicated or incompetent person	$500.00		7.11.4	Less than **TWO** means of **EGRESS** if room >200 sqft	$500.00
34.817(l)	No off highway **PARKING** provided	$100.00		7.11.1	No **EXIT WITHIN 75** ft of any point in the building	$150.00
34.817(g)	**SMOKING** inside the site	$500.00		7.7.1	Exits do not **TERMINATE** in open space (i.e. blocked)	$150.00
34.817(g)	**SMOKING** outside within 10 feet of site	$250.00		7.2.1.2.3.2	**DOOR OPENINGS** less than 32" wide	$150.00
2154.202(g)	Selling fireworks **OUTSIDE** selling **SEASON**	$250.00 TO $500.00		7.2.1.4.2	Door 'doesn't **SWING OUT** in direction of egress	$250.00
	FIREWORKS STORAGE			7.2.1.3.1	Floor **ELEVATION** change Interior >½ or Exterior door >8"	$100.00
34.832(6)	Stored fireworks in sales area **ACCESSIBLE** to public	$100.00		7.2.1.3.3	**THRESHOLD** at door exceeds ½" in height	$100.00
34.832(7)	Fireworks storage room not **RESTRICTED** to employees only	$100.00		7.11.6	**DOORS** latch or lock not fire or **PANIC HARDWARE**	$1,000.00
34.832(7)	**"NO SMOKING"** signs not posted in storage room	$50.00		7.2.1.5.2	Doors have **KEY LOCKS** on egress side.	$500.00
	STORAGE (and retail sales) OVER 500 CASES			7.2.1.4.1(3)	Ex (a&c) Not **LOCKED OPEN** when occupied	$250.00
34.823(a2)	Not of **SOLID CONSTRUCTION** or sound engineering	Case		7.2.1.4.1(3)	Ex (b) No "This Door To Remain OPEN etc..." **SIGN**	$100.00
34.823(a3)	Electrical does not meet **NATIONAL ELECTRIC CODE**	$25.00 TO $250.00		**Code**	**EXIT DOORS (cont)**	Fine
34.823(a3)	No outside **MASTER ELECTRICAL SWITCH**	$250.00		7.2.1.4.1(3)	Ex (e) No **ONE PANIC** hardware door without a roll-up	$500.00
34.823(a4A)	**LESS 50ft** from inhabited bldg(s) or surface of highways	$500.00			**SIGNS**	
34.823(a4A)	Not in compliance with distances in **TABLE 1** 34.824	$500.00		7.10.1.2.1	Not all exits have **"EXIT" SIGNS**. (if exit not obvious)	$100.00
34.823(a4B)	**WINDOWS** or sunlight on fireworks not diffused	$50.00		7.10.6.1.1	"EXIT" **SIGNS NON-COMPLIANT** with standard	$50.00
34.823(a4C)	**STOVE**, exposed flame or electric heater in storage area	$500.00		7.10.2.1	Missing **DIRECTIONAL SIGNS** to exits (if not apparent)	$50.00
34.823(a4D)	Swing **EXIT DOOR** locked, not marked or obstructed	$250.00		7.10.6.2.1	Directional **SIGNS NON-COMPLIANT** with standard	$50.00
34.823(a4E)	No Class A **EXTINGUISHER** for each 1000 sqft of floor	$100.00		7.10.8.3	Missing **"NO EXIT"** sign on doors that could be mistaken	$250.00
34.823(a4F)	Brush, dry grass, leaves or **COMBUSTIBLES** within 10ft	$100.00		34.817(g)	**"NO SMOKING"** sign not posted **OUTSIDE** entrance doors	$100.00
34.823(a4G)	Missing **"NO SMOKING"** signs. (4" letters)	$100.00		34.817(g)	**"NO SMOKING"** sign not posted **INSIDE** entrance doors	$100.00
34.823(a5)	No fence, **SECURITY ALARM** or 24 hr. personnel on site	$500.00		34.817(g)	**"NO SMOKING"** sign not posted **several location** inside	$100.00
34.823(a6)	Class I **COMBUSTIBLES** (gasoline) less 100 ft from bldg	$100.00		34.817(g)	**"NO SMOKING"** sign lettering less than 4 inches high	$50.00
34.823(a6)	**CLASS I** dispensing or vents less than 100 ft from bldg (site closed)	$500.00			**EMERGENCY LIGHTING** (if over 3000 sq.ft.)	
34.823(b1)	No **SUPERVISOR** at least 18 years old on duty (site closed until corrected)	$500.00		36.2.9	No **EMERGENCY LIGHTING** provided	$500.00
34.832(3A)	< 60ft from **INHABITED** bldg. (w/o permit before 11-18-02)	$500.00		7.8.1.3	Emergency lighting doesn't **ILLUMINATE** paths of egress	$250.00
34.832(3B)	< 30ft from **PROPERTY** line (w/o permit before 11-18-02)	$250.00		7.9.2.1	Emergency lighting **DURATION** is less than **1½ hrs**	$250.00
34.832(3C)	Does not comply with **TABLE 1** or have fire sprinklers	$500.00		7.9.3.1.1	No **RECORD** of emergency lighting inspection **& TEST**	$100.00
	PATHWAYS/CORRIDORS OF EGRESS				**STRUCTURE**	
36.2.5.5	Means of **EGRESS/AISLES** less than **36 inches**	$150.00		34.832(1)	Building is not FREE STANDING or durable	Case
36.2.5.10	Means of egress < **36" + CART LENGTH** (if using carts)	$150.00		34.832(1)	Mezzanine or 2nd STORY accessible to the public	$150.00
34.817(e)	Path to exit door **OBSTRUCTED**	$250.00		34.832(1)	Selling from a TENT, boat, or mobile vehicle (site closed)	$500.00

7.1.10.1	Egress not **CONTINUALLY FREE** of obstructions	$150.00		34.817(k)	Bldg. single or multi-family RESIDENTIAL STRUCTURE (site closed)	$500.00
Code	**STRUCTURE cont**	**Fine**		**Code**	**STAIRS**	**Fine**
34.832(1)	Sales area Multi-Use (other business) or MULTI-TENANT (site closed)	$500.00		7.2.2.2.1	RISER not 4"-7" or TREADS less than 11" wide	$100.00
34.832(18)	Sales area >2500 sqft with ave. CEILING HEIGHT < 12 ft	$500.00		7.2.2.2.1.2	Less than 36" WIDE or < 56" wide if occupancy over 2000	$100.00
34.832(10)	Stored behind glass with impinging direct SUNLIGHT	$50.00		7.2.2.3.3.1	Stairs treads not SOLID	$100.00
34.832(14)	No outside MASTER electrical switch	$100.00		7.2.2.4.1.1	No HANDRAILS 34" to 38" high provided	$100.00
9.1.2	Electrical WIRING and equipment APPEAR HAZARDOUS	$25.00 TO $250.00		7.1.8	Open stairs over 30" rise without a GUARD RAIL	$100.00
	INTERIOR				**STAIR LANDINGS**	
34.832(5)	Inadequate PREVENTION of customers handling fwks	$100.00		7.2.2.3.2.1	No LANDING at door opening	$100.00
34.832(5)	RESTRAINT around displayed fireworks not durable	$100.00		7.2.2.3.2.3	Landing LENGTH in direction of travel is less than width.	$100.00
34.832(5)	Customers HANDLING fireworks w/o attendant assistance	$50.00		7.2.2.3.3.1	Horizontal landing not SOLID (i.e. grating or see through)	$100.00
34.832(9)	small quantities of unused BOXES in sales/storage area	$50.00			HANDRAILS	
34.832(11)	EXTENSION CORD located where public can walk over	$50.00		7.2.2.4.4.1	Not 34" to 38" HIGH above leading edge of tread	$100.00
34.832(11)	EXTENSION CORD supplies > one device w/o power strip	$50.00		7.2.2.4.4.5	Less than 2¼" CLEARANCE between rail and wall	$100.00
34.832(11)	EXTENSION CORD unprotected from accidental damage	$50.00		7.2.2.4.4.6	Handrails are not a CIRCULAR cross-section of 1¼" to 2"	$100.00
34.832(11)	EXTENSION CORD used in lieu of fixed structural wiring	$25.00		7.2.2.4.4.7	Rail is not CONTINUOUS	$100.00
34.832(11)	Power STRIP without internal circuit breaker	$25.00		7.2.2.4.4.6	Improper TERMINATION or EXTENSION of rail	$100.00
34.832(13)	Trash CONTAINERS not METAL or heavy plastic	$25.00			GUARD RAILS	
34.832(13)	Trash CONTAINERS < 10ft AWAY from fireworks	$250.00		7.1.8	No GUARD RAIL where egress is > 30" above floor/grade	$100.00
34.832(15)	SPACE HEATER in sales/storage areas	$100.00		7.2.2.4.5.2	Guard RAIL is less than 42" high.	$100.00
34.832(17)	COOKING EQUIPMENT in sales/storage areas	$100.00		7.2.2.4.5.3	Over 4" between any point in VERTICAL RAILS up to 34" high	$100.00
34.817(d)	No 2A EXTINGUISHER per 2,000 sqft & within 75 ft travel	$500.00			RAMPS	
34.817(p)	Internal combustion ENGINES operating inside retail site	$500.00		7.2.5.3.2(1).	No LANDING at top, bottom or at door openings.	$100.00
36.3.3.2	Interior wall and ceiling FINISH is not type Class A or B	$500.00		Tab 7.2.5.2	Single ramp in excess of a 30" RISE.	$100.00
6.1.14.4.1	No FIREWALL -Btwn High Hazard & other occup > 200 sqft	$500.00		Tab 7.2.5.2	SLOPE in excess of 1 in 8	$100.00
	PAPERWORK			Tab 7.2.5.2	Less than 30" WIDE	$100.00
34.817(j)	Original permit not posted in sales area	$100.00		7.2.5.3.1(1)	Not permanent FIXED construction	$100.00
34.817(j)	No permit (site closed until corrected)	$500.00		7.2.5.3.1(4)	Not SOLID construction.	$100.00
34.832(8)	Local FD or County FD not NOTIFIED of location in writing	$100.00		7.2.5.4	No GUARD or HANDRAIL on ramp with rise over 6"	$100.00
34.832(16)	PLAN not on file at SFMO office (site closed until corrected)	$250.00			BULK MERCHANDISING >12,000 sqft	
	FIREWORKS			36.4.5	Violation(s) of Bulk Merchandising requirements	Case
2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	$1,000.00			**OTHER NFPA LIFE SAFETY CODE**	
2154.003(b)	ILLEGAL fireworks (Bottle or Pop Rockets, M-80's)	$1,000.00				
2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	$500.00		34.832(19)	Violations of NFPA 101 the Life Safety Code®	Case
34.817(o)	Fireworks do not conform to USCPS LABELING	$500.00		9.1.2	One or more FAULTS identified on Receptacle tester	$25.00
34.817(i)	OTHER than fireworks or fireworks promotional items	100.00				

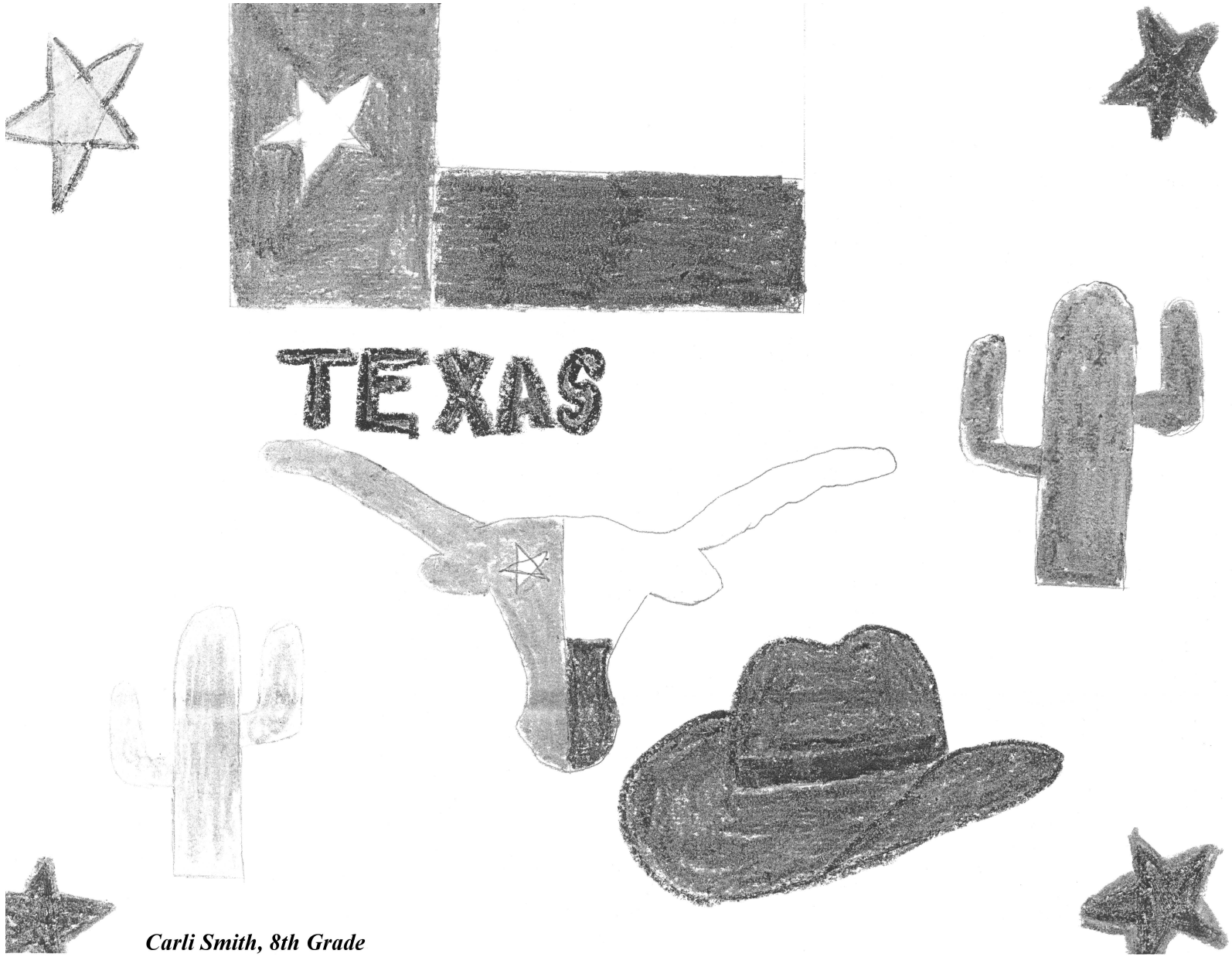
Figure: 28 TAC §34.1302(f)

CODE	VIOLATION	FINE
2154.252(b)	Offering 1.4G fireworks for sale from other than an authorized retail location	$1,000.00
2154.252(d)	Sells fireworks to person who does not hold license or permit	$1,000.00
34.815(b)(1)	Purchase of 1.4G Fireworks from an unlicensed distributor or jobber.	$500.00
2154.201(a)	Issue other permit to a person under 18 years old.	$500.00
34.815(c)(1)	Failed to return permits by March 1st	$100.00
34.832(16)	No site plan on file with SFMO	$1,000.00
34.809(a)	Conduct 1.3G display without a permit	$3,000.00
34.809(a)	Conduct a display without the appropriate licensed operator	$3,000.00
34.826(c)	Failed to conduct display in compliance with NFPA 1123	$500.00-$1,000.00
34.826(f)	Failed to conduct a proximate display in compliance with NFPA 1126	$500.00-$1,000.00
34.826(h)	Used a flame effect and failed to comply with NFPA 160	$500.00-$1,000.00

Figure: 40 TAC §373.3(b)(2)(F)(ii)

OTA Required Supervision Hours

OTAs working 128 or more hours during a given month:	OTAs working between 70-127 hours during a given month:	OTAs working between 69-21 [~~or fewer~~] hours during a given month:	OTAs working 20 or fewer hours during a given month:
6 hours of frequent communication supervision	3 hours of frequent communication supervision	2 hours of frequent communication supervision	1 hour of frequent communication supervision
2 hours of interactive supervision	1 hour of interactive supervision	1 hour of interactive supervision	30 minutes of interactive supervision



Carli Smith, 8th Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

2016 Establishing Nutrition Education Grant Program Request for Applications

The Texas Department of Agriculture (TDA) is accepting applications for the **Establishing the 3E's Grant Program (E3E)** from organizations that are in good standing with the Texas Comptroller's Office and TDA to incorporate nutrition education into their programs for children.

The Texas Department of Agriculture (TDA) is authorized by §12.0027 of the Texas Agriculture Code and §38.026 of the Education Code to administer the 3E's Grant Program (3E's) to promote better health and nutrition programs and prevent obesity among children in this state. Additionally, through §33.028 of the Texas Human Resources Code, the Texas legislature has appropriated funding to TDA to provide grants for organizations that are in good standing with the Texas Comptroller of Public Accounts and TDA to incorporate nutrition education into programs for children. The objective of the program is to increase awareness of the importance of good nutrition, especially for children, and to encourage children's health and well-being through education, exercise and eating right. TDA's 3E's Grant Program consists of two program categories:

1. **Establishing the 3E's Grant Program (E3E) -** a program that incentivizes nutrition education programs in any childcare institution or community organization; and

2. **Expanding the 3E's Grant Program (X3E) -** a program that rewards nutrition education programs in public schools only.

Eligibility

To be eligible for E3E funds, an applying organization must be in good standing with TDA and must:

1. Be an organization that:

a. participates in early childhood education, including:

i. the CACFP (Child and Adult Care Food Program) as administered by TDA;

ii. a Head Start Program, as defined in 42 USC 9801 et seq., and 45 CFR Parts 1301-1311; or

iii. another early childhood education program; and

b. certifies that it will use awarded funds to provide nutrition education to children between the ages of three and five years old; or

2. Be a community or faith-based initiative that:

a. provides recreational, social, volunteer, leadership, mentoring, or developmental programs; and

b. certifies that it will use awarded funds to provide nutrition education to children younger than 19 years of age.

No prior E3E grantee can apply. If an organization has received E3E funds in the past, it is ineligible to apply for future rounds.

Funding Parameters

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.

Awards are subject to the availability of funds. If no funds are appropriated or collected for this program, applicants will be informed accordingly.

Applicants may seek up to $7,500 per site for expenses related to implementation of the nutrition education program proposed in the application. CACFP Sponsor Organizations that have more than one site or location should submit a single, combined application. The maximum award to any selected grantee shall not exceed $7,500 per location or $25,000, whichever is less. Other restrictions or funding limitations may also be considered during the award process.

Application Requirements and Deadline

Application and information can be downloaded from TDA's website at: *www.texasagriculture.gov* under the Grants & Services Tab.

One complete application packet, including the project narrative and signed application, must be **received by TDA before close of business (5:00 p.m. CT) on Thursday, April 14, 2016.** It is the applicant's responsibility to ensure the timely delivery of all required materials.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, 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-201601115
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: March 7, 2016

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Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that include that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *State of Texas v. South Houston Community Development Corporation, Inc., Aldine Community Care Center, Inc. and Jesse Dunn;* Cause No. D-1-GN-14-004932, in the 126th Judicial District Court, Travis County, Texas.

Nature of the Defendants' Operations: Defendants are current and former owners/operators of an assisted living facility that includes a public water system and wastewater treatment facility, in Houston, Texas. The TCEQ entered a default administrative order against the defendants in 2011 for violations of Texas regulations concerning the safe operation of the water system and wastewater treatment facility. Investigations of the facilities in 2013 and 2014 revealed that violations continued at both facilities. Since the State filed this lawsuit, the defendant has relocated the tenants served by the failing facilities.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction orders Defendants to operate the water system in compliance with state regulations and properly shutdown the wastewater treatment facility. The Agreed Final Judgment and Permanent Injunction also awards the State of Texas civil penalties of $175,000 and $8,700 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Amy E. Davis, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201601188
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 9, 2016

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - February 2016

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period February 2016 is $28.48 per barrel for the three-month period beginning on November 1, 2015, and ending January 31, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of February 2016 from a qualified low-producing oil lease is eligible for a 25% credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period February 2016 is $1.34 per mcf for the three-month period beginning on November 1, 2015, and ending January 31, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2016 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of February 2016 is $30.77 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of February 2016 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of February 2016 is $1.93 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of February 2016 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201601158
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 8, 2016

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Local Sales Tax Rate Changes Effective April 2016

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished, effective March 31, 2016, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Streetman (Freestone Co)	2081048	.012500	.075000
Streetman (Navarro Co)	2081048	.015000	.080000

The City sales and use tax will be increased to 1 1/2 percent effective April 1, 2016 in the City listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Newcastle (Young Co)	2252032	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government code, Type A Corporations (4A) will become effective April 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Cleburne (Johnson Co)	2126027	.020000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government code, Type B Corporations (4B) will become effective April 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Lone Oak (Hunt Co)	2116083	.020000	.082500

The additional 1/2% (4A) and 1/2% (4B) city sales and use taxes for improving and promoting economic and industrial development as permitted under Chapters 504 (Type A Corporations) and 505 (Type B Corporations) of the Texas Local Government Code, will each be reduced to 3/8 percent effective March 31 , 2016 and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Grandview (Johnson Co)	2126018	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective March 31, 2016 and the adoption of an additional 1/2 percent as permitted under Chapter 505 of the Texas Local Government Code Type B Corporations (4B) will become effective April 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
South Padre Island (Cameron Co)	2031101	.020000	.082500

A one percent special purpose district sales and use tax will become effective April 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Blanco County Emergency Services District No. 1	5016529	.010000	SEE NOTE 1
Blanco County Emergency Services District No. 2	5016538	.010000	SEE NOTE 2
Copper Canyon Crime Control and Prevention District	5061685	.010000	SEE NOTE 3
Harris County Emergency Services District No. 47	5101945	.010000	SEE NOTE 4
Williamson Co Emergency Services District No. 4	5246567	.010000	SEE NOTE 5

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Medina Co Emergency Services District No. 1	5163511	.015000	SEE NOTE 6
Medina Co Emergency Services District No. 6	5163520	.015000	SEE NOTE 7
Palo Pinto Co Emergency Services District No. 2	5182509	.015000	SEE NOTE 8

A two percent special purpose district sales and use tax will become effective April 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Burnet Co Emergency Services District No. 9	5027553	.020000	SEE NOTE 9
Generation Park Management District	5101936	.020000	SEE NOTE 10
Hardin Co Emergency Services District No. 6	5100517	.020000	SEE NOTE 11

NOTE 1: The Blanco County Emergency Services District No. 1 is located in the northern portion of Blanco County, which has a county sales and use tax. The district partially overlaps territory in the Blanco County North Library District, which has a special purpose district sales and use tax. The district excludes, for sales tax purposes, any area within the cities of Johnson City or Round Mountain. The unincorporated areas of Blanco County in ZIP Codes 78620, 78635, 78636, 78654, 78663, 78669 and 78671 are partially located within the Blanco County Emergency Services District No. 1. Contact the district representative at 713-703-0364 for additional boundary information.

NOTE 2: The Blanco County Emergency Services District No. 2 is located in the southern portion of Blanco County, which has a county sales and use tax. The district partially overlaps territory in the Blanco County South Library District, which has a special purpose district sales and use tax. The district excludes, for sales tax purposes, any area within the city of Blanco. The unincorporated areas of Blanco County in ZIP Codes 78027, 78070, 78606, 78620, 78636, 78671 and 78676 are partially located within the Blanco County Emergency Services District No. 2. Contact the district representative at 512-750-5286 for additional boundary information.

NOTE 3: The boundaries for the Copper Canyon Crime Control and Prevention District are the same as the boundaries for the city of Copper Canyon.

NOTE 4: The Harris County Emergency Services District No. 47 is located in the western portion of

Harris County. The district's boundaries for the imposition of sales and use tax exclude areas of the district which are responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city. The district is located within the Houston MTA, which has a transit sales and use tax. The unincorporated areas of Harris County in ZIP Codes 77084, 77449 and 77491 are partially located in the Harris County Emergency Services District No. 47. Contact the district representative at 281-304-1230 for additional boundary information.

NOTE 5: The Williamson County Emergency Services District No. 4 is located in the western portion of Williamson County. The Liberty Hill Public Library District, which has a special purpose district sales and use tax, is located within the district. The district excludes, for sales tax purposes, any area in the city of Liberty Hill. The unincorporated area of Williamson County in ZIP Codes 76527, 78605, 78628, 78633, 78641 and 78642 are partially located in the Williamson County Emergency Services District No. 4. Contact the district representative at 512-515-5165 for additional boundary information.

NOTE 6: The Medina County Emergency Services District No. 1 is located in the eastern portion of Medina County, which has a county sales and use tax. The district excludes, for sales tax purposes, any area in the cities of Castroville or La Coste. The unincorporated areas of Medina County in ZIP Codes 78009, 78039, 78056 and 78066 are partially located within the Medina County Emergency Services District No. 1. Contact the district representative at 830-931-3358 for additional boundary information.

NOTE 7: The Medina County Emergency Services District No. 6 is located in the central portion of Medina County, which has a county sales and use tax. The district excludes, for sales tax purposes, any area in the city of Hondo. The unincorporated areas of Medina County in ZIP Codes 78003, 78016, 78056, 78057, 78850, 78861, 78883 and 78886 are partially located within the Medina County Emergency Services District No. 6. Contact the district representative at 830-931-3358 for additional boundary information.

NOTE 8: The Palo Pinto County Emergency Services District No. 2 is located in the southeastern portion of Palo Pinto County, which has a county sales and use tax. The unincorporated area of Palo Pinto County in ZIP Codes 76066, 76067, 76453, 76462, 76472 and 76484 are partially located within the Palo Pinto County Emergency Services District No. 2. Contact the district representative at 903-826-3478 for additional boundary information.

NOTE 9: The Burnet County Emergency Services District No. 9 is located in the southeastern portion of Burnet County. The unincorporated areas of Burnet County in ZIP Code 78669 are partially located within the Burnet County Emergency Services District No. 9. Contact the district representative at 512-565-8388 for additional boundary information.

NOTE 10: The Generation Park Management District is located in the northeastern portion of Harris County. The district does not include any area within the city of Houston, the Houston MTA or the boundaries of the Harris County Emergency Services Districts 2 and 60. ZIP Code 77044 is partially located in the Generation Park Management District. Contact the district representative at 713-623-4531 for additional boundary information.

NOTE 11: The Hardin County Emergency Services District No. 6 is located in the northeast portion of Hardin County. The district excludes, for sales tax purposes, any area within the city of Silsbee. The unincorporated areas of Hardin County in ZIP Code 77656 are partially located within the Hardin County Emergency Services District No. 6. Contact the district representative at 409-656-7948 for additional boundary information.

TRD-201601117
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 7, 2016

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Notice of Contract Award

Pursuant to Chapters 403, 2155 and 2156 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for Management and Regulatory Services for the Texas Conservation Plan for the Dunes Sagebrush Lizard ("RFP 218d"):

BIO-WEST, Inc., 1812 Central Commerce Court, Round Rock, Texas 78664. The total maximum amount of the contract is $786,456.00. The term of the contract is March 2, 2016 through August 31, 2017, with two (2) optional one year renewal periods.

The notice of issuance was published in the February 12, 2016, issue of *Texas Register* (41 TexReg 1144).

TRD-201601122
Laurie Velasco
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 7, 2016

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Subchapters F, G and H, Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 216a ("RFP") for the purpose of obtaining investment consulting services for the Board. The selected consultant ("Consultant") will advise and assist the Board and Comptroller in administering all of the Board's investment activities related to the Texas Tomorrow Funds ("Funds") and the Texas Achieving a Better Life ("ABLE") Program. The Funds include the Texas Tomorrow Fund (Prepaid Program), the Texas College Savings Plan and Lonestar 529 Plan, the Texas Tuition Promise Fund, and the Texas Save and Match Program. Comptroller, as Chair and Executive Director of the Board, is issuing this RFP on behalf of the Board so that the Board may move forward with retaining the necessary investment consultant. Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the Consultant will be expected to begin performance of the contract on or about August 1, 2016, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the *Electronic State Business* Daily ("ESBD") at: http:esbd.cpa.state.tx.us after 10:00 a.m. Central Time ("CT") on Friday, March 18, 2016.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Monday, March 28, 2016. Prospective proposers are encouraged to fax or e-mail Questions to (512) 463-3669 or *contracts@cpa.texas.gov* to ensure timely receipt. On or about Friday, April 1, 2016, the Comptroller expects to post responses to questions on the ESBD. *Questions received after the deadline will not be considered. Respondents shall be solely responsible for verifying timely receipt of Questions in the Issuing Office.*

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. CT, on Friday, April 15, 2016. *Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for ensuring timely receipt of Proposals in the Issuing Office.*

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - March 18, 2016, after 10:00 a.m. CT; Questions Due - March 28, 2016, 2:00 p.m. CT; Official Responses to Questions posted - April 1, 2016; Proposals Due - April 15, 2016, 2:00 p.m. CT; Contract Execution - August 1, 2016, or as soon thereafter as practical; Commencement of Work - September 1, 2016. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201601182
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 9, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/14/16 - 03/20/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/14/16 - 03/20/16 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-201601162
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 8, 2016

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Court of Criminal Appeals

In the Court of Criminal Appeals of Texas

Misc. Docket No. 15-006

ORDER ADOPTING AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 73.4 and 79.2 and TEXAS RULE OF EVIDENCE 615

ORDERED that:

1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 73.4 and 79.2 and Texas Rule of Evidence 615, effective January 1, 2016.

2. These rules may be changed in response to public comments received before January 31, 2016. Any interested party may submit written comments directed to Abel Acosta, Clerk of the Court, at abel.acosta@txcourts.gov.

3. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

Dated: December 7, 2015.

_____

Sharon Keller, Presiding Judge

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Lawrence E. Meyers, Judge

_____

Cheryl Johnson, Judge

_____

Michael Keasler, Judge

_____

Barbara Hervey, Judge

_____

Elsa Alcala, Judge

_____

Bert Richardson, Judge

_____

Kevin P. Yeary, Judge

_____

David Newell, Judge

Texas Rules of Appellate Procedure

73.4. Filing and Transmission of Habeas Record

* * *

(b) In addition to the duties set out in Article 11.07, the clerk shall do the following:

(1) If the convicting court enters an order designating issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of that order and proof of the date the district attorney received the habeas application.

(2) When any pleadings, objections, motions, affidavits, exhibits, proposed or entered findings of fact and conclusions of law, or other orders are filed or made a part of the record, the district clerk shall immediately send a copy to all parties in the case. A party has ten days from the date he receives the trial court's findings of facts and conclusions of law to file objections, but the trial court may, nevertheless, order the district clerk to transmit the record to the Court of Criminal Appeals before the expiration of the ten days.

* * *

(5) On the 181st day from the date of receipt of the application by the State of a postconviction application for writ of habeas corpus under Article 11.07, the district clerk shall forward the writ record to this Court unless the district court has received an extension of time from the Court of Criminal Appeals pursuant to Rule 73.5.

79.2. Contents

(a) The motion must briefly and distinctly state the grounds and arguments relied on for rehearing.

(b) A motion for rehearing an order that grants discretionary review may not be filed.

(c) A motion for rehearing an order that refuses a petition for discretionary review may be grounded only on substantial intervening circumstances or on other significant circumstances which are specified in the motion. Counsel must certify that the motion is so grounded and that the motion is made in good faith and not for delay.

(d) A motion for rehearing an order that denies habeas corpus relief or dismisses a habeas corpus application under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case.

Texas Rules of Evidence

Rule 615. Producing a Witness's Statement in Criminal Cases

(a) Motion to Produce. After a witness other than the defendant testifies on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the state or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that:

(1) is in their possession;

(2) relates to the subject matter of the witness's testimony; and

(3) has not previously been produced.

(b) Producing the Entire Statement. If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) Producing a Redacted Statement. If the party who called the witness claims that the statement contains information that does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any unrelated portions, the court must order delivery of the redacted statement to the moving party. If a party objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) Recess to Examine a Statement. If the court orders production of a witness's statement, the court, on request, must recess the proceedings to allow the moving party time to examine the statement and prepare for its use.

(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the state disobeys the order, the court must declare a mistrial if justice so requires.

(f) "Statement" Defined. As used in this rule, a witness's "statement" means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

Comment to 2015 Amendment: The Michael Morton Act, codified at Texas Code of Criminal Procedure art. 39.14, affords defendants substantial pre-trial discovery, requiring the state, upon request from the defendant, to produce and permit the defendant to inspect and copy various items, including witness statements. In many instances, therefore, art. 39.14 eliminates the need, after the witness testifies on direct examination, for a defendant to request, and the court to order, production of a witness's statement.

But art. 39.14 does not entirely eliminate the need for in-trial discovery of witness statements. Art. 39.14 does not extend equivalent discovery rights to the prosecution, and so prosecutors will still need to use Rule 615 to obtain witness statements of defense witnesses. Moreover, some defendants may fail to exercise their discovery rights under art. 39.14 and so may wish to obtain a witness statement under Rule 615. In addition, the Michael Morton Act applies only to the prosecution of offenses committed after December 31, 2013. Defendants on trial for offenses committed before then have no right to pre-trial discovery of the witness statements of prosecution witnesses.

Consequently, Rule 615(a) has been amended to account for the changed pre-trial discovery regime introduced by the Michael Morton Act. If a party's adversary has already produced a witness's statement--whether through formal discovery under art. 39.14 or through more informal means--Rule 615(a) no longer gives a party the right to obtain, after the witness testifies on direct examination, a court order for production of the witness's statement. But if a party's adversary has not already produced a witness's statement, the party may still use Rule 615(a) to request and obtain a court order requiring production of the witness's statement after the witness finishes testifying on direct examination.

TRD-201601100
Abel Acosta
Clerk
Court of Criminal Appeals
Filed: March 4, 2016

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Texas Education Agency

Notice of Correction: Request for Prekindergarten Progress Monitoring Instruments Submissions

Filing Date. March 9, 2016

Filing Authority. Texas Education Code, §29.169(c)

The Texas Education Agency (TEA) published Request for Prekindergarten Progress Monitoring Instruments Submissions in the February 5, 2016, issue of the *Texas Register* (41 TexReg 999).

The TEA is amending the deadline for receipt of submissions. The new deadline is March 25, 2016.

TRD-201601185
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 9, 2016

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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 Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 18, 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 April 18, 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: American Truck Source, LLC.; DOCKET NUMBER: 2015-1653-AIR-E; IDENTIFIER: RN108734856; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: commercial motor vehicle sales facility; RULES VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure a motor vehicle is equipped with either the emissions control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate emissions control system or device, prior to selling the motor vehicle; and 30 TAC §114.20(c)(3) and THSC, §382.085(b), by failing to have a notice of the prohibitions and requirements of 30 TAC §114.20 displayed at a commercial motor vehicle sales facility in a conspicuous and prominent location; PENALTY: $2,216; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: Billy Causey; DOCKET NUMBER: 2015-1403-PST-E; IDENTIFIER: RN108153131; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: property with inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.7(a)(1), by failing to register with the commission, on authorized agency forms, USTs in existence on or after September 1, 1987; and 30 TAC

§334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $9,187; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BNSF Railway Company; DOCKET NUMBER: 2016-0051-AIR-E; IDENTIFIER: RN102806668; LOCATION: Temple, Bell County; TYPE OF FACILITY: rail line; RULES VIOLATED: 30 TAC §114.312(a) and Texas Health and Safety Code, §382.085(b), by failing to store, transfer, dispense, and hold diesel fuel in any stationary tank, reservoir, or other container that may ultimately be used to power a diesel fueled compression-ignition internal combustion engine in the affected counties that did not meet the Low Emissions Diesel fuel standards; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: CAL FARLEY'S BOYS RANCH; DOCKET NUMBER: 2015-1339-MWD-E; IDENTIFIER: RN101720548; LOCATION: Channing, Oldham County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0014750001, Monitoring and Reporting Requirements Number 5, by failing to ensure that all flow measuring or recording devices are calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually; and 30 TAC §305.125(1), TWC, §26.121(a)(1), TCEQ Permit Number WQ0014750001, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limits; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: City of Crystal City; DOCKET NUMBER: 2015-1498-MSW-E; IDENTIFIER: RN102327863; LOCATION: Crystal City, Zavala County; TYPE OF FACILITY: landfill; RULES VIOLATED: 30 TAC §330.131 and Municipal Solid Waste (MSW) Permit Number 1308B, Site Operating Plan (SOP) Section 4.3.1, by failing to control public access by means of artificial barriers, natural barriers or a combination of both; 30 TAC §330.139 and MSW Permit Number 1308B, SOP Section 4.3.5, by failing to maintain and operate the working face of the landfill to control windblown waste; 30 TAC §330.133(c) and MSW Permit Number 1308B, SOP Sections 4.3.21 and 4.3.22, by failing to prevent the unloading and acceptance of prohibited waste; 30 TAC §330.127(5)(A) and (C) and MSW Permit Number 1308B, SOP Sections 4.5.1 and 4.5.5, by failing to conduct random inspections of incoming loads including inspection of compactor vehicles to detect prohibited waste and train facility personnel to recognize prohibited waste; 30 TAC §330.143(a), (b)(2), (3), and (8) and MSW Permit Number 1308B, SOP Section Number 4.3.7, by failing to maintain the visibility of all required landfill markers and the benchmark, place facility boundary markers at each corner of the facility and along each boundary line at intervals no greater than 300 feet, and to have a permanent benchmark in an area of the facility that is set in concrete; 30 TAC §330.165(f) and (g) and §330.463(a)(1) and MSW Permit Number 1308B, Closure Plan, Section 1, Post-Closure Care Plan, Section 5, SOP Section 4.3.18, by failing to maintain the landfill final cover in accordance with the site closure plan and repair erosion gullies and wash-out areas within five days of detection; 30 TAC §330.165(h) and MSW Permit Number 1308B, SOP Section 4.3.18, by failing to keep a landfill cover application record on site readily available for inspection which specifies the date cover was accomplished, how it was accomplished, and the last area covered; 30 TAC §330.127(5)(B) and MSW Permit Number 1308B, SOP Section 4.5.3, by failing to keep records of each inspection conducted to detect prohibited waste; 30 TAC §328.59(a) and §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers, or in enclosed or lockable containers; and 30 TAC §330.673, Texas Health and Safety Code, §361.013(a), and TWC, §5.702, by failing to pay outstanding MSW landfilling fees for TCEQ Financial Account Number 0708404 and associated late fees for fiscal year 2015; PENALTY: $20,675; Supplemental Environmental Project offset amount of $16,540; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: City of Dell City; DOCKET NUMBER: 2015-0956-MWD-E; IDENTIFIER: RN102844032; LOCATION: Dell City, Hudspeth County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0014256001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $1,562; Supplemental Environmental Project offset amount of $1,250; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(7) COMPANY: City of Port Arthur; DOCKET NUMBER: 2014-1787-PWS-E; IDENTIFIER: RN101391043; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 inadequate chlorine residuals in the distribution system being recorded using the prescribed notification format as specified in 30 TAC §290.47(e); 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.44(c), by failing to ensure all water lines within the distribution system are a minimum diameter of two inches; and 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 total chlorine throughout the distribution system at all times; PENALTY: $533; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: City of Rising Star; DOCKET NUMBER: 2015-1851-PWS-E; IDENTIFIER: RN101205573; LOCATION: Rising Star, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) 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) for microbial contaminants during the month of August 2015 and failing to provide public notification and submit a copy of the notification to the executive director (ED) regarding the failure to comply with the MCL for microbial contaminants during the month of August 2015; 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 for the first and second quarters of 2015 and failed to provide public notification and submit a copy of the notification to the ED regarding the failure to submit a DLQOR for the first quarter of 2015; 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect annual lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory and submit the results to the ED for the 2014 and 2015 monitoring periods; 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, 2013 - December 31, 2013 monitoring period; PENALTY: $810; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Royse City; DOCKET NUMBER: 2015-1463-PWS-E; IDENTIFIER: RN101391696; LOCATION: Royse City, Rockwall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 minimum disinfectant residual of 0.5 milligrams per liter total chlorine throughout the distribution system at all times; PENALTY: $300; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of San Marcos; DOCKET NUMBER: 2015-1605-MWD-E; IDENTIFIER: RN100838648; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), and 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010273002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $9,000; Supplemental Environmental Project offset amount of $7,200; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(11) COMPANY: CSFM INCORPORATED dba Chestnut Star Food Mart; DOCKET NUMBER: 2015-1697-PST-E; IDENTIFIER: RN101492999; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,505; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: David Hover and DAK Property Management, Incorporated; DOCKET NUMBER: 2015-1683-PWS-E; IDENTIFIER: RN106300932; LOCATION: Elmendorf, Wilson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; 30 TAC §290.43(e), by failing to ensure that the facility's potable water storage tank and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (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 §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; and 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: $2,291; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2015-1753-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2074, Special Terms and Conditions Number 13, and New Source Review Permit Number 914, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: German N. Vega dba G and C Convenience Store; DOCKET NUMBER: 2015-1789-PST-E; IDENTIFIER: RN101685238; LOCATION: Roma, Starr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the underground storage tank (UST) facility at least one named individual for each class of operator - Class A, Class B, and Class C; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,818; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2015-1467-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial/organic chemicals manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.620, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.1209(d)(2), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1898, Special Terms and Conditions (STC) Numbers 1A and 20, and New Source Review Permit (NSR) Number 1387, Special Conditions (SC) Number 9, by failing to conduct Absolute Calibration Audits for the Continuous Emissions Monitoring Systems; 30 TAC §§101.20(2), 113.620, 116.115(c), and 122.143(4), 40 CFR §§63.10(e)(3) and 63.1211(a), THSC, §382.085(b), FOP Number O1898, STC Numbers 1A and 20, and NSR Permit Number 1387, SC Number 8B, by failing to submit a timely, accurate, and complete periodic report for the January 1, 2013 - June 30, 2013 reporting period; and 30 TAC §§122.143(4) and 122.145(2)(A), THSC §382.085(b), and FOP Number O1898, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $25,438; Supplemental Environmental Project offset amount of $10,175; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Johannes Koster and Deborah Michelle Koster dba Koster Dairy Farm; DOCKET NUMBER: 2016-0034-AGR-E; IDENTIFIER: RN101528081; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: concentrated animal feeding operation; RULES

VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0003159000, Part VIII.B.4., Reporting and Notifications, by failing to orally notify the appropriate TCEQ regional office within one hour of the discovery of a discharge during a chronic or catastrophic rainfall event; PENALTY: $1,130; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 580 D West Lingleville Road, Stephenville, Texas 76401 (254) 965-9200.

(17) COMPANY: Ray French Land Company, Limited; DOCKET NUMBER: 2016-0285-WQ-E; IDENTIFIER: RN108965203; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2015-1636-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.722(c)(1), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1668, Special Terms and Conditions Number 22, and New Source Review Permit Numbers 3219 and PSDTX974, Special Conditions Number 1, by failing to prevent unauthorized emissions and exceeding the highly reactive volatile organic compound emission rate of 1,200 pounds per one-hour block period; PENALTY: $50,000; Supplemental Environmental Project offset amount of $25,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Stripes LLC dba Stripes 1509; DOCKET NUMBER: 2015-1507-MLM-E; IDENTIFIER: RN102921574; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §213.4(j)(5), by failing to obtain approval for a modification of a previously approved underground storage tank (UST) facility plan prior to beginning a regulated activity over the Edwards Aquifer Transition Zone; 30 TAC §213.5(d)(1), by failing to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages; 30 TAC §334.49(a)(4) and (d)(1)(B) and TWC, §26.3475(d), by failing to ensure that any metal components of a UST system which is protected from corrosion by one of the electrical isolation methods remains electrically isolated by periodically inspecting and testing the metal component; 30 TAC §334.75(b), by failing to contain and immediately clean up a spill of any petroleum product from a UST system that is less than 25 gallons; and 30 TAC §334.72(3) and (4), by failing to report a suspected release to the TCEQ within 24 hours of the discovery; PENALTY: $23,761; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(20) COMPANY: THE CONSOLIDATED WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1736-PWS-E; IDENTIFIER: RN101281632; LOCATION: Latexo, Houston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; and 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: $345; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: THE CONSOLIDATED WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0050-PWS-E; IDENTIFIER: RN101442416; LOCATION: Latexo, Houston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $345; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Town of Anthony; DOCKET NUMBER: 2015-1847-MWD-E; IDENTIFIER: RN102805603; LOCATION: Anthony, El Paso 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: $6,250; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(23) COMPANY: TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2015-0761-MWD-E; IDENTIFIER: RN103015053; LOCATION: near Palacios, Jackson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §§305.42(a), 305.65 and 305.125(2), and TWC, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $8,562; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Williamson Travis Counties Municipal Utility District 1; DOCKET NUMBER: 2015-1796-WQ-E; IDENTIFIER: RN105624159; LOCATION: Austin, Williamson and Travis Counties; TYPE OF FACILITY: small separate storm sewer system; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR040377, Part IV, Section B(2), by failing to submit a concise annual report to the executive director within 90 days of the end of a reporting year; and 30 TAC §305.125(1) and TPDES General Permit Number TXR040377, Part III, Section B(1), by failing to meet measurable goals identified in the Stormwater Management Program for Minimum Control Measures Number 1, Public Education, Outreach, and Involvement; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

TRD-201601159
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 8, 2016

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Enforcement Orders

An agreed order was entered regarding Blattner Energy, Inc., Docket No. 2015-0242-MSW-E on March 1, 2016 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OLD TYMER ENTERPRISES, INC., Docket No. 2015-0373-PST-E on March 1, 2016 assessing $7,125 in administrative penalties with $1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Grutsch, Enforcement Coordinator at (512) 239-2607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Normangee, Docket No. 2015-1060-PWS-E on March 1, 2016 assessing $1,610 in administrative penalties with $322 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAYWOOD WATER SUPPLY CORPORATION, Docket No. 2015-1109-PWS-E on March 1, 2016 assessing $1,438 in administrative penalties with $287 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHORT TRIP, LLC dba Short Trip Food Mart, Docket No. 2015-1230-PST-E on March 1, 2016 assessing $2,098 in administrative penalties with $419 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Gandesbery dba Good Samaritan Park, Docket No. 2015-1333-PWS-E on March 1, 2016 assessing $400 in administrative penalties with $80 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NIGTON-WAKEFIELD WATER SUPPLY CORPORATION, Docket No. 2015-1338-PWS-E on March 1, 2016 assessing $75 in administrative penalties with $15 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAIRPLAY WATER SUPPLY CORPORATION, Docket No. 2015-1360-PWS-E on March 1, 2016 assessing $345 in administrative penalties with $69 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fikes Wholesale, Inc. dba Food Fast 1020, Docket No. 2015-1373-PST-E on March 1, 2016 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Springlake-Earth Independent School District, Docket No. 2015-1414-PWS-E on March 1, 2016 assessing $233 in administrative penalties with $46 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2015-1423-AIR-E on March 1, 2016 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newton, Docket No. 2015-1427-MLM-E on March 1, 2016 assessing $1,864 in administrative penalties with $372 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM RAYBURN WATER, INC., Docket No. 2015-1504-PWS-E on March 1, 2016 assessing $286 in administrative penalties with $57 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Solvay Specialty Polymers USA, L.L.C., Docket No. 2015-1541-AIR-E on March 1, 2016 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millen Oil Company, Inc., Docket No. 2015-1555-PST-E on March 1, 2016 assessing $4,606 in administrative penalties with $921 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tyler, Docket No. 2015-1614-PWS-E on March 1, 2016 assessing $113 in administrative penalties with $22 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas A. Money, Docket No. 2015-1652-LII-E on March 1, 2016 assessing $675 in administrative penalties with $135 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAHESH INVESTMENTS-LAKE FORK, L.L.C., Docket No. 2014-0792-MWD-E on March 3, 2016 assessing $13,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LULING O&G LLC ("LOG") and Delton Bishop ("Bishop"), Docket No. 2014-1030-MLM-E on March 3, 2016 assessing $22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Burlington Resources Oil & Gas Company LP, Docket No. 2014-1101-AIR-E on March 3, 2016 assessing $25,537 in administrative penalties with $5,107 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Seminole, Docket No. 2014-1313-PWS-E on March 3, 2016 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BC Humble Enterprises, LLC, Docket No. 2014-1464-MWD-E on March 3, 2016 assessing $17,916 in administrative penalties with $3,583 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quarters, LLC, Docket No. 2014-1498-MWD-E on March 3, 2016 assessing $34,675 in administrative penalties with $6,935 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brad Callaghan dba Callaghan Enterprises, Docket No. 2014-1705-IHW-E on March 3, 2016 assessing $27,500 in administrative penalties with $5,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 150, Docket No. 2015-0172-MWD-E on March 3, 2016 assessing $12,375 in administrative penalties with $2,475 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 3400 LLC dba Millenium Mart 3400, Docket No. 2015-0238-PST-E on March 3, 2016 assessing $13,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Coast Waste Disposal Authority, Docket No. 2015-0509-AIR-E on March 3, 2016 assessing $15,310 in administrative penalties with $3,062 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2015-0594-AIR-E on March 3, 2016 assessing $46,876 in administrative penalties with $9,375 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Socorro, Docket No. 2015-0746-WQ-E on March 3, 2016 assessing $14,250 in administrative penalties with $2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2015-0748-AIR-E on March 3, 2016 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Terminal Deer Park Inc., Docket No. 2015-0815-AIR-E on March 3, 2016 assessing $27,000 in administrative penalties with $5,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2015-0828-AIR-E on March 3, 2016 assessing $7,975 in administrative penalties with $1,595 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Hickory Creek, Docket No. 2015-0889-WQ-E on March 3, 2016 assessing $7,700 in administrative penalties with $1,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2015-0905-AIR-E on March 3, 2016 assessing $59,067 in administrative penalties with $11,813 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RCF Investments, Inc. dba The Brock Junction, Docket No. 2015-0978-PST-E on March 3, 2016 assessing $13,629 in administrative penalties with $2,725 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Refining Retail, LLC dba Howdy's 304, Docket No. 2015-0991-PST-E on March 3, 2016 assessing $11,905 in administrative penalties with $2,381 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gladewater, Docket No. 2015-0992-MWD-E on March 3, 2016 assessing $28,575 in administrative penalties with $5,715 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco Pipeline L.P., Docket No. 2015-1002-AIR-E on March 3, 2016 assessing $9,225 in administrative penalties with $1,845 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regency Field Services LLC, Docket No. 2015-1014-AIR-E on March 3, 2016 assessing $9,890 in administrative penalties with $1,978 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Eli Rodriguez dba Rodriguez Tire Shop, Docket No. 2015-1022-MSW-E on March 3, 2016 assessing $1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Donald Smith, Docket No. 2015-1061-MWD-E on March 3, 2016 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bastrop, Docket No. 2015-1064-PWS-E on March 3, 2016 assessing $345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAYKOT ENTERPRISES INC. dba South Hills Fina, Docket No. 2015-1071-PST-E on March 3, 2016 assessing $12,355 in administrative penalties with $2,471 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bay City, Docket No. 2015-1073-MWD-E on March 3, 2016 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FL Rich Gas Services, LP, Docket No. 2015-1075-AIR-E on March 3, 2016 assessing $28,501 in administrative penalties with $5,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adrian Lizalde, Docket No. 2015-1077-WQ-E on March 3, 2016 assessing $8,751 in administrative penalties with $1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTR Real Estate Holdings, L.C. dba Heartland House, Docket No. 2015-1082-PWS-E on March 3, 2016 assessing $585 in administrative penalties with $585 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF TOTAL Petrochemicals LLC, Docket No. 2015-1086-AIR-E on March 3, 2016 assessing $32,813 in administrative penalties with $6,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, Enforcement Coordinator at (512) 239-6581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Oil Company of California, Docket No. 2015-1087-AIR-E on March 3, 2016 assessing $11,025 in administrative penalties with $2,205 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TX LFG Energy, LP, Docket No. 2015-1127-AIR-E on March 3, 2016 assessing $24,938 in administrative penalties with $4,987 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angeesth, LLC dba Union Bower Chevron, Docket No. 2015-1196-PST-E on March 3, 2016 assessing $9,129 in administrative penalties with $1,825 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SEEMA ENTERPRISES INC. dba N P Food Mart, Docket No. 2015-1212-PST-E on March 3, 2016 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. F. PRESLEY OIL COMPANY, Docket No. 2015-1258-PST-E on March 3, 2016 assessing $15,860 in administrative penalties with $3,172 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TPC Group LLC, Docket No. 2015-1261-AIR-E on March 3, 2016 assessing $15,600 in administrative penalties with $3,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lewisville, Docket No. 2015-1371-WQ-E on March 3, 2016 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201601178
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2016

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Notice of Hearing

FORMOSA UTILITY VENTURE, LTD.

AND FORMOSA PLASTICS CORPORATION, TEXAS

SOAH Docket No. 582-16-2608

TCEQ Docket No. 2015-1528-IWD

TPDES Permit No. WQ0002436000

APPLICATION.

Formosa Utility Venture, Ltd. and Formosa Plastics Corporation, Texas, P.O. Box 700, Point Comfort, Texas 77978-0700, which operates the Point Comfort Plant, a plastics and organic and inorganic chemicals manufacturing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0002436000 to establish minimum analytical levels for oil & grease, biochemical oxygen demand (5-day), free available chlorine, and titanium; reduce Lavaca Bay monitoring from quarterly each year to quarterly triannually based on 15 years of no impacts; increase the temperature limit at Outfall 001 from 95° F to 100° F; authorize the discharge of non-process area storm water, hydrostatic test water, fire water, non-contact steam condensate, non-contact wash water, potable water, air conditioner unit condensate, and ash truck wash water on an intermittent and flow variable basis via Outfall 013; increase the effluent limitations for total copper at Outfall 001; increase the effluent limitations for chloroform at Outfall 101 (proposed Outfall SUM); authorize the discharge of fire water via Outfalls 001, 101, and 201; create a summation outfall (designated as Outfall SUM) to regulate the effluents monitored via internal Outfalls 101 and 201; and authorize the discharge of fire water, potable water, and air conditioner unit condensate via Outfalls 001, 101, 201, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, and 012.

The current permit authorizes the discharge of remediated groundwater and treated previously monitored effluents (via Outfalls 101 and 201) at a daily average flow not to exceed 9,700,000 gallons per day via Outfall 001; treated process wastewater, equipment/facility washdown, storm water, and utility wastewaters at a daily average flow not to exceed 4,400,000 gallons per day via Outfall 101; treated and combined Ion Exchange Membrane (IEM) wastewater streams, utility wastewaters, equipment/facility washdown, storm water, and water treatment wastewaters on a continuous and flow variable basis via Outfall 201; non-process area storm water, hydrostatic test water, fire water, non-contact steam condensate, and noncontact wash water on an intermittent and flow variable basis via Outfalls 002, 003, 004, and 005; and non-process area storm water, hydrostatic test water, fire water, non-contact steam condensate, and non-contact wash water on an intermittent and flow variable basis via Outfalls 006, 007, 008, 009, 010, 011, and 012. The application was submitted to the TCEQ on February 2, 2010.

The facility is located at 201 Formosa Drive, one-mile north of the intersection of State Highway 35 and Farm-to-Market Road 1593, northeast of the City of Point Comfort, Calhoun County, Texas 77978. The effluent is discharged via Outfall 001, through a pipeline to Lavaca Bay/Chocolate Bay; via Outfall 011 from the Dock Tank Farm to a ditch, thence to a drainage pipe directing the flow to Point Comfort turning basin, thence to Lavaca Bay/Chocolate Bay in Segment 2453 of the Bays and Estuaries; via Outfalls 002, 003, 004, and 012 to unnamed ditches, thence to Cox Lake, thence to Cox Bay; via Outfalls 005, 006, 007, 008, 009, and 010 to Cox Lake, thence to Cox Bay; and via Outfall 013 directly to Cox Bay, in Segment No. 2454 of the Bays and Estuaries. The unclassified receiving waters have no significant aquatic life use for the unnamed ditches and high aquatic life use for Cox Lake. The designated uses for Segments 2453 and 2454 are exceptional aquatic life use, contact recreation, and oyster waters.

In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the re-

ceiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Cox Lake, which has been identified as having high aquatic life use, or in Cox Bay or Lavaca Bay/Chocolate Bay which have been identified as having exceptional aquatic life use. The current Texas Surface Water Quality Standards should be used to determine copper limits for this facility. 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 reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Point Comfort Branch Library, 1 Lamar Street, Point Comfort, Texas and the Jackson County Public Library, 411 North Wells Street, Edna, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=28.6888&lng=-96.5472&zoom=13&type=r.* For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - April 4, 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 January 29, 2016. 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 Formosa Utility Venture, Ltd. And Formosa Plastics Corporation, Texas at the address stated above or by calling Mr. Joe Henry at (361) 987-8070.

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: February 25, 2016

TRD-201601163
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Mitesh C-Store, Inc. d/b/a Lake Country Food Mart

SOAH Docket No. 582-16-2671

TCEQ Docket No. 2015-0866-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 24, 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 9, 2015 concerning assessing administrative penalties against and requiring certain actions of MITESH C-STORE, INC. d/b/a Lake Country Food Mart, for violations in Trinity County, Texas, of: Tex. Water Code §26.3475(a), (c)(1), and (d), 30 Tex. Admin. Code §§334.7(d)(3), 334.49(a) and (c)(2)(C), 334.50(b)(1)(a) and (b)(2), 334.54(b)(2), (c)(1) and (2), and (e)(2), and TCEQ Agreed Order Docket No. 2013-0007-PST-E, Ordering Provision No. 2.a.

The hearing will allow MITESH C-STORE, INC. d/b/a Lake Country 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 MITESH C-STORE, INC. d/b/a Lake Country 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 MITESH C-STORE, INC. d/b/a Lake Country 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.**

MITESH C-STORE, INC. d/b/a Lake Country Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and 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 J. Amber Ahmed, 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: February 26, 2016

TRD-201601161
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Harrison County

SOAH Docket No. 582-16-2617

TCEQ Docket No. 2015-1297-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 31, 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 28, 2015 concerning assessing administrative penalties against and requiring certain actions of Harrison County, for violations in Harrison County, Texas, of: Tex. Water Code §26.3475(a) and 30 Tex. Admin. Code §334.50(b)(2).

The hearing will allow Harrison County, 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 Harrison County, 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 **Harrison County** 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. Harrison County, 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 Ian Groetsch, 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: February 29, 2016

TRD-201601165
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Webb County

SOAH Docket No. 582-16-2616

TCEQ Docket No. 2015-1428-MLM-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. - April 7, 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 November 19, 2015 concerning assessing administrative penalties against and requiring certain actions of Webb County, for violations in Webb County, Texas, of: Tex. Admin. Code §§290.42(d)(2)(C) and (d)(11)(B)(ii); 290.45(b)(2)(A), (b)(2)(F) and (b)(2)(G); 290.46(d)(2)(B), (e)(6)(C), (m), (s)(1); 290.110(b)(4); 290.111(c)(3)(B)(i), (d)(2)(A), (e)(3)(C), (e)(5)(C)(iii), and (h); 290.115(f)(1); 290.271(b); 290.274(a) and (c); 312.142(a); and TCEQ Agreed Order Docket No. 2013-2014-MLM-E, Ordering Provision Nos. 3.a.iii., 3.b.vi., 3.b.viii., 3.b.xvi., 3.d.i., 3.d.ii., 3.d.vi., 3.f.i., 3.f.ii., and 3.f.iv.

The hearing will allow Webb County, 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 Webb County, 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 **Webb County** 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. Webb County, 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, Tex. Health and Safety Code chs. 341 and 361, and 30 Tex. Admin. Code chs. 70, 290 and 312; 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 Jacquelyn Boutwell, 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: March 7, 2016

TRD-201601166
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Superior Lubricants Transport, Inc. d/b/a Superior Transport

SOAH Docket No. 582-16-3011

TCEQ Docket No. 2015-1056-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. - April 7, 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 30, 2015 concerning assessing administrative penalties against and requiring certain actions of SUPERIOR LUBRICANTS TRANSPORT, INC. d/b/a Superior Transport, for violations in Tarrant County, Texas, of: Tex. Water Code §26.3467(d) and 30 Tex. Admin. Code §334.5(b)(1)(A).

The hearing will allow SUPERIOR LUBRICANTS TRANSPORT, INC. d/b/a Superior Transport, 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 SUPERIOR LUBRICANTS TRANSPORT, INC. d/b/a Superior Transport, 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 SUPERIOR LUBRICANTS TRANSPORT, INC. d/b/a Superior Transport 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.** SUPERIOR LUBRICANTS TRANSPORT, INC. d/b/a Superior Transport, 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 Tracy Chandler, 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: March 9, 2016

TRD-201601179
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2016

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan and on Proposed Revisions to Texas Emissions Reduction Plan Guidelines

The Texas Commission on Environmental Quality (commission or TCEQ) will conduct public hearings to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution From Motor Vehicles, §114.680 and §114.682; and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency concerning SIPs.

The commission will also receive testimony regarding proposed revisions to the guidelines for the Drayage Truck Incentive Program (DTIP) and the Diesel Emissions Reduction Incentive (DERI) Program, entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524) and Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388).*

The proposed rulemaking would amend several criteria pertaining to the DTIP. Corresponding revisions to the DTIP guidelines are proposed to make the guidelines consistent with the proposed rule changes. The proposed rulemaking and guideline revisions would add other cargo handling equipment to the list of equipment eligible for replacement under the DTIP and would remove the requirement that a drayage truck being purchased must have a day cab only. The definition of a seaport in the DTIP rules and guidelines would be amended to include publically and privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

Additional changes are proposed to the DERI Program and DTIP guidelines, in addition to the changes to make the DTIP guidelines consistent with the proposed rule changes. The guidelines for both programs would be revised to remove the authorization for the executive director to allow an engine replaced under the DERI Program or the DTIP to be sent to a remanufacturing facility in lieu of destruction. The DTIP guideline revisions would also remove the requirement that, in order to be eligible for replacement or purchase, a non-road yard truck must have an engine rated at greater than 125 horsepower.

The commission will hold public hearings on the proposed rulemaking and the proposed revisions to the guidelines in Austin on April 12, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, and in Houston on April 14, 2016, at 6:00 p.m. in Conference Room B, 2nd floor, at the Houston-Galveston Area Council located at 3555 Timmons Lane. The hearings will be 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 proposals 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. Requests should be made as far in advance as possible.

Written comments on the proposed rulemaking 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. Comments on the proposed rulemaking should reference Rule Project Number 2016-004-114-AI.

Comments on the guideline revisions may be included with comments on the proposed rulemaking or may be submitted separately. Separate electronic comments pertaining solely to the guideline revisions should reference Non-Rule Project Number 2016-011-OTH-NR and may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* Separate written comments pertaining solely to the guideline revisions may be submitted to Steve Dayton, MC 204, Implementation Grants Section, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-0077.

The comment period closes on April 18, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* Copies of the proposed revisions to the guidelines can be obtained from the commission's TERP program website at *http://www.terpgrants.org.* For further information, please contact Steve Dayton of the Implementation Grants Section at (512) 239-6824.

TRD-201601108
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 4, 2016

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Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit Major Amendment Proposed Permit Number 2240B

APPLICATION. Waste Corporation of Texas, L.P., 1330 Post Oak Boulevard, Houston, Harris County, Texas 77056, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to the permit for the Ralston Road Landfill to authorize a change of the final exterior side slopes from 4H:1V to 3H:1V and a vertical height increase. The facility is a Type IV municipal solid waste landfill facility located at 6632 John Ralston Road, Houston, Harris County, Texas 77049. The TCEQ received this application on January 7, 2016. The permit application is available for viewing and copying at the Houston Public Library, Lakewood Neighborhood Branch, 8815 Feland Street, Houston, Harris County, Texas 77028, and may be viewed online at www.scsengineers.com/state. The following webpage which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.822275&lng=- 95.2238&zoon=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, if any requests for reconsideration or for a contested case hearing have been received, the Executive Director will forward the application and such requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. Further information may also be obtained from Waste Corporation of Texas, L.P. - Ralston Road Landfill at the address stated above or by calling Mr. Marcos Elizondo, Waste Corporation of Texas, L.P. at (979) 246-2865.

TRD-201601177
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2016

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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 January 11, 2016 through March 7, 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, March 11, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, April 11, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: Brazoria County, Texas

Location: The dredging portion of the proposed project begins in West Bay, approximately 1.9 miles north of the intersection of Bluewater Highway and San Luis Pass. Dredging will continue to the southwest, and then toward the southeast through San Luis Pass, ending near the intersection of San Luis Pass and the Gulf of Mexico. Dredged material will be placed on Follets Island Beach, centered approximately 1.6 miles southwest of the intersection of Bluewater Highway and San Luis Pass, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: CHRISTMAS POINT, Texas and SAN LUIS PASS, Texas.

LATITUDE & LONGITUDE (NAD 83):

- Dredging Start: Latitude: 29.109236 North; Longitude: 95.129048 West

- Dredging End: Latitude: 29.083341 North; Longitude: 95.118374 West

- Material placement: Latitude: 29.055410 North; Longitude: 95.141869 West

Project Description: The applicant proposes to hydraulically dredge approximately 376,200 cubic yards of sand material from West Bay and San Luis Pass for the purpose of beach nourishment on the north end of Follets Island. The dredged area will be approximately 12,000 feet in length and 160 feet in width at the bottom cut, with 6(H):1(V) side slopes. The dredged area would be excavated to -9 feet NAVD 88. The dredged material will be pumped via pipe to a 96-acre nearshore beach nourishment area just seaward of the Follets Island Beach. The 400-foot by 4,800-foot crest of the dredged material placement would be at -0.5-foot NAVD 88 with 30(H):1(V) side slopes.

CMP Project No: 16-1193-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00306. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

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).

Applicant: Texas City Terminal Railway Company

Location: The project site is located in the Texas City Turning Basin, within the Port of Texas City, adjacent to Dock 41, and the Industrial Canal, at 2201 Dock Road, in Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: VIRGINIA POINT, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.36450° North; Longitude: 94.89140° West

Project Description: The applicant proposes to amend the existing dredging permit by adding the following components: expansion of dredging area and depth; performing work, including demolition of existing structures; installation of a sheet pile bulkhead; construction of a dock and appurtenances; mooring berthing dolphins; and performing other activities in uplands. Specifically, the proposed project includes the following components:

- Demolish existing structures over waters of the U.S. including various buildings, paved areas, and fencing; an existing 320-foot dock; three dry docks; and 920-linear-foot existing bulkhead;

- Construct 1,193 linear feet of dock, including the maximum extent of mooring dolphins;

- Excavate approximately 431,000 cubic yards from 2.2 acres of upland area and convert to open water;

- Dredging of a 9.2 acres berthing area to 47 feet below mean low tide (MLT). Dimensions of the currently authorized dredge area for Dock 42 would be extended by 8.9 acres;

- Dredging in waters of the U.S. will be accomplished by hydraulic cutter suction dredge or mechanical dredge;

- The dredged material is proposed to be disposed of at Shoal Point Terminal Dredge Material Placement Areas (DMPA) including Cell C, PA 5, PA 6, and/or Cell A;

- Maintenance dredging: Based on average shoaling rates of dredge areas in the vicinity, and with similar configuration, the annual maintenance volume is estimated to be 12,800 cubic yards of dredge material. The Shoal Point Terminal DMPA's have been authorized for placement under the previous permit authorization;

- Installation of 645 linear feet of steel sheet pile bulkhead along the proposed shoreline. No material is proposed for backfill along this bulkhead.

CMP Project No: 16-1190-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2013-00042. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: D.R. Horton - Texas LTD

Location: The project site is located in Clear Lake, at 2621 Veranda Falls, in League City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: LEAGUE CITY, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.5522° North; Longitude: 95.06674° West

Project Description: The applicant proposes to construct a marina; to extend the length of a previously authorized pier; to dredge; and to beneficially use the dredge material by creating a living shoreline. Specifically, the following activities are proposed:

Structures to be constructed:

- Marina - 14,824 square feet of area to be impacted;

- Walkway - Extend the length of a previously authorized 6-foot-wide by 100-foot-long walkway by 1,800 square feet to construct an 8-foot-wide by 300-foot-long walkway;

- Pavilion - An 80-foot-wide by 32-foot-long covered pavilion at end of the walkway;

- Docks - Two 8-foot-wide by 192-foot-long docks, with 48 slips;

- 48 Finger piers - 4-foot-wide by 31-foot-long;

- West Pier - 8-foot-wide by 80-foot-long walkway and 40-foot by 20-foot deck.

Dredging:

- Approximately 7,750 cubic yards from 1.72 acres, within a 300-foot by 250-foot area, to a depth of 6 feet below existing bottom (NAVD 88 vertical datum);

- Expected maintenance dredging is 700 cubic yards of material per year. The reserve capacity in the marsh is 8,943 cubic yards and anticipated that the project will allow for 10 years of maintenance dredging material. All calculated dredging quantities include a 10% over-dredge factor.

Fill placed:

- Wave barrier - 206 linear feet to protect living shoreline;

- Geotextile tubes - 5,440 cubic yards of dredge material will be placed into 2,186 linear feet;

- Living shoreline - 13,380 cubic yards of material will be placed into 2.07 acres of waters of the U.S. and planted during the creation of a marsh.

CMP Project No: 16-1196-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2013-00582. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

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-201601171
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: March 8, 2016

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Notice of Funds Availability - Texas Coastal Management Program

The General Land Office and the Coastal Coordination Advisory Committee (CCAC) file this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately $2 million in §306/§306A funding is expected in October 2017. The General Land Office, which oversees the implementation of the CMP with the advice of the CCAC, will pass through approximately 90% of the available §306/§306A funds to eligible entities to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP.

1. Incorporated cities within the coastal zone boundary

2. County governments within the coastal zone boundary

3. Texas state agencies

4. Texas public colleges/universities

5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone)

6. Councils of governments and other regional governmental entities within the coastal zone boundary

7. The Galveston Bay Estuary Program

8. The Coastal Bend Bays and Estuaries Program

9. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above. (A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.)

Funding Categories

The General Land Office and the CCAC will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference.

1. Coastal Natural Hazards Response

2. Critical Areas Enhancement

3. Public Access

4. Water Sediment Quantity and Quality Improvements

5. Waterfront Revitalization and Ecotourism Development

6. Permit Streamlining/Assistance, Governmental Coordination and Local Government Planning Assistance

The General Land Office will hold three grant workshops to provide information on the grant program and allow potential applicants the opportunity to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process.

Port Isabel - May 11, 2016, at 9:30 a.m.

Artisan at Port Isabel

106 Port Road, Clubhouse

Corpus Christi - May 18, 2016, at 9:30 a.m.

Texas A&M University - Natural Resources Center

6300 Ocean Drive, Room 1003

Galveston - May 25, 2016, at 9:30 a.m.

Galveston County Courthouse

722 Moody Avenue, Workshop Room

The requirements to receive federal grant funds are outlined in the CMP Cycle #22 Grant Guidance and Application Packet, which is available for download at http://www.glo.texas.gov/coast/grant-projects/funding/.

In order to submit pre-proposals or final applications, applicants must register to receive a user ID and password.

Pre-proposals and final applications must be submitted electronically. Facsimiles or hard copies will not be accepted.

The deadline to submit pre-proposals is Wednesday, June 15, 2016, by 5:00 p.m. Submission of a pre-proposal is optional but strongly recommended for first-time and/or inexperienced applicants who are un-

familiar with the CMP application process, applicants who have an idea for a new and/or innovative project, or applicants who are uncertain if a project is eligible under this grant program. Written comments will only be provided to applicants who submit pre-proposals by June 15, 2016, by 5:00 p.m. The deadline to submit final grant applications is Wednesday, September 21, 2016, by 5:00 p.m.

TRD-201601172
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: March 8, 2016

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Texas Health and Human Services Commission

Public Notice: Amendments to Texas State Plan for Medical Assistance

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting or implementing fees for the following:

Clinical Diagnostic Laboratory Services

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);

Family Planning;

Hearing Services;

Home Health Services;

Physicians and Other Practitioners; and

Vision Services.

The proposed amendments are effective April 1, 2016.

The proposed amendments are estimated to result in an aggregate cost of $2,476,930 for the remainder of federal fiscal year (FFY) 2016, consisting of $1,415,070 in federal funds and $1,061,860 in state general revenue. For FFY 2017, the estimated cost is $5,175,700, consisting of $2,907,708 in federal funds and $2,267,992 in state general revenue. For FFY 2018, the estimated cost is $5,425,081, consisting of $3,047,811 in federal funds and $2,377,270 in state general revenue.

Rate Hearing. A rate hearing was held on February 18, 2016, at 1:30 p.m. in Austin, Texas, and information about the proposed rate changes (including methodology and justification) and the hearing can be found in the January 22, 2016, issue of the *Texas Register* at pages 701-704 at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment. Interested parties may obtain a free copy of the proposed amendments or additional information about the amendments by contacting 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 email at jr.top@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail: Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery: Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751. Phone number for package delivery: 512-730-7401

Fax: Attention: Rate Analysis at 512-730-7475

Email: *RADAcuteCare@hhsc.state.tx.us*

TRD-201601170
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 8, 2016

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Public Notice: SPA 16-0005 Medicaid Eligibility Marriage Policy

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0005 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

In accordance with federal guidance following the U.S. Supreme Court ruling in Obergefell v. Hodges on June 26, 2015, the proposed state plan amendment removes the Medicaid State Plan pages outlining HHSC's eligibility policy relating to recognition of marriage. The proposed amendment is effective April 1, 2016.

The proposed amendment is estimated to have no fiscal impact, as the change is aligning the state plan with current agency policy.

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, PO 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-201601164
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 8, 2016

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Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

During the second 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	Amend-ment Number	Date of Action
Bryan	Central Texas Heart Center P.L.L.C.	L06769	Bryan	00	01/26/16
San Antonio	BTDI JV L.L.P. dba Sendero Imaging Main	L06768	San Antonio	00	01/27/16

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	Arise Health care System L.L.C. dba Arise Austin Medical Center	L06621	Austin	02	01/22/16
Bedford	Mid-Cities Cardiac Care Center P.L.L.C.	L06641	Bedford	04	01/20/16
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	45	01/26/16
Dallas	IBA Molecular North America Inc. dba IBA Molecular	L06174	Dallas	17	01/25/16
El Paso	Isomedix Operations Inc. dba Steris Isomedix Services	L04268	El Paso	21	01/28/16
El Paso	El Paso Cardiology Associates P.A.	L05162	El Paso	13	01/27/16
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	46	01/20/16
Fort Worth	Physicians Surgical Center of Fort Worth L.L.P.	L05863	Fort Worth	08	01/20/16
Freeport	The Dow Chemical Company	L00451	Freeport	98	01/29/16
Freeport	BASF Corporation	L01021	Freeport	62	01/26/16
Harlingen	VHS Harlingen Hospital Company L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	12	01/20/16
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	209	01/21/16
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	163	01/26/16
Houston	American Diagnostic Tech. L.L.C.	L05514	Houston	113	01/20/16

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Methodist Health Centers dba Houston Methodist West Hospital	L06358	Houston	08	01/21/16
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06383	Houston	10	01/28/16
La Porte	E. I. Dupont De Nemours & Company	L00314	La Porte	94	01/25/16
McKinney	Cancer Center Associates dba Rena Tarbet Cancer Center	L05952	McKinney	11	01/20/16
N. Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba North Hills Hospital	L02271	N. Richland Hills	77	01/21/16
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	71	01/21/16
Plano	Texas Health Resources dba Heart First	L06480	Plano	10	01/25/16
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	06	01/21/16
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	347	01/22/16
San Antonio	Medical and Radiation Physics Inc.	L01417	San Antonio	36	01/20/16
San Antonio	Arias & Associates Inc.	L04964	San Antonio	46	01/28/16
San Antonio	Heart Consultants	L06678	San Antonio	01	01/20/16
Sherman	Texas Oncology P.A. dba North Texas PET Imaging	L05502	Sherman	18	01/27/16
Sweeny	Phillips 66 Company	L06524	Sweeny	05	01/21/16
Texas City	Marathon Petroleum Company L.L.C.	L04431	Texas City	33	01/27/16
The Woodlands	Woodlands Heart and Vascular Institute P.A.	L06302	The Woodlands	03	01/20/16
Throughout TX	RWLS L.L.C. dba Renegade Services	L06307	Andrews	33	01/28/16
Throughout TX	Archer Wireline L.L.C.	L06620	Fort Worth	08	01/21/16
Throughout TX	Archer Wireline L.L.C.	L06620	Fort Worth	09	01/26/16
Throughout TX	Radiographic Specialists Inc.	L02742	Houston	66	01/28/16
Throughout TX	HVJ Associates Inc.	L03813	Houston	54	01/22/16
Throughout TX	Element Materials Technology Houston Inc.	L06451	Houston	04	01/26/16
Throughout TX	C&J Spec Rent Services Inc. dba Casedhole Solutions	L06662	Houston	03	01/20/16
Throughout TX	UT Quality Inc.	L06698	Houston	04	01/26/16
Throughout TX	Signum Instruments Inc.	L06738	Houston	02	01/28/16
Throughout TX	Industrial Nuclear Company Inc.	L04508	La Porte	28	01/27/16
Throughout TX	Stronghold Inspection Ltd.	L06695	La Porte	02	01/22/16
Throughout TX	Castle Engineering & Testing L.L.C.	L06143	Laredo	05	01/20/16
Throughout TX	Castle Engineering & Testing L.L.C.	L06143	Laredo	06	01/28/16
Throughout TX	Permian Nondestructive Testing Inc.	L06001	Midland	19	01/22/16
Throughout TX	Dynasty Wireline Services L.L.C.	L06753	Midland	01	01/20/16
Throughout TX	J. Z. Russell Industries Inc.	L06459	Nederland	09	01/26/16
Throughout TX	Advanced Inspection Technologies L.L.C.	L06608	Spring	04	01/21/16
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	197	01/28/16

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Borger	WRB Refining L.P.	L02480	Borger	61	01/28/16
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	32	01/22/16
Round Rock	Columbia/St. David's Healthcare System L.P. dba Medical Center of Round Rock	L03469	Round Rock	51	01/26/16

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Bryan	Central Texas Heart Center P.A.	L05960	Bryan	03	01/27/16
San Antonio	ACD-SA Ltd. dba Sendero Imaging and Treatment Center	L05567	San Antonio	23	01/27/16
Throughout TX	Element Materials Technology St. Paul Inc.	L06711	Houston	01	01/20/16

TRD-201601083
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 2, 2016

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Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

During the first half of February, 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
Throughout TX	Positron Corp.	L06770	Houston	00	02/01/16

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
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids South Austin Medical Center	L03273	Austin	102	02/04/16
Bishop	Ticona Polymers Inc.	L02441	Bishop	56	02/11/16
Borger	Chevron Phillips Chemical Company L.P.	L05181	Borger	25	02/11/16
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	14	02/09/16
Cleburne	Roc Service Company L.L.C.	L06758	Cleburne	01	02/04/16
Dallas	Peloton Therapeutics Inc.	L06490	Dallas	05	02/11/16
Dallas	Dallas Medical Center L.L.C.	L06584	Dallas	05	02/12/16
Dallas	Truradiation Partners North Dallas L.L.C. dba Northpoint Cancer Center	L06645	Dallas	04	02/12/16
Edinburg	Sunshine Medical Services	L06742	Edinburg	02	02/11/16
Harlingen	Harlingen Medical Center	L05587	Harlingen	08	02/10/16
Houston	Memorial Hermann Health System dba Memorial Hermann Sugar Land Hospital	L03457	Houston	54	02/05/16
Houston	Houston Cyclotron Partners L.P. dba Cyclotope	L05585	Houston	28	02/01/16
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	100	02/11/16
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L06670	Houston	02	02/10/16
Killeen	George S. Rebecca M.D., F.A.C.C. dba Texas Cardiovascular Medicine	L05099	Killeen	16	02/11/16
Livingston	Memorial Hospital of Polk County dba Memorial Medical Center Livingston	L05552	Livingston	17	02/03/16

Lubbock	Neutron Lab L.L.C. dba Texas Compounding Services	L06588	Lubbock	01	02/02/16
Lufkin	Memorial Health System dba Chi St. Lukes Health Memorial	L01346	Lufkin	95	02/01/16
Lufkin	Piney Woods Healthcare System L.P. dba Woodland Heights Medical Center	L01842	Lufkin	65	02/12/16
Pasadena	CHCA Bayshore L.P. dba Bayshore Medical Center	L00153	Pasadena	102	02/04/16
Pasadena	MEMC Pasadena Inc.	L05129	Pasadena	16	02/03/16
San Antonio	BHS Physicians Network Inc. dba Heart & Vascular Institute of Texas	L06750	San Antonio	01	02/04/16
Stephenville	Tarleton State University	L05612	Stephenville	08	02/01/16
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	08	02/09/16
Sugar Land	Schlumberger Technology Corporation	L06303	Sugar Land	05	02/10/16
Sugar Land	TMH Physician Associates P.L.L.C. dba Methodist Diagnostic Cardiology Houston	L06527	Sugar Land	02	02/01/16
Temple	Scott & White Memorial Hospital dba Scott & White Medical Center – Temple	L00331	Temple	102	02/09/16
Temple	Scott & White Memorial Hospital dba Baylor Scott & White McLane Childrens Hospital	L00666	Temple	55	02/09/16
Texas City	Ineos Styrolution America L.L.C.	L00354	Texas City	42	02/08/16
Texas City	Marathon Petroleum Company L.L.C.	L04431	Texas City	34	02/03/16
Throughout TX	Texas Health Presbyterian Hospital Dallas	L01586	Dallas	104	02/09/16
Throughout TX	Fugro Consultants Inc.	L03461	Dallas	30	02/04/16
Throughout TX	Professional Service Industries Inc.	L04940	Dallas	20	02/05/16
Throughout TX	AMEC Foster Wheeler Environment & Infrastructure Inc.	L03622	El Paso	33	02/04/16
Throughout TX	Archer Wireline L.L.C.	L06620	Fort Worth	10	02/08/16
Throughout TX	Oceaneering International Inc.	L04463	Houston	85	02/05/16
Throughout TX	US Steel Tubular Products Inc.	L06604	Houston	01	02/02/16
Throughout TX	Versa Integrity Group Inc.	L06669	Houston	07	02/02/16
Throughout TX	Code Compliance Inspection L.L.C.	L06703	La Porte	04	02/04/16
Throughout TX	Permian Nondestructive Testing Inc.	L06001	Midland	20	02/02/16
Throughout TX	Team Industrial Services Inc.	L00087	Pasadena	234	02/05/16
Throughout TX	Petrochem Inspection Services Inc. dba TUV SUD America Chemical Oil and Gas	L04460	Pasadena	124	02/11/16
Tyler	East Texas Medical Center	L00977	Tyler	162	02/01/16

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Amarillo	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L03398	Amarillo	44	02/03/16
Corpus Christi	Equistar Chemicals L.P. Corpus Christi Plant	L02447	Corpus Christi	26	02/03/16
Throughout TX	Integrity Testing & Inspection Inc. dba ITxI Labs Inc.	L06027	El Paso	11	02/02/16
Throughout TX	The University of Texas Health Science Center at Houston	L02774	Houston	73	02/03/16
Throughout TX	Russell T. Gully dba SKG Engineering	L05918	San Angelo	06	02/04/16
Throughout TX	Ruiz Testing Services Inc.	L04948	San Antonio	20	02/02/16

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
Throughout TX	Perryton	L05634	Perryton	07	02/11/16

TRD-201601084
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 2, 2016

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Request for Qualifications

The Texas Department of Housing and Community Affairs has posted a Request for Qualifications (RFQ) **#332-RFQ16-1002** for *Low Income Housing Tax Credit Counsel.* If you are interested in providing a response to this RFQ, please view the Request for Qualifications posting on the Electronic State Business Daily (ESBD). The website for the ESBD is: *http://esbd.cpa.state.tx.us/* and you can search by the proposal number listed above.

TRD-201601160
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 8, 2016

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for MTL INSURANCE COMPANY to change its name to MUTUAL TRUST LIFE INSURANCE COMPANY, A PAN-AMERICAN LIFE INSURANCE GROUP STOCK COMPANY, a foreign life, accident and/or health company. The home office is in Oak Brook, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201601184
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: March 9, 2016

♦ ♦ ♦

Revised Workers' Compensation Classification Relativities

The commissioner of insurance considered workers' compensation classification relativities to replace those adopted under Commissioner's Order No. 3848, dated March 5, 2015.

The commissioner held a hearing on staff's proposed revised classification relativities under Docket No. 2784 on December 16, 2015, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. TDI published notice of staff's proposed revised classification relativities and of the hearing on November 30, 2015, on the Secretary of State's website as an open meeting. TDI also provided notice on the TDI website and by electronic news. At the hearing, staff explained the recommended revisions.

A copy of the full text of the notice and Exhibit A, the proposed revised classification relativities, has been on file with the TDI chief clerk since November 24, 2015. Comments on the proposed revised classification relativities were due by 5:00 p.m., central time, on January 4, 2016. TDI received one comment.

The commenter asserted that the proposed 10 percent reduction was insufficient, and concluded that the loss costs and relativities could easily be reduced by 20 percent. The commenter stated that the 2014 combined ratio of 84 percent indicates an astronomical level of profitability; the National Council on Compensation Insurance (NCCI) selected conservative loss trends when developing its loss cost reductions; and the loss ratio for workers' compensation insurance has not exceeded 48 percent since 2010.

The commissioner considered the comment and found that staff's proposed 10 percent reduction to the overall relativities is reasonable. TDI and NCCI have responded appropriately to the decreasing combined ratios and loss ratios by reducing the relativities and the loss costs in each of the last two years. Also, TDI staff's analysis of the loss trends selected by NCCI shows that the selections were reasonable. Finally, reducing the relativities by 10 percent, but not more, balances recognition of the continued improvement in loss experience with the possibility of rate shock or overcorrection, either of which could result in future rate increases.

After considering the proposed revised classification relativities, the commissioner adopts the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The current classification relativities, which were effective on July 1, 2015, are based on experience data reflecting workers' compensation experience from policies with effective dates from 2007 through 2011.

2. The proposed revised classification relativities are based on experience data reflecting workers' compensation experience from policies with effective dates from 2008 through 2012.

Methodology

3. Staff used the same methodology as in previous years to calculate the revised classification relativities.

4. Staff's analysis used the five most recent policy years' loss experience from the Workers' Compensation Statistical Plan data, which is summarized by and obtained from NCCI, TDI's statistical agent. Staff reviewed NCCI's data for reasonableness and consistency.

5. Staff developed a revenue-neutral set of relativities in relation to the current relativities, and limited the change to +/-25 percent for any one class in order to minimize possible rate shock due to any large indicated changes in the relativities. Staff then multiplied the revenue-neutral set of relativities by an adjustment factor of 0.9.

6. This adjustment will decrease the classification relativities by an average of 10 percent overall. With this overall reduction, the change for any given classification will range from -32.5 percent to 12.5 percent of the current classification relativities.

7. Staff estimated the accident year combined ratio for 2014 to be approximately 84 percent, which is four points below last year's ratio of 88 percent. This ratio has decreased each year since 2011, when it reached a high of 96 percent.

8. NCCI's overall average decrease to the loss cost level effective July 1, 2015, was 10.9 percent. Further, NCCI has proposed a 9.9 percent decrease in the overall average loss cost level effective July 1, 2016.

9. Findings of Fact 7 and 8 demonstrate that the workers' compensation market is profitable. As a result, staff determined that it is reasonable to reduce the average level of the current classification relativities by 10 percent overall, as presented at the hearing.

Effective Date

10. TDI staff requested that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with effective dates on or after July 1, 2016, unless the insurer files an alternative classification rate basis.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter under Insurance Code §2053.051. Section 2053.051 requires TDI to determine hazards by class and establish classification relativities applicable to the payroll in each classification for workers' compensation insurance. It further provides that the classification system must be revised at least once every five years.

2. Adopting the revised classification relativities in Exhibit A is reasonable and is consistent with Texas workers' compensation statutes and rules.

The commissioner adopts the revised classification relativities in Exhibit A for policies with effective dates on or after July 1, 2016. Exhibit A is incorporated by reference into this order. Insurers may use the revised classification relativities immediately. However, the revised classification relativities must be used for all policies with effective dates on or after July 1, 2016, unless the insurer files an alternative classification rate basis.

EXHIBIT A

TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2016

Class	Relativity	Class	Relativity
0005	4.02	2288	6.62
0008	5.35	2361	1.22
0011	10.53	2380	1.76
0016	9.10	2501	6.64
0034	5.35	2503	1.05
0035	5.32	2532	1.76
0037	7.37	2534	2.84
0042	5.68	2560	5.83
0059	'a'	2576	5.28
0065	'a'	2578	6.72
0066	'a'	2581	7.79
0067	'a'	2583	3.29
0079	4.44	2587	4.47
0083	7.54	2670	14.68
0106	9.91	2683	4.68
0113	6.08	2688	6.76
0401	20.98	2702	24.38
0913	'a'	2705	12.60
0923	'a'	2710	9.74
1165	'a'	2719	10.04
1321	2.48	2731	5.46
1438	5.99	2790	4.09
1463	17.73	2802	6.54
1472	6.47	2835	4.87
1701	7.77	2881	5.01
1747	2.71	2923	2.00
1803	4.32	3004	4.29
1924	5.07	3022	4.97
2003	6.63	3027	1.47
2014	7.71	3028	5.63
2040	3.71	3040	6.64
2041	3.13	3041	5.21
2068	5.59	3042	2.59
2081	5.49	3064	6.33
2095	6.70	3066	5.00
2105	5.46	3081	4.59
2111	9.13	3082	9.59
2114	7.47	3085	4.33
2121	3.05	3110	6.18
2157	6.14	3111	4.86
2172	1.42	3113	4.29
2211	18.52	3114	4.08
2220	3.80	3126	3.17
2260	3.46	3131	2.63
2286	2.98	3132	3.95

EXHIBIT A

TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2016

Class	Relativity	Class	Relativity
3146	4.18	4038	6.08
3179	3.19	4045	5.74
3220	3.14	4062	4.20
3223	3.66	4101	6.69
3224	6.55	4112	0.73
3227	6.66	4114	3.29
3255	5.92	4130	7.98
3257	6.53	4150	1.34
3300	9.14	4206	6.14
3316	1.37	4207	1.08
3331	6.64	4239	2.62
3365	5.19	4243	6.21
3372	4.74	4244	3.56
3383	1.44	4250	2.71
3507	3.95	4273	2.61
3548	3.03	4279	4.51
3574	1.03	4282	1.55
3620	4.83	4283	3.11
3629	2.45	4299	2.88
3632	4.30	4304	6.23
3639	7.14	4307	3.06
3642	4.34	4351	0.95
3643	3.56	4360	6.00
3647	2.82	4361	3.44
3648	3.48	4362	1.05
3681	1.30	4410	5.57
3685	1.57	4417	4.85
3719	2.53	4420	10.11
3724	4.42	4431	5.24
3726	4.51	4432	2.96
3805	1.27	4439	1.90
3807	6.55	4452	3.72
3808	6.30	4459	3.10
3821	7.16	4470	3.84
3822	4.38	4484	4.26
3823	6.04	4511	1.13
3824	4.97	4519	4.42
3830	2.99	4558	2.68
3865	5.96	4568	5.78
3881	7.88	4583	5.86
4000	5.26	4611	1.45
4021	8.35	4635	2.71
4024	2.94	4653	5.26
4034	8.27	4665	12.82
4036	3.14	4670	8.40

EXHIBIT A

TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2016

Class	Relativity	Class	Relativity
4692	0.86	5183	5.01
4693	2.07	5190	5.22
4703	4.57	5191	1.32
4712	3.01	5192	4.47
4716	5.13	5200	5.89
4717	5.78	5203	12.19
4720	3.35	5213	6.21
4740	1.17	5220	5.80
4743	2.30	5348	3.39
4751	1.71	5403	7.40
4766	'a'	5437	5.96
4777	'a'	5443	3.64
4800	'a'	5462	8.61
4801	'a'	5474	5.35
4802	'a'	5479	6.94
4803	'a'	5491	2.75
4804	'a'	5506	9.68
4805	'a'	5536	4.50
4806	'a'	5538	11.72
4807	'a'	5551	14.40
4808	'a'	5606	1.17
4809	'a'	5701	5.61
4810	'a'	6003	7.00
4811	'a'	6045	4.31
4812	'a'	6202	11.14
4813	'a'	6203	1.87
4814	'a'	6204	10.03
4815	'a'	6205	'a'
4816	'a'	6206	4.74
4817	'a'	6213	3.59
4818	'a'	6216	7.61
4819	'a'	6219	6.55
4820	'a'	6229	3.82
4821	'a'	6233	3.48
4822	'a'	6237	3.57
4823	'a'	6238	12.80
4902	4.51	6306	10.16
4923	1.64	6319	6.21
5022	9.76	6400	6.87
5040	14.76	6504	4.45
5041	9.63	6823	6.85
5057	5.33	6824	10.68
5070	14.33	6843	11.70
5102	6.16	6872	9.89
5160	3.35	6874	22.56

EXHIBIT A

TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2016

Class	Relativity	Class	Relativity
7016	3.94	8033	4.65
7024	4.33	8034	6.04
7046	5.84	8039	3.63
7047	6.74	8044	6.91
7098	6.49	8045	0.67
7099	10.00	8047	1.14
7133	5.71	8058	4.01
7134	6.34	8102	8.88
7135	9.76	8106	7.54
7219	10.60	8107	4.41
7230	14.58	8113	6.63
7309	21.61	8209	8.15
7313	7.40	8215	5.04
7317	6.25	8227	4.08
7327	4.96	8231	10.77
7350	20.65	8234	8.04
7360	6.83	8264	7.95
7380	7.04	8265	9.75
7382	9.07	8288	8.07
7390	7.22	8292	6.10
7405	3.33	8293	14.98
7418	5.26	8295	5.56
7421	1.14	8304	11.28
7422	3.78	8350	10.85
7423	7.15	8385	5.22
7502	2.13	8387	3.13
7515	1.83	8391	3.46
7520	4.57	8601	0.41
7538	14.03	8606	3.03
7539	1.55	8607	2.62
7580	3.53	8709	3.56
7590	7.78	8726	1.31
7600	4.62	8742	0.40
7602	7.71	8748	0.65
7610	0.57	8752	4.24
7704	5.59	8754	1.47
7720	3.66	8755	0.46
7855	5.94	8803	0.14
8002	3.72	8809	0.29
8006	4.41	8810	0.23
8008	2.28	8820	0.18
8013	1.03	8828	3.83
8017	2.72	8829	4.87
8018	5.24	8831	2.06
8032	5.19	8832	0.46

EXHIBIT A

TEXAS WORKERS' COMPENSATION RELATIVITIES
AVAILABLE FOR IMMEDIATE USE
MANDATORY EFFECTIVE DATE 7/1/2016

Class	Relativity	Class	Relativity
8833	1.08		
8837	'a'		
8838	0.87		
8858	0.41		
8868	0.88		
8901	0.26		
9014	5.05		
9015	4.70		
9016	5.26		
9019	4.22		
9032	6.75		
9033	4.80		
9040	5.11		
9052	4.26		
9058	2.85		
9060	3.03		
9061	1.85		
9063	1.75		
9079	2.25		
9080	1.98		
9089	1.27		
9093	2.09		
9101	5.59		
9102	4.89		
9154	3.19		
9156	2.61		
9170	28.56		
9178	13.31		
9179	13.82		
9182	4.10		
9186	14.62		
9220	11.80		
9402	8.58		
9501	3.75		
9522	7.12		
9529	5.22		
9552	10.88		
9586	1.38		
9600	2.24		
9620	1.65		
9984	'a'		
9985	'a'		

TRD-201601154
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: March 7, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1755 "Easy Money"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1755 is "EASY MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1755 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1755.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BILL SYMBOL, MONEY BAG SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1755 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
BILL SYMBOL	WIN
MONEY BAG SYMBOL	TPL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$1,000	ONE THOU
$100,000	100THOU

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 $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

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 (1755), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1755-0000001-001.

K. Pack - A Pack of the "EASY MONEY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

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 "EASY MONEY" Scratch Ticket Game No. 1755.

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 "EASY MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to the EASY NUMBER Play Symbol in the same GAME, the player wins the prize for that number. If a player reveals a "Bill" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "Money Bag" Play Symbol, the player wins TRIPLE 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 55 (fifty-five) 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 55 (fifty-five) 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 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) 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 twenty-five (25) 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. Each Ticket will have five (5) different "EASY NUMBER" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different within a GAME.

F. No "YOUR NUMBERS" Play Symbol will match an "EASY NUMBER" Play Symbol in a different GAME.

G. Non-winning Prize Symbols will never appear more than four (4) times.

H. The "BILL" (WIN) and "MONEY BAG" (TPL) Play Symbols will never appear in the "EASY NUMBER" Play Symbol spots.

I. The "MONEY BAG" (TPL) Play Symbol will only appear as dictated by the prize structure to win triple the prize.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 10 and $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "EASY MONEY" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "EASY MONEY" Scratch Ticket Game prize of $1,000 or $100,000, 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 "EASY MONEY" 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 "EASY MONEY" 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 "EASY MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 1755. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1755 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	944,000	7.50
$10	660,800	10.71
$15	188,800	37.50
$20	188,800	37.50
$50	70,800	100.00
$100	14,750	480.00
$500	1,121	6,315.79
$1,000	160	44,250.00
$100,000	4	1,770,000.00

*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 3.42. 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. 1755 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. 1755, 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-201601168
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 8, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1803 "Hit $200,000"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1803 is "HIT $200,000". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1803 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1803.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 5X SYMBOL, HIT SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $20,000 and $200,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1803 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
HIT SYMBOL	WIN $50
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN$
$250	TOFF
$500	FVHN
$1,000	ONTH
$20,000	20TH
$200,000	200TH

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 $5.00 or $10.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000, $20,000 or $200,000.

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 (1803), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1803-0000001-001.

K. Pack - A Pack of the "HIT $200,000" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

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 "HIT $200,000" Scratch Ticket Game No. 1803.

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 "HIT $200,000" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. 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 a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "HIT" Play Symbol, the player wins $50 instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) 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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. The "HIT" (WIN $50) Play Symbol will only appear as dictated by the prize structure and will only appear with the $50 Prize Symbol.

E. No matching WINNING NUMBERS Play Symbols on a Ticket.

F. The "5X" (WINX5) Play Symbol will only appear as dictated by the prize structure.

G. No more than three (3) matching non-winning Prize Symbols on a Ticket.

H. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "HIT $200,000" Scratch Ticket Game prize of $5.00, $10.00, $25.00, $50.00, $100, $250 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 $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HIT $200,000" Scratch Ticket Game prize of $1,000, $20,000 or $200,000, 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 "HIT $200,000" 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 "HIT $200,000" 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 "HIT $200,000" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If

more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 15,000,000 Scratch Tickets in Scratch Ticket Game No. 1803. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1803 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	1,700,000	8.82
$10	1,500,000	10.00
$25	190,000	78.95
$50	215,250	69.69
$100	18,500	810.81
$250	8,000	1,875.00
$500	1,875	8,000.00
$1,000	1,000	15,000.00
$20,000	240	62,500.00
$200,000	7	2,142,857.14

*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 4.13. 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. 1803 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. 1803, 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-201601169
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 8, 2016

♦ ♦ ♦

North Central Texas Council of Governments

Request for Potential Grant Partners

The North Central Texas Council of Governments (NCTCOG) is soliciting commitments from entities that operate diesel vehicles and/or equipment in the goods movement sector in the Dallas-Fort Worth (DFW) region to partner in anticipation of submitting a grant application to the US Environmental Protection Agency (EPA) under the Clean Diesel Funding Assistance Program Fiscal Year 2016 Request for Proposals. If awarded, this project will reduce emissions from existing diesel vehicles or equipment in use in the goods movement sector. Eligible activities may include vehicle or equipment replacement, engine repower or upgrade, installation of idle reduction technology, or other eligible activities as defined by EPA in the Request for Proposals. Subject to cost per ton evaluation, projects located at the following locations will receive priority consideration: rail yards, freight terminals, intermodal facilities, distribution centers, and warehousing centers, and airport cargo facilities. Eligible projects may receive federal funds ranging from 25 percent to 60 percent of project cost, depending on project type. Selected partners will be responsible for: following all applicable federal procurement guidelines; meeting cost-share requirements; and granting appropriate security interest to NCTCOG for all grant funded vehicles and/or equipment. NCTCOG may consider applications received in response to this solicitation for future funding opportunities or programs. More information and application materials for this Call for Partners can be obtained online at *www.nctcog.org/aqfunding*.

Application materials must be received no later than 5:00 p.m., CDT, on Friday, April 15, 2016, to Lori Clark, Principal Air Quality Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201601180
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 9, 2016

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on March 1, 2016, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Gunsight Mountain Holdings, LLC (Gunsight Holdings) for Approval Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 45673.

The Application: Gunsight Holdings filed an application for approval of the issuance of passive equity interests in Gunsight Holdings to EFS Renewable Holdings, LLC (Investor). Gunsight Holdings is the owner of 100% of the equity interests in Gunsight Mountain Wind Energy, LLC, which is developing a 120 MW wind powered electricity generation project located in Howard County (the project). The project will be interconnected to the Electric Reliability Council of Texas (ERCOT) through facilities owned by Oncor Electric Delivery Company LLC. The total combined generation ownership of Gunsight Holdings, Investor, and their respective affiliates exceeds one percent of the total electricity offered for sale in ERCOT.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45673.

TRD-201601097
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2016

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 2, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Post Oak Hill Water Supply Corporation and HDU Services, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Burleson County; Docket Number 45684.

The Application: Post Oak Hill Water Supply Corporation (Post Oak Hill) and HDU Services, LLC (HDU Services) filed an application for sale, transfer, or merger of facilities and certificate rights in Burleson County. Post Oak Hill and HDU Services seek approval for HDU Services to acquire all of the water system assets of Post Oak Hill held under water Certificate of Convenience and Necessity No. 12686.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45684.

TRD-201601181
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2016

♦ ♦ ♦

Notice of Application for Transfer Pursuant to Public Utility Regulatory Act §37.154

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 26, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §§11.001 - 66.016 (West 2007 & Supp. 2015) (PURA).

Docket Style and Number: Joint Application of Rayburn Country Electric Cooperative, Inc. and Trinity Valley Electric Cooperative, Inc. to Transfer Certificate Rights and Facilities in Van Zandt and Henderson Counties, Docket Number 45531.

The Application: The joint application seeks approval to transfer the portion of Trinity Valley Electric Cooperative's certificate of convenience and necessity (CCN) rights associated with three existing transmission line segments and two retired substation sites that are being purchased by Rayburn County Electric Cooperative. All the electric facilities being acquired by Rayburn are operated in the Southwest Power Pool. Trinity Valley holds CCN No. 30094 and Rayburn holds CCN No. 30188.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be established. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45531.

TRD-201601094
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 2016

♦ ♦ ♦

Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 1, 2016, Telecommunication Properties, Inc. and TPI/ExteNet Holdings, LLC. filed an application with the Public Utility Com-

mission of Texas (commission) to amend service provider certificate of operating authority (SPCOA) Number 60913. Applicants request approval of a change in ownership/control.

Docket Style and Number: Application of Telecommunication Properties, Inc. and TPI/ExteNet Holdings, LLC to amend a Service Provider Certificate of Operating Authority, Docket Number 45683.

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 March 25, 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 45683.

TRD-201601096
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2016

♦ ♦ ♦

Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 3, 2016, Pathway Com-Tel, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority Number 60128. Applicant requests a change in certificated service area.

Docket Style and Number: Application of Pathway Com-Tel, Inc. to Amend a Service Provider Certificate of Operating Authority, Docket Number 45690.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than March 25, 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 45690.

TRD-201601156
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2016

♦ ♦ ♦

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On February 25, 2016, EdgeConneX Fiber Texas, LLC filed an application with the Public Utility Commission of Texas to relinquish its Service Provider Certificate of Operating Authority (SPCOA) Number 60948.

Style and Docket Number: Application of EdgeConneX Fiber Texas, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 45658.

Application: EdgeConneX Fiber Texas, LLC seeks to relinquish its service provider certificate of operating authority because no customers were ever served in the State of Texas.

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 March 16, 2016. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45658.

TRD-201601093
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 2016

♦ ♦ ♦

Notice of Filing to Withdraw Services Pursuant 16 TAC §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Withdraw Services Pursuant to 16 Tex. Admin. Code §26.208(h) - Docket Number 45680.

The Application: On March 1, 2016, pursuant to 16 TAC §26.208(h), Guadalupe Valley Telephone Cooperative, Inc. filed an application with the Commission to withdraw certain operator services from the Long Distance Message Telecommunications Service Tariff. Guadalupe Valley proposes to discontinue the following services: Line Status Verification and Busy Line Interrupt. The proceeding was docketed and suspended on March 3, 2016, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936 7120 or toll-free at (888) 782 8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45680.

TRD-201601095
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

TARIFF CONTROL NO. 45696

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 4, 2016, to implement a minor rate change pursuant to 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of West Plains Telecommunications, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45696.

The Application: West Plains Telecommunications, Inc. filed an application with the commission to increase Directory Assistance charges for direct-dialed and operator-assisted calls for all exchanges. West Plains proposed an effective date of March 15, 2016. The estimated revenue increase to be recognized by the West Plains is $946 in gross annual intrastate revenues. West Plains has 3,289 access lines (residence and business).

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by March 31, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by March 31, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45696.

TRD-201601174
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2016

♦ ♦ ♦

Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

TARIFF CONTROL NO. 45697

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 4, 2016, to implement a minor rate change pursuant to 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of Five Area Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45697.

The Application: Five Area Telephone Cooperative, Inc. filed an application with the commission to increase Directory Assistance charges for direct-dialed and operator-assisted calls for all exchanges. Five Area Telephone proposed an effective date of March 15, 2016. The estimated revenue increase to be recognized by Five Area Telephone is $368 in gross annual intrastate revenues. Five Area Telephone has 819 access lines (residence and business) in service.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by March 31, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by March 31, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45697.

TRD-201601175
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2016

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on March 1, 2016, of notice of intent to serve approximately 86 acres of land in Guadalupe County.

Docket Style and Number: Zipp Road Utility Company LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County, Docket No. 45679.

The Application: Pursuant to 16 Tex. Admin. Code §24.113(i), Zipp Road Utility Company, LLC filed with the commission notice of its intent to serve approximately 86 acres of land in Guadalupe County that was decertified from Guadalupe-Blanco River Authority sewer Certificate of Convenience and Necessity (CCN) Number 20892. The approximately 86 acres of land at issue were decertified pursuant to Tex. Water Code §13.254(a-5) (TWC). Pursuant to TWC §13.254(a-the commission may require an award of compensation to a decertified retail public utility that is the subject of a petition filed under TWC §13.254(a-5) and TWC §13.254(e) provides that the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. Further, the commission is required to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

Persons wishing to comment should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket No. 45679.

TRD-201601167
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on March 2, 2016, of a petition to amend a certificate of convenience and necessity (CCN) by expedited release in Hays County, Texas.

Docket Style and Number: Petition of Hays Consolidated Independent School District to Amend Sweetwater Utility LLC's Certificate of Convenience and Necessity in Hays County by Expedited Release, Docket No. 45687.

The Petition: Hays Consolidated Independent School District filed with the commission a petition for expedited release from Sweetwater Utility LLC's sewer CCN No. 20887 pursuant to Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the commission no later than April 1, 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 No. 45687.

TRD-201601155
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2016

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Notice of Workshop and Request for Comments on Rule Amendments to Chapter 24

Public Utility Commission (commission) Staff is drafting a proposed rule to update and streamline 16 Texas Administrative Code §24.21 (TAC) (relating to Form and Filing of Tariffs). The changes focus primarily on minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. A strawman with proposed amendments to 16 TAC §24.21 has been filed with the commission's Central Records under Project No. 45112 for review by interested parties.

This strawman is offered for public review and comment. Commission staff will hold a workshop regarding this rulemaking at 9:30 a.m. on Wednesday, March 30, 2016. The workshop will be conducted in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78711. The commission requests comments generally on the costs and benefits of the draft proposed rules. Interested parties are invited to provide comments on the draft proposed rules at the workshop and to submit written comments by filing 16 copies of such comments with Central Records no later than 3:00 p.m. on Tuesday, April 19, 2016. Interested parties are invited to file reply comments by filing 16 copies of such responses with Central Records no later than 3:00 p.m. on Tuesday, April 26, 2016. All comments should reference Project No. 45112 and should be limited to 20 pages.

Questions concerning this project or this notice should be referred to Christina Switzer, Legal Division, at Christina.Switzer@puc.texas.gov or (512) 936-7216. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201601186
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2016

♦ ♦ ♦

Notice Requesting Comments on Amendments to Chapter 22

Public Utility Commission (commission) Staff is drafting proposed rules to further address the application of the commission's procedural rules to proceedings involving water and sewer utilities. The proposed rules also contain limited modifications to reflect changes to the commission's procedural practices, the commission's internal organizational structure, the Texas Administrative Procedure Act, and the commission's filing technology. A strawman with proposed amendments to the chapter 22 procedural rules has been filed with the commission's Central Records under Project No. 45116 for review by interested parties.

This strawman is offered for public review and comment. The Commission requests comments generally on the costs and benefits of the draft proposed rules. Interested parties are invited to submit written comments on the draft proposed rules that have been filed in Central Records under Project No. 45116 by filing 16 copies of such comments with Central Records no later than 3:00 p.m. on Friday, April 18, 2016. Interested parties are invited to file reply comments by filing 16 copies of such responses with Central Records no later than 3:00 p.m. on Friday, April 25, 2016. All comments should reference Project No. 45116 and should be limited to 20 pages.

Questions concerning this project or this notice should be referred to Kennedy Meier, Legal Division, at *Kennedy.Meier@puc.texas.gov* or (512) 936-7265. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201601183
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2016

♦ ♦ ♦

Texas Water Development Board

Notice for 2017 State Water Plan

Notice of Public Hearing, Public Comment Period, and Intent to Adopt

The Texas Water Development Board (Board) will conduct a public hearing beginning at 6:00 p.m. on April 18, 2016, in Room 170 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas to receive public comments on the *Draft* 2017 State Water Plan, including the 2017 Interactive State Water Plan website, in accordance with Texas Water Code §16.051 and 31 Texas Administrative Code §358.4(a). Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the 2017 State Water Plan. In addition, persons may provide written comments on or before 5:00 p.m. April 25, 2016, to Connie Sanders, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or by e-mail to *PUBLIC-COMMENT@twdb.texas.gov.*

Copies of the *Draft* 2017 State Water Plan are available for inspection in Room 640M of the Stephen F. Austin Building, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7847. A copy of the *Draft* 2017 State Water Plan and a link to the 2017 Interactive State Water Plan website are also available on the Board's website at http://www.twdb.texas.gov. After consideration of comments submitted in accordance with this notice, the Board will consider adopting the 2017 State Water Plan at a Texas Water Development Board meeting to be noticed separately.

TRD-201601098
Les Trobman
General Counsel
Texas Water Development Board
Filed: March 4, 2016

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Open Meetings

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

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

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

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

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

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

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

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

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

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)*

SALES AND CUSTOMER SUPPORT

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Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

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