

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 3. COMPLIANCE AND ENFORCEMENT

4 TAC §7.155

The Texas Department of Agriculture (Department) adopts the repeal of Subchapter H, Division 3, §7.155, relating to incidental use for schools, without changes to the proposal made in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1192). The repeal is to eliminate confusion as a result of the adoption of a duplicative section, Chapter 7, Subchapter H, Division 7, §7.205.

There were no comments received.

The repeal of §7.155 is adopted pursuant to Chapter 1951 of the Texas Occupations Code, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the adoption is the Texas Occupations Code, Chapter 1951.

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 28, 2016.

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §7.125(a)(1) is not included in the print version of the Texas Register. The figure is available in the html version of the April 8, 2016, issue of the Texas Register online.)

The Texas State Library and Archives Commission adopts amendments to 13 TAC §7.125 regarding local government retention schedule for Records Common to All Local Governments (Schedule GR) with changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8709). The amendment affects §7.125(a)(1) and is adopted pursuant to the Government Code §441.158(a). The amendment makes revisions necessary to keep the schedule up-to-date with current laws, administrative rules, and improve retention of public records.

Comments were received regarding the amendment during the comment period. These comments and the resulting changes are identified in this preamble.

Comment: An official from City of Fort Worth recommended that the new proposed records series GR1075-40 W-9 Form - Request for Taxpayer Identification Number (TIN) and Certification be removed and included in GR1025-26a Accounts Payable and Disbursement Records.

Response: Agency will not make the change as requested. W-9 Forms will remain a separate records series. The Code of Federal Regulation prescribes a specific retention period and the agency is not authorized to set retention different than what is prescribed by rule or law.

Comment: An official from a City of Fort Worth agreed with the proposed retention of LA + 10 years for GR1075-16a Construction Project Records. They recommended the addition of the retention note, "Review before disposal; some records may merit PERMANENT retention for historical reasons." They also requested the removal of the requirement to keep original records once a facility is transferred to another entity. Additionally, they recommended revision of retention note addressing infrastructure to not be permanent but tied to life of asset.

Response: Agency agrees with the recommendations. Retention note added and revised accordingly.

Comment: An official from Harris County recommended clarification on the retention note requiring government entities to keep original records once a facility is transferred to another en-

tity. They are in agreement with the retention period of LA + 10 years.

Response: Agency agrees with recommendation to clarify retention note. Retention note has been revised.

Comment: An official from Harris County recommended the revision of retention note addressing infrastructure to not be permanent but tied to life of asset.

Response: Agency agrees with recommendation and retention note removed.

Comment: An attorney from Lloyd Gosselink Rochelle & Townsend, P.C. articulated its support of the proposed changes in language to the schedule. They do recommend reducing the retention period of GR1075-16c from 5 years to AV. They state that the AV designation will most assist local governments with management of these voluminous construction documents that precede the signed and sealed versions.

Response: Agency will not reduce retention period of this record series. The AV designation does allow flexibility but may cause some entities to destroy records too soon. Some construction projects can be very long-term projects spanning many years. The agency has determined that 5 years is a minimum number of years for these type of records and will provide for consistency across local governments.

The amended section is adopted under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The amended section affects Government Code §441.158 and §441.160.

§7.125. *Records Retention Schedules.*

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.
Figure: 13 TAC §7.125(a)(1)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, 3rd Edition.
Figure: 13 TAC §7.125(a)(3) (No change.)

(4) Local Schedule DC: Records of District Clerks, 3rd Edition.
Figure: 13 TAC §7.125(a)(4) (No change.)

(5) Local Schedule PS: Records of Public Safety Agencies, 3rd Edition.
Figure: 13 TAC §7.125(a)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, Revised 2nd Edition.
Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.
Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, 2nd Edition.

Figure: 13 TAC §7.125(a)(8) (No change.)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 3rd Edition.

Figure: 13 TAC §7.125(a)(10) (No change.)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION

PROCEDURES

16 TAC §33.9

The Texas Alcoholic Beverage Commission adopts amendments to §33.9, relating to Fees for On-Line Transaction, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1059).

Section 33.9 sets the fees for on-line transactions with the commission. The amendments clarify that the fees for a credit card transaction are 25 cents, plus 2.75 percent of the total transaction amount. The amendments establish a flat fee of one dollar for a transaction paid by ACH or electronic check. The fees are consistent with those required by Texas.Gov, which processes the commission's on-line transactions.

Section 33.9 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The com-

mission has determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.55, which grants authority to charge reasonable service fees for the use of electronic or internet service to apply for licenses, permits or certificates.

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

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CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.52

The Texas Alcoholic Beverage Commission adopts amendments to §41.52, relating to Private Clubs--In General, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1060).

Section 41.52 sets forth general rules relating to private clubs. The amendments make grammatical changes, change outdated references, correct internal references, change gender-specific references to gender-neutral references, or change the word "administrator" to "executive director" (pursuant to Alcoholic Beverage Code §5.11(b) and commission practice).

The amendments provide that subsection (c)(1)(F) references to tax bond requirements apply to any bond that may otherwise be required, but remove an affirmative obligation in this section that a bond be maintained. This is consistent with the commission's treatment of tax bonds generally.

The amendments also eliminate the food service requirement in subsection (e) for "complete" meals. Clubs may fulfill the food service obligation by contracting with an outside vendor. The food has to be available upon request and be delivered to and served on the club's premises. In addition, payment for the food service has to be made by the member to the club, and not to the outside vendor.

Section 41.52 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

No comments were received.

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

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

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16 TAC §41.54

The Texas Alcoholic Beverage Commission adopts the repeal of §41.54, relating to Destructions, without changes to the proposal as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1062).

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule continues to exist but that substantial revisions are necessary. Therefore, the commission repeals the text of this section and in a separate rulemaking replaces it with new text under the same rule number and title.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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16 TAC §41.54

The Texas Alcoholic Beverage Commission adopts new §41.54, relating to Destructions, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1062).

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. In a separate rulemaking, the commission reviewed the previous

version of this section pursuant to Government Code §2001.039 and determined that the need for a rule continues to exist but that substantial revisions to that version of the rule were necessary. Therefore, in that separate rulemaking the commission has repealed the text of this section as it previously read and in this rulemaking the commission replaces it with new text under the same rule number and title.

Subsection (a) specifies which permittees and licensees are entitled to a tax exemption or tax credit for alcoholic beverages that are destroyed in accordance with the section.

Subsection (b) defines which destructions qualify for a tax exemption or tax credit.

Subsection (c) specifies the timeline to notify the commission prior to a destruction and that an Application for Destruction of Alcoholic Beverages must be used to provide the notice. It also requires that written approval be received before the destruction occurs.

Subsection (d) specifies the documents to be retained after a destruction, including a copy of the Application for Destruction of Alcoholic Beverages signed by an authorized representative of the commission, any receipt for fees charged by the facility where the destruction occurred, and an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction.

Subsection (e) provides that the approved Application for Destruction of Alcoholic Beverages must be submitted with the monthly excise tax report filed with the commission upon which the tax exemption is claimed. If a permittee or licensee is unable to claim the destruction as an exemption on a tax report, the subsection allows the permittee or licensee to submit a letter requesting issuance of an authorized tax credit.

Subsection (f) requires that the permittee or licensee retain a copy of the Application for Destruction of Alcoholic Beverages.

Subsection (g) specifies that the commission may require that the alcoholic beverages designated for destruction be physically inspected by the commission's authorized representative prior to destruction and/or that the actual destruction be witnessed by such a representative.

No comments were received.

The new section is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 513. REGISTRATION

SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.10

The Texas State Board of Public Accountancy adopts an amendment to §513.10, concerning Firm License, without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 768). The section will not be republished.

The amendment to §513.10 clarifies that: 1) CPA firms may be organized under the Texas Business Corporation Act and LLC law, as well as the Texas Professional Corporation Act and professional LLC law, and 2) Professional organizations must be composed entirely of licensees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on March 24, 2016.

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22 TAC §513.11

The Texas State Board of Public Accountancy adopts an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders, without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 769). The section will not be republished.

The amendment to §513.11 clarifies that: 1) CPA firms may be organized under the Texas Business Corporation Act and LLC law, as well as the Texas Professional Corporation Act and professional LLC law, and 2) Professional organizations must be composed entirely of licensees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.131

The Texas State Board of Public Accountancy adopts an amendment to §523.131, concerning Board Approval of Ethics Course Content, without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 770). The section will not be republished.

The amendment to §523.131 requires ethics course providers to have in their presentation and materials information on the services available to licensees from the Accountants Confidential Assistance Network (ACAN).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 59. PARKS

The Texas Parks and Wildlife Department Commission (Commission) in a duly noticed meeting on January 21, 2016 adopted the repeal of §§59.1 - 59.5, 59.41 - 59.47, 59.191 - 59.193, and 59.330, amendments to §§59.101 - 59.103, 59.105, 59.107 - 59.109, 59.133, and 59.134, and new §§59.1 - 59.5, 59.42, and 59.44, concerning State Parks, without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9075). Amendments to §59.131 are adopted with changes.

The current state park rules have accreted over time and in some places are confusing, disjointed, and contradictory. With the exception of the amendments to §§59.131, 59.133, and 59.134, concerning state parks rules of conduct, the repeals, amendments, and new sections are nonsubstantive and intended to modernize the department's state park rules by removing obsolete provisions, eliminating redundancy, consolidating provisions by subject material, and simplifying regulatory provisions where possible. The department wishes to stress that the rules do not impose additional fees or increase current fees at any park and are strictly nonsubstantive in that regard.

The repeal of §§59.1 - 59.5 is necessary in order to accommodate new rules that simply and succinctly establish the process by which the department establishes and changes the various fees it is authorized to impose.

New §59.1, concerning Establishment of Fees, retains the language of current §59.1(a) and adds a definition of "state park" or "park" in the interests of accuracy. Current §59.1(b) is eliminated because it is an abstraction that is of little use from a regulatory perspective. New paragraph (1) clearly delineates the process by which the department establishes the various state park fees. The Commission currently establishes entry, facility, and use fees within a range of values that the executive director may adjust as necessary but not exceed. New paragraph (2) formalizes that process by requiring all changes (including waivers and discounts) to entry, facility, and use fees to be documented by executive order. New paragraph (3) provides for the delegation of discount and waiver authority to other department personnel in accordance with a written department policy, and new paragraph (4) requires the establishment and collection of fees and fee waivers to be consistent with sound management of financial resources and strong fiscal controls. The new rule is intended to provide flexibility to the department to adjust fees by increments as necessary within the fee ranges established by the commission while simultaneously providing accountability by way of documentation.

Current §59.2, concerning Parks Entrance and Use Fees, has become confusing and contains unnecessary provisions. Therefore, new §59.2, concerning Park Entrance Fees, provides a single, concise set of provisions to establish the department's authority to impose entry fees, entry fee amount ranges, the privileges conveyed by payment of an entry fee, the duration of those privileges, and the department's authority to create customized fees that include entry fees. The extraneous provisions such as application procedures and privileges for various passes are now located in new §59.3, concerning Park Entry Passes. The department notes that neither the current entry fee privileges and period of validity nor the current entry fee amounts are being changed.

New §59.3, concerning Park Entry Passes, consolidates all provisions concerning the various passes issued by the department

(application, fees, privileges) in a single section. The department notes that the new provision does not introduce any substantive changes to the current rules governing the issuance of various passes and does not increase any fee.

New §59.4, concerning Activity and Facility Use Fees, reorganizes and simplifies the current fee schedule without altering the current fee ranges established by the Commission. The department has determined that the current fee rules for activity and facility use at §59.3, concerning Activity and Facility Use Fees, are redundant, excessively detailed, and minutely nuanced for no reason or benefit. For instance, the section establishes separate fee ranges for pavilions, amphitheaters, auditoriums, and gymnasiums, which are essentially the same thing. Similarly, the section establishes fee ranges for hotel/motel rooms based on bed size (single, standard, king single, suite, executive suite), but also for bed and breakfast facilities, rooms with kitchenettes, cabins, and shelters. The current rule makes various subtle distinctions regarding campsites (primitive, regular, regular with electricity, regular with electricity and sewer connection) and group facilities (group lodge, group camp, etc.) as well as numerous other permutations and combinations of facilities and usage. The department has determined that a simple fee schedule that establishes fee ranges for basic types of facilities and use is all that is necessary from a regulatory perspective, with the specific current fees for each type of facility/use to be established by executive order. Thus, rather than multiple fee ranges for essentially the same type of facility/use parameters, the new rule establishes facility/use ranges by generic type under the current fee ranges for those facilities/uses. The new rule also consolidates existing fees relating to commercial use of state parks that impact usage by the public, require additional staff, or impact facilities or resources into a single "park impact fee." The department notes that the new section does not alter the current fee ranges established by the commission.

New §59.5, concerning Reservation of State Park Facilities, provides for a parks reservation system. The department currently operates a reservation system; the new rule acknowledges that fact and provides for the executive director's authority to prescribe the procedures and conditions for operating that system.

The repeal of §§59.41 - 59.47 (current Subchapter C) is necessary to eliminate unnecessary regulations. The current regulations are advisory and informational in nature and therefore unnecessary in a regulatory format. The department has determined that with the exception of land acquisition and development guidelines (required by statute, Parks and Wildlife Code, §13.001), the subject material of Subchapter C is more properly the province of department policy.

New §59.42, concerning Land Acquisition Guidelines (including donations), sets forth the various parameters to be considered by the department with respect to the acquisition of lands for addition to the parks system. Of primary importance is consistency with the department's Land and Water Resources Conservation and Recreation Plan (Plan) required by Parks and Wildlife Code, §11.104. The Plan is a master document that prioritizes and guides department decisions for the long term. Therefore, new subsection (a)(1) recognizes the role of the Plan in department acquisition decisions. New subsection (a)(2) establishes contiguity with existing lands as a priority. The department has determined that the ability to increase or enhance existing parkland is a recognized value-added factor in department acquisition decisions. New subsection (a)(3) recognizes the importance of various recreational values to be considered when the department

contemplates the acquisition of land, such as water features, and interesting or unique topographic features that provide aesthetic appeal to the park-going public. A further consideration, set forth in new subsection (a)(4), is the natural resource value of prospective acquisitions. In addition to enjoyment by the public, another function of parkland is the preservation of habitats and ecosystems, which is intrinsically valuable. New subsection (a)(5) implicates the cultural value of prospective land acquisitions, recognizing that the parks experience also touches on the rich cultural and historical resources of Texas, which are worthy of preservation and interpretation for the benefit and enrichment of the public. New subsection (a)(6) recognizes the priority of a prospective acquisition that would fill a gap in the department's inventory of natural and cultural resources. Given the size of Texas, its geographic and cultural diversity, and the finite resources available for land acquisition, it is important that the department seek to acquire land that addresses unique natural and cultural facets of the state that may not be currently represented in the inventory of department lands. New subsection (a)(7) acknowledges the ancillary values of viewsheds, wildlife corridors, watersheds, and buffers for existing parklands. New subsection (a)(8) sets forth priorities based on the size of a prospective acquisition. Generally, it is desirable for smaller acquisitions (less than 500 acres) to be contiguous with existing parkland, unless there is a compelling cultural or natural feature that makes it imperative to acquire a parcel; otherwise, larger parcels that are not contiguous may be acquired so long as the acquisition is consistent with the Plan. Finally, new subsection (a)(9) acknowledges the value of miscellaneous criteria in the department's decision-making with respect to land acquisition for parks.

New §59.42(b) requires all additions to the state park system to be formally accepted by vote of the Commission, which is necessary to ensure that all parkland acquisition is transparent and subject to public comment.

New §59.44, concerning Development Guidelines, stipulates that facilities development within the state park system be limited to structures and infrastructure that advance the purposes of the department or serve visitor needs and are consistent with department planning documents. The department believes it is prudent to acknowledge that structures and infrastructure within state parks serve a purpose and not be gratuitous or unnecessary.

The amendments to §§59.101 - 59.103, 59.105, and 59.107 - 59.109 make nonsubstantive changes to the rules in Subchapter E, concerning Operation and Leasing of Park Concessions. The amendments modernize the rules and eliminate unnecessary provisions.

The amendment to §59.101, concerning Definitions, adds the word "leased" to the definition of "concessioner" in paragraph (1), adds "facility use" to the exceptions in paragraph (2), replaces the word "state" with the word "department" in paragraph (3), adds new paragraph (5) to define "state park or park," and eliminates the definitions for "prospectus," "state-operated concessions," and "partnership concessions." The amendment to paragraph (1) is necessary to clarify that concession rights on state parks are leased (i.e., subject to the time limits established in a contract) and not permanent. The amendment to paragraph (2) is necessary to clarify the definition of "concessions." The amendment to paragraph (3) is necessary to clarify that the payment is actually made to the department. The definition of "state park or park" in new paragraph (5) is necessary to establish the context of the applicability of the rules. The definitions in current

paragraphs (5) - (7) are superfluous and thus are eliminated. The definition of "prospectus" in current paragraph (5) is unnecessary because the term is archaic and is being eliminated throughout the rules. The definitions in current paragraphs (6) and (7) are being eliminated because the department is not required to treat itself as a concessioner, which leaves all other concessions by default as undertakings of entities other than the department, and covered by the definition in paragraph (1).

The amendment to §59.102, concerning General Requirements for Leased Park Concessions, alters subsection (a) by adding a declarative statement that park visitor services and accommodations may be operated by a concessioner under contractual arrangements with the department. The department has determined that a direct statement to the effect that the department may contract for the provision of services and accommodations via contract with a concessioner is the most effective way to express the relationship between the department and concessioners. The amendment to subsection (a) also removes the provision stating that when adequate services and accommodations exist outside a park within a reasonable distance, every attempt will be made to avoid the duplication of same products and services. The provision is unnecessary because such determinations are part of the criteria used by the department to determine the feasibility of providing the opportunity of any given concession. The amendment also eliminates current subsection (c), which consists of a list of types of concessions that the department may authorize. The provision is unnecessary because the provision is unintentionally limiting. The department has the authority to contract to provide any concession the department deems necessary to enhance or improve the visitation experience, provided it is consistent with the department's mission and the Plan. See, Parks and Wildlife Code, §13.015.

The amendment to §59.103, concerning Selection of a Concessioner, reorganizes and simplifies the section for clarity. The amendment to subsection (a) incorporates the text from current subsection (c), which delegates the granting, termination, amendment, transfer, assignment, and enforcement of all leased concession contract requirements and provisions of such contracts to the executive director. The amendment to subsection (a) also eliminates a statement to the effect that when necessary, desirable, and financially feasible, the department may announce availability of concession opportunity by means of a prospectus. The department has determined that a declarative statement of the authority delegated to the executive director by the Commission with respect to contracts with concessioners is the most effective method of establishing the process for determining the need for and the granting of concession contracts. Similarly, the amendment to §59.103 adds new subsection (b) to provide that the recruitment and selection of concessioners for a leased concession within a state park be undertaken in a manner appropriate for the scale of the investment and term of the business opportunity, ensuring that the selection process is fair and equitable, and in compliance with applicable contracting laws. The department believes that a statement of intent establishing the general criteria used by the department to determine appropriate concessioners and concession opportunity is important, as is a statement of intent to follow all applicable contracting laws.

The amendment to §59.103 also amends current subsection (b) (which is being re-designated as subsection (c)) to modernize archaic language and replace a wordy and abstruse provision regarding the expectations of the department with regard to the operations of a concession with a simpler provision stating that it

is the expectation of the department that a concessioner operate a concession as set forth in the contract. The amendment also eliminates current subsections (c) and (d), which are no longer necessary. The substantive provisions of current subsection (c) have been incorporated in subsection (a). Current subsection (d) is unnecessary because the authority to terminate on the basis of breach of contract exists as a condition of the contract and does not need to be established by rule.

The amendment to §59.105, concerning Leased Concession Contract Terms, makes nonsubstantive changes and eliminates archaic language. The amendment to subsection (a) removes stilted language. The amendment to subsection (b) stipulates that franchise fee rates be determined by the executive director or his designee in an equitable and fair manner, giving consideration to the various types of operations, gross receipts, net profit, and capital invested and provides that single or multiple percentages applied to all or various kinds of gross receipts may be considered in new or amended contracts. Essentially, the amendment establishes the criteria used by the department to determine the particulars of franchise fee rates. The amendment also eliminates a provision in current subsection (b) that limits revocable short-term contracts to a term of two years or less. The department sees no reason for such a limitation.

The amendment to §59.105(c) provides for penalties and interest for delinquent franchise fees to be stated in a contract, not to exceed the amounts allowed by statute, which is in keeping with current business practices.

The amendment to §59.105 adds new subsection (d) to provide that penalties and interest may be waived by the executive director or designee for good cause. This provision recognizes that there could be situations in which it would be appropriate for the department to waive penalties and interest imposed under a concession contract, due to such things as unforeseen factors beyond the control of a concessioner, or when in the best interest of the department. The department wishes to provide for such situations.

The amendment to §59.105 also adds new subsection (e) to provide that the rates and charges prescribed by the concessioner shall be subject to the approval of the executive director or designee, that the reasonableness of the concessioner's rates and charges to the public shall be judged primarily by comparing with current charges for facilities and services of comparable character under similar conditions, and that consideration shall be given to factors deemed relevant to the type of concession, location, and business conditions. The new subsection is necessary to ensure that park visitors are able to use reasonably priced concession opportunities and to protect the state from fraud and loss.

The amendment to §59.107, concerning Accounting, makes a nonsubstantive grammatical change in subsection (a).

The amendment to §59.108, concerning Bond and Insurance, alters subsection (a) by widening the scope of the requirement for a bond to be furnished by a concessioner, and allows the department to impose other conditions as necessary to protect the interests of the department and the public, and ensure compliance with applicable law regarding payment and performance bonds. The current rule limits bond requirements to construction projects. The department sees no reason why bond requirements should be thus limited and reasons that the public's interest should be protected in all cases. Therefore, the department should be able to require any action, including the furnishing of

a bond, when it determines there is a necessity to do so. The amendment also eliminates archaic language in subsection (b) related to insurance coverage and replaces it with a simple directive to carry such liability insurance as deemed appropriate by the department.

The amendment to §59.109, concerning Furnishing Utilities, allows the cost of utilities used by a concessioner to be addressed in the terms of the contract in instances where it is not feasible to meter such usage. Currently, the rule requires utility payments under such conditions to be paid upon receipt of notification. The department has determined that it is in the best interest of the public, the department, and the concessioner to have such issues be addressed contractually so that all parties are in agreement prior to the initiation of concession activities.

The amendment to §59.131, concerning Definitions, replaces a missing conjunction in paragraph (20).

The amendment to §59.133, concerning Closing Hours and Overnight Use, adds new subsection (b) to provide that the executive director or designee may close a state park as necessary to protect public health and safety during emergency conditions, resource management activities, construction projects, or other management purposes. This provision recognizes that it is appropriate to close a park as necessary and to set forth that capability by rule.

The amendment to §59.134, concerning Rules of Conduct in Parks, allows llamas in state parks, prohibits the introduction of any species of animal life into a state park except as authorized, allows persons to display and use archery equipment when participating in authorized angling activity, and clarifies that activities allowed by permit must be conducted under the same conditions as those conducted by payment of fee.

Current §59.134(c) allows for the entry and use of equines by park visitors in designated areas. The amendment adds llamas. The department has been approached by llama enthusiasts who would like to be able to use llamas as pack and assistance animals. After consulting with the Texas Animal Health Commission, the department sees no reason not to allow llamas under the same provisions that currently apply to equines.

Current §59.134(c)(3)(B) creates an offense for the introduction of any species of animal life within a state park. The department has recently encountered situations in which park visitors intentionally and unintentionally introduced exotic wildlife to state parks. The introduction of such animal species presents a threat to native ecosystems and habitats. In order to protect and better manage the lands held by the department for the enjoyment of the public, the department believes it is prudent to expressly prohibit the introduction of any species of animal life except as may be specifically authorized by the Parks and Wildlife Code or the executive director.

Current §59.134(d) creates an offense for the display or discharge of arms in a state park except in certain listed situations. The definition of "arm and firearm" in §59.131(1) includes archery equipment. Although the current rules of conduct in state parks allow the display and use of arms and firearms when being used in authorized public hunting activities, the rules do not address the use of archery equipment for the take of nongame fish during authorized angling activities. The amendment remedies that oversight. Subsection (d) also updates this provision to address situations in which a person is carrying a handgun in compliance with applicable handgun laws.

The amendment to §59.134(f) adds language to clarify that it applies to activities conducted under permit as well as to activities conducted following the payment of a fee.

The repeal of §§59.191 - 59.193, concerning Relocation Assistance in Park Acquisition Projects, is necessary because the rules no longer serve a purpose. The repeals constitute a repeal of Subchapter G.

The repeal of §59.330, concerning Eligibility of Donated Land for Acceptance and Inclusion in State Park System, is necessary because the provisions of that section have been incorporated in new §59.142. The repeals constitute a repeal of Subchapter K.

The department received two comments opposing adoption of the proposed rules. Both commenters articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that fees should not be increased. The department agrees with the comment and responds that the rules as adopted neither impose new nor increase existing fees. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lake use fee is ridiculous. The department disagrees with the comment and responds that the fee in question is already in effect and is not altered by the new rules.

No groups or associations commented on the adoption of the rules as proposed.

The department received eight comments supporting adoption of the rules as proposed.

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §§59.1 - 59.5

The repeals are adopted under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015(a), which authorizes the commission to set park user fees for park services; §13.018(e), which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport; and §13.0191, which authorizes the department to set fees for the use of a facility or lodging at a state park in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department.

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

Filed with the Office of the Secretary of State on March 21, 2016.

TRD-201601348

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: April 10, 2016

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

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31 TAC §§59.1 - 59.5

The new rules are adopted under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015(a), which authorizes the commission to set park user fees for park services; §3.018(e), which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport; and §13.0191, which authorizes the department to set fees for the use of a facility or lodging at a state park in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department.

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

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SUBCHAPTER C. ACQUISITION AND DEVELOPMENT OF HISTORIC SITES, BUILDINGS AND STRUCTURES

31 TAC §§59.41 - 59.47

The repeals are adopted under Parks and Wildlife Code, §13.001(c), which requires the commission to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011(b), which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; and §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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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Ann Bright
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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §§59.42, §59.44

The new rules are adopted under Parks and Wildlife Code, §13.001(c), which requires the commission to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011(b), which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; and §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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

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SUBCHAPTER E. OPERATION AND LEASING OF PARK CONCESSIONS

31 TAC §§59.101 - 59.103, 59.105, 59.107 - 59.109

The amendments are adopted under Parks and Wildlife Code, §13.015(b), which authorizes the department to operate or grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites and to make regulations governing the granting or operating of concessions.

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

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SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §§59.131, 59.133, 59.134

The amendments are adopted under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; and §13.102, which authorizes the department to make regulations

governing the conservation, preservation, and use of state property whether natural features or constructed facilities; the abusive, disruptive, or destructive conduct of persons; the activities of park users including camping, swimming, boating, fishing, or other recreational activities; the possession of pets or animals; the regulation of traffic and parking; and conduct which endangers the health or safety of park users or their property.

§59.131. *Definitions.*

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

(1) Arms and firearms--Any device from which shot, a projectile, arrow, or bolt is fired by the force of an explosion, compressed air, gas, or mechanical device. To include, but not limited to, rifle, shotgun, handgun, air rifle, pellet gun, longbow, cross bow, sling shot, blow gun, or dart gun.

(2) Bicycle--A device that a person may ride, that is propelled by human power, and has two tandem wheels at least one of which is more than 14 inches in diameter.

(3) Artifacts--Objects used or modified by humans, including, but not limited to, arrow points, dart points, stone, bone, or shell implements or any other prehistoric or historic objects.

(4) Boat--A vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

(5) Camping--The act of:

(A) occupying a designated camping facility;

(B) erecting a tent, or arranging bedding, or both, for the purpose of, or in such a manner as will permit, remaining overnight; and/or

(C) using a trailer, camper, or other vehicle for the purpose of sleeping during nighttime hours.

(6) Cultural features--Include, but are not limited to, state archeological landmarks, archeological sites, historic sites and structures, pictographs and petroglyphs.

(7) Department--The Texas Parks and Wildlife Department.

(8) Director--The executive director of the Texas Parks and Wildlife Department or his or her designee.

(9) Equine--A species of animal belonging to the family equidae, including horses, ponies, donkeys, and mules.

(10) Garbage--Trash, refuse, rubbish, household waste, medical waste, rubble, spoil, construction debris, yard clippings, offal, or any other similarly useless, noxious, or offensive material.

(11) Motor Vehicle--For purposes of this subchapter, a motor vehicle does not include a wheelchair, a motorized wheelchair or a motorized mobility device. A motor vehicle is a motor powered vehicle, including, but not limited to:

(A) any motor driven or propelled vehicle required to be registered under the laws of this state;

(B) an all-terrain vehicle as defined in Transportation Code, §502.001;

(C) a motorcycle as defined in Transportation Code, §501.002 and §541.201;

(D) a golf cart, as defined in Transportation Code, §502.001;

(E) a moped as defined in Transportation Code, §541.201;

(F) a neighborhood electric vehicle as defined in Transportation Code, §551.301;

(G) a pocket bike or mini-motorbike, as defined in Transportation Code, §551.301;

(H) an electric bicycle; or

(I) a motor assisted scooter, as defined in Transportation Code, §551.301.

(12) Motorized mobility device--A device designed for transportation of persons with physical disabilities that:

(A) has three or more wheels;

(B) is propelled by a battery-powered motor;

(C) has not more than one forward gear; and

(D) is not capable of speeds exceeding eight miles per hour.

(13) Night--Any time from 1/2 hour after sunset to 1/2 hour before sunrise.

(14) Person--Natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons acting individually, or by an agent, servant, or employee.

(15) Pet--A domesticated companion animal accompanying a person who enters or uses a state park. In no event shall a pet under this subchapter include the following:

(A) a dangerous wild animal, as defined in Health and Safety Code, §822.101;

(B) wildlife;

(C) livestock and exotic livestock as defined in Agriculture Code, §§1.003, 142.001, and 161.001;

(D) any species of animal that is not ordinarily domesticated; or

(E) any species of animal that a person may not legally possess.

(16) Plant life--All plants including trees, dead or downed wood, shrubs, vines, wildflowers, grass, sedge, fern, moss, lichen, fungus, or any other member of the plant family.

(17) Public place--Any place to which the public or a substantial group of the public has access. The interior spaces of the following are not considered public places:

(A) department cabins, screened shelters, recreation halls, group barracks, and lodges; and

(B) tents, campers, trailers, motor homes, or any enclosed vehicle(s) that are used as camping equipment.

(18) State park--A state park, state historic site, or state natural that is administered, operated, or managed by the department.

(19) Unattended pet--A pet that is unaccompanied or not under immediate control of the person responsible for the pet. Pets tied or secured outside of camping equipment or buildings are not considered under immediate control.

(20) Wildlife--A species, including each individual of a species, that normally lives in a state of nature and is not ordinarily domesticated.

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 21, 2016.

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Ann Bright

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Texas Parks and Wildlife Department

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



SUBCHAPTER G. RELOCATION ASSISTANCE IN PARK ACQUISITION PROJECTS

31 TAC §§59.191 - 59.193

The repeals are adopted under Parks and Wildlife Code, §13.001(c), which requires the commission to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011(b), which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; and §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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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Ann Bright

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Texas Parks and Wildlife Department

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



SUBCHAPTER K. ACCEPTANCE OF DONATED LAND

31 TAC §59.330

The repeal is adopted under Parks and Wildlife Code, §13.0075, which requires the commission to adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

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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Ann Bright

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Texas Parks and Wildlife Department

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 2. LEGAL SERVICES BOND DIVISION

34 TAC §§1.51, 1.52, 1.54 - 1.56, 1.58 - 1.60

The Comptroller of Public Accounts adopts the repeal of §1.51, concerning presentation of municipal bonds and other public securities for registration before issuance; §1.52, concerning certificates provided; §1.54, concerning registration numbers; §1.55, concerning release of bonds after registration; §1.56, concerning maintenance of transcript of proceedings for each bond issue; §1.58, concerning registration of bond ownership; §1.59; concerning conversion of form of a bond from bearer bond to registered bond and from registered bond to bearer bond and presentation for exchange; and §1.60, concerning form of registration certificates to be printed on bonds, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1082). These sections are being repealed due to a change from paper to electronic registration that has occurred over time in public security registration practices under Government Code, Chapter 1203.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Government Code, §1203.026, which provides the comptroller with the authority to adopt rules relating to the comptroller's performance of registration of public securities under Chapter 1203.

The repeals do not affect Government Code, Chapter 1203, Subchapters A, B, and C, §1203.001 et. seq.

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 24, 2016.

TRD-201601407

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: April 13, 2016

Proposal publication date: February 12, 2016

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

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CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.432

The Comptroller of Public Accounts adopts amendments to §3.432, concerning refunds on gasoline, diesel fuel, compressed natural gas, and liquefied natural gas taxes, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 946). The amendments are adopted to implement the provisions of Senate Bill 254, 81st Legislature, 2009, effective July 1, 2009, House Bill 2148, 83rd Legislature, 2013, effective September 1, 2013, and House Bill 1905, 84th Legislature, 2015, effective September 1, 2015.

Subsection (h)(1)(E) is amended to add the definition of a volunteer fire department to provide clarity for refund purposes because of statutory exemptions provided in Senate Bill 254 and House Bill 2148.

Subparagraph (F) is added to include an exemption for non-profit entities providing emergency medical services as provided in House Bill 1905.

Paragraph (2) is amended to reflect the inclusion of new subparagraph (F).

Paragraph (3) is reformatted to reflect the expansion of an exemption to include a Texas municipality and a transit company, including a metropolitan rapid transit authority, as provided in House Bill 1905.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §162.104 (Exemption for Gasoline), §162.125 (Gasoline Refund or Credit for Certain Taxes Paid), §162.204 (Diesel Fuel Exemptions), §162.227 (Diesel Fuel Refund for Certain Taxes Paid), §162.356 (Compressed Natural Gas and Liquefied Natural Gas Exemptions), and §162.365 (Compressed Natural Gas and Liquefied Natural Gas Exemption).

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 22, 2016.

TRD-201601357

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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Proposal publication date: February 5, 2016

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER E. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §9.218 and new §9.218 in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities. New §9.218 is adopted with changes to the proposed text published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 451). The repeal of §9.218 is adopted without changes to the proposed text.

The adoption sets forth the requirements that a program provider in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition (ICF/IID) program must comply with to voluntarily close a facility and, at the program provider's option, to request suspension of a closing facility's certified capacity for up to one year after the facility closes. For DADS to approve the suspension of certified capacity, the closing facility must meet certain requirements, including having a certified capacity of eight or less. To activate the suspended capacity, the program provider must submit an application for enrollment in the ICF/IID Program before the suspension period ends.

A minor editorial change was made to §9.218(b)(2) to change passive voice to active voice.

DADS received no comments regarding adoption of the repeal and new section.

40 TAC §9.218

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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 28, 2016.

TRD-201601431

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-2264



40 TAC §9.218

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§9.218. Voluntary Facility Closure and Suspension of Certified Capacity.

(a) In this section, the terms "close" and "closure" refer to a facility ceasing to operate. The terms do not include temporarily relocating individuals who reside in a facility.

(b) Except as provided in subsection (c) of this section, if a program provider intends to voluntarily close a facility, the program provider must submit to DADS, at least 60 days before the facility closes, written notice of the program provider's intent to close the facility, which includes:

(1) the anticipated date of closure; and

(2) a description of how the facility will discharge and relocate an individual who resides in the closing facility to a new residence.

(c) If, for reasons beyond the program provider's control, the program provider cannot provide the notice required by subsection (b) of this section at least 60 days before the program provider anticipates closing the facility, the program provider must state in the notice the reason why a shorter time period is necessary.

(d) The program provider must comply with §9.227 of this subchapter (relating to Discharge from a Facility).

(e) If a facility is closing, DADS imposes a vendor hold on payments due to the program provider under the provider agreement until an audit conducted in accordance with §9.269 of this subchapter (relating to Audits) is complete.

(f) A program provider that closes a facility may request that DADS suspend some or all of the facility's certified capacity for up to one year after the facility closes.

(g) To request that a facility's certified capacity be suspended:

(1) the facility's certified capacity must be eight or less;

(2) the facility must not be the subject of any proposed or pending enforcement action; and

(3) the program provider must:

(A) voluntarily close the facility; and

(B) submit a letter to DADS requesting suspension of the facility's certified capacity.

(h) A letter submitted in accordance with subsection (g)(3)(B) of this section must include:

(1) the legal name and address of the program provider;

(2) the closing facility's name and address;

(3) the facility's identification number;

(4) the facility's contract number;

(5) the facility's license number and expiration date, if the facility is licensed;

(6) the certified capacity of the facility;

(7) the certified capacity for which the program provider is requesting the suspension;

(8) the anticipated closure date of the facility;

(9) justification for the suspension of certified capacity; and

(10) a statement regarding the possible use of the certified capacity in the future.

(i) Within 30 days after DADS receives a program provider's letter, as described in subsection (g)(3)(B) of this section, DADS notifies the program provider in writing whether DADS has approved or denied the program provider's request to suspend capacity.

(j) If DADS approves a request to suspend capacity, the notification from DADS states:

(1) the period of time the capacity is suspended, which must not exceed one year;

(2) the effective date of the suspension;

(3) the certified capacity being suspended; and

(4) the capacity available, which must not exceed six per facility.

(k) After DADS approves a request to suspend capacity, DADS does not extend the period of time for which capacity is suspended.

(l) A program provider may not transfer a facility's suspended capacity to another entity.

(m) DADS may rescind its approval of a request to suspend certified capacity. If DADS rescinds its approval, the suspended capacity reverts to the control of DADS.

(n) A program provider does not receive an administrative hearing to challenge DADS denial of a request to suspend capacity or DADS rescission of its approval to suspend capacity.

(o) To activate a facility's suspended certified capacity, the program provider must submit an application for enrollment in the ICF/IID Program in accordance with Division 2 of this subchapter (relating to Provider Enrollment) before the suspension period ends. If a program provider does not submit an application for enrollment in the ICF/IID

Program before the suspension period ends, the suspended capacity is not available to the program provider and reverts to the control of DADS. If DADS rejects a program provider's application for enrollment in the ICF/IID Program, the suspended capacity is not available to the program provider and reverts to the control of DADS.

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-201601432

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: April 17, 2016

Proposal publication date: January 8, 2016

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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER H. ENFORCEMENT

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §90.239 and new §90.239, in Chapter 90, Intermediate Care Facilities for persons with an Intellectual Disability or Related Conditions, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 470).

The adoption sets forth the notification requirements that an intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) license holder must comply with to voluntarily close a facility.

DADS received no comments regarding adoption of the repeal and new section.

40 TAC §90.239

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which

authorizes DADS to license an ICF/IID; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 28, 2016.

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40 TAC §90.239

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license an ICF/IID; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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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